

By Senator Geller

29-1493-02

See HB 109

1                                   A bill to be entitled  
2           An act relating to windstorm property  
3           insurance; amending s. 627.351, F.S.;  
4           specifying membership of the boards of the  
5           Florida Windstorm Underwriting Association and  
6           the Residential Property and Casualty Joint  
7           Underwriting Association; revising criteria for  
8           limited apportionment; providing rate  
9           standards; specifying duties with respect to  
10          pursuit of federal tax exemptions and tax-free  
11          bond status; providing premium tax exemption;  
12          providing for appropriation of funds for  
13          hurricane loss mitigation purposes; providing  
14          standards for certain payments to agents of  
15          record of Florida Windstorm Underwriting  
16          Association and Residential Property and  
17          Casualty Joint Underwriting Association  
18          policies; amending s. 627.3511, F.S.; revising  
19          agent compensation in connection with take-out  
20          plans; amending s. 627.7013, F.S.; delaying the  
21          repeal date of the moratorium on  
22          hurricane-related cancellation or nonrenewal of  
23          property insurance policies; amending s.  
24          624.4072, F.S.; increasing a period of  
25          exemption from certain taxes and assessments  
26          for certain minority businesses; extending a  
27          future repeal; providing effective dates.

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

31

1           Section 1. Effective July 1, 2002, paragraph (b) of  
2 subsection (2) and paragraph (c) of subsection (6) of section  
3 627.351, Florida Statutes, are amended, and paragraph (f) is  
4 added to subsection (2) of that section, to read:

5           627.351 Insurance risk apportionment plans.--

6           (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

7           (b) The department shall require all insurers holding  
8 a certificate of authority to transact property insurance on a  
9 direct basis in this state, other than joint underwriting  
10 associations and other entities formed pursuant to this  
11 section, to provide windstorm coverage to applicants from  
12 areas determined to be eligible pursuant to paragraph (c) who  
13 in good faith are entitled to, but are unable to procure, such  
14 coverage through ordinary means; or it shall adopt a  
15 reasonable plan or plans for the equitable apportionment or  
16 sharing among such insurers of windstorm coverage, which may  
17 include formation of an association for this purpose. As used  
18 in this subsection, the term "property insurance" means  
19 insurance on real or personal property, as defined in s.  
20 624.604, including insurance for fire, industrial fire, allied  
21 lines, farmowners multiperil, homeowners' multiperil,  
22 commercial multiperil, and mobile homes, and including  
23 liability coverages on all such insurance, but excluding  
24 inland marine as defined in s. 624.607(3) and excluding  
25 vehicle insurance as defined in s. 624.605(1)(a) other than  
26 insurance on mobile homes used as permanent dwellings. The  
27 department shall adopt rules that provide a formula for the  
28 recovery and repayment of any deferred assessments.

29           1. For the purpose of this section, properties  
30 eligible for such windstorm coverage are defined as dwellings,  
31 buildings, and other structures, including mobile homes which

1 are used as dwellings and which are tied down in compliance  
2 with mobile home tie-down requirements prescribed by the  
3 Department of Highway Safety and Motor Vehicles pursuant to s.  
4 320.8325, and the contents of all such properties. An  
5 applicant or policyholder is eligible for coverage only if an  
6 offer of coverage cannot be obtained by or for the applicant  
7 or policyholder from an admitted insurer at approved rates.

8         2.a.(I) All insurers required to be members of such  
9 association shall participate in its writings, expenses, and  
10 losses. Surplus of the association shall be retained for the  
11 payment of claims and shall not be distributed to the member  
12 insurers. Such participation by member insurers shall be in  
13 the proportion that the net direct premiums of each member  
14 insurer written for property insurance in this state during  
15 the preceding calendar year bear to the aggregate net direct  
16 premiums for property insurance of all member insurers, as  
17 reduced by any credits for voluntary writings, in this state  
18 during the preceding calendar year. For the purposes of this  
19 subsection, the term "net direct premiums" means direct  
20 written premiums for property insurance, reduced by premium  
21 for liability coverage and for the following if included in  
22 allied lines: rain and hail on growing crops; livestock;  
23 association direct premiums booked; National Flood Insurance  
24 Program direct premiums; and similar deductions specifically  
25 authorized by the plan of operation and approved by the  
26 department. A member's participation shall begin on the first  
27 day of the calendar year following the year in which it is  
28 issued a certificate of authority to transact property  
29 insurance in the state and shall terminate 1 year after the  
30 end of the calendar year during which it no longer holds a  
31 certificate of authority to transact property insurance in the

1 state. The commissioner, after review of annual statements,  
2 other reports, and any other statistics that the commissioner  
3 deems necessary, shall certify to the association the  
4 aggregate direct premiums written for property insurance in  
5 this state by all member insurers.

6 (II) The plan of operation shall provide for a board  
7 of directors consisting of the members of the State Board of  
8 Administration, which shall oversee the operations of the  
9 association and shall carry out any other duties provided by  
10 law. The board shall appoint an advisory council consisting  
11 of an actuary, a meteorologist, an engineer, a representative  
12 of insurers, a representative of insurance agents, and three  
13 consumers who shall also be representatives of other  
14 professions and industries, to provide the board with  
15 information and advice in connection with its duties under  
16 this section. Members of the advisory council shall be  
17 eligible for per diem and travel expenses under s. 112.061.  
18 The association shall not be considered a state agency and its  
19 obligations shall not be considered obligations of the state  
20 ~~Insurance Consumer Advocate appointed under s. 627.0613, 1~~  
21 ~~consumer representative appointed by the Insurance~~  
22 ~~Commissioner, 1 consumer representative appointed by the~~  
23 ~~Governor, and 12 additional members appointed as specified in~~  
24 ~~the plan of operation. One of the 12 additional members shall~~  
25 ~~be elected by the domestic companies of this state on the~~  
26 ~~basis of cumulative weighted voting based on the net direct~~  
27 ~~premiums of domestic companies in this state. Nothing in the~~  
28 ~~1997 amendments to this paragraph terminates the existing~~  
29 ~~board or the terms of any members of the board.~~

30 (III) The plan of operation shall provide a formula  
31 whereby a company voluntarily providing windstorm coverage in

1 affected areas will be relieved wholly or partially from  
2 apportionment of a regular assessment pursuant to  
3 sub-sub-subparagraph d.(I) or sub-sub-subparagraph d.(II).

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

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

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

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

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

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

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

1 calendar year for all member insurers, the association shall  
2 levy an assessment on member insurers in an amount equal to  
3 the deficit.

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

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

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



1 sub-sub-subparagraph are not part of an insurer's rates, are  
2 not premium, and are not subject to premium tax, fees, or  
3 commissions; however, failure to pay the emergency assessment  
4 shall be treated as failure to pay premium.

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

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

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

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

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

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

1 be deferred. However, there shall be no limitation or  
2 deferment of an emergency assessment to be collected from  
3 policyholders under sub-sub-subparagraph 2.d.(III).

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

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

21 b.(I) Subject to sub-sub-subparagraph (II), all rate  
22 filings under this subsection relating to coverage for  
23 windstorm losses shall reflect historical insurance data. When  
24 using a computer model in making a rate filing under this  
25 subsection, the association may use only a computer model  
26 which is based upon standards and guidelines developed or  
27 established by the Florida Commission on Hurricane Loss  
28 Projection Methodology under s. 627.0628. Consideration of  
29 historical insurance data and the use of computer models shall  
30 be consistent with applicable standards of practice of the

31

1 American Academy of Actuaries.The association may require  
2 arbitration of a rate filing under s. 627.062(6).

3 ~~(II) It is the intent of the Legislature that the~~  
4 Rates for coverage provided by the association shall be  
5 actuarially sound and not competitive with approved rates  
6 charged in the admitted voluntary market such that the  
7 association functions as a residual market mechanism to  
8 provide insurance only when the insurance cannot be procured  
9 in the voluntary market. The plan of operation shall provide  
10 a mechanism to assure that the average base rates for each  
11 line of business charged by the association for hurricane  
12 coverage for each unmitigated risk in a particular county  
13 shall be no lower than the highest department-approved rate  
14 within the association's eligible area for hurricane coverage  
15 in the voluntary market for each line of business in such  
16 county, among the 20 largest insurers actually writing such  
17 coverage in such county, beginning no later than January 1,  
18 ~~1999, the rates charged by the association for each line of~~  
19 ~~business are reflective of approved rates in the voluntary~~  
20 ~~market for hurricane coverage for each line of business in the~~  
21 ~~various areas eligible for association coverage.~~

22 c. The association shall provide for windstorm  
23 coverage on residential properties in limits up to \$10 million  
24 for commercial lines residential risks and up to \$1 million  
25 for personal lines residential risks. If coverage with the  
26 association is sought for a residential risk valued in excess  
27 of these limits, coverage shall be available to the risk up to  
28 the replacement cost or actual cash value of the property, at  
29 the option of the insured, if coverage for the risk cannot be  
30 located in the authorized market. The association must accept  
31 a commercial lines residential risk with limits above \$10

1 million or a personal lines residential risk with limits above  
2 \$1 million if coverage is not available in the authorized  
3 market. The association may write coverage above the limits  
4 specified in this subparagraph with or without facultative or  
5 other reinsurance coverage, as the association determines  
6 appropriate.

7           d. The plan of operation must provide objective  
8 criteria and procedures, approved by the department, to be  
9 uniformly applied for all applicants in determining whether an  
10 individual risk is so hazardous as to be uninsurable. In  
11 making this determination and in establishing the criteria and  
12 procedures, the following shall be considered:

13           (I) Whether the likelihood of a loss for the  
14 individual risk is substantially higher than for other risks  
15 of the same class; and

16           (II) Whether the uncertainty associated with the  
17 individual risk is such that an appropriate premium cannot be  
18 determined.

19  
20 The acceptance or rejection of a risk by the association  
21 pursuant to such criteria and procedures must be construed as  
22 the private placement of insurance, and the provisions of  
23 chapter 120 do not apply.

24           e. The policies issued by the association must provide  
25 that if the association obtains an offer from an authorized  
26 insurer to cover the risk at its approved rates under either a  
27 standard policy including wind coverage or, if consistent with  
28 the insurer's underwriting rules as filed with the department,  
29 a basic policy including wind coverage, the risk is no longer  
30 eligible for coverage through the association. Upon  
31 termination of eligibility, the association shall provide

1 written notice to the policyholder and agent of record stating  
2 that the association policy must be canceled as of 60 days  
3 after the date of the notice because of the offer of coverage  
4 from an authorized insurer. Other provisions of the insurance  
5 code relating to cancellation and notice of cancellation do  
6 not apply to actions under this sub-subparagraph.

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

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

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

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

1  
2 If the new or producing agent is unwilling or unable to accept  
3 appointment, the new insurer shall pay the agent in accordance  
4 with sub-sub-subparagraph (I).

5 h. When the association enters into a contractual  
6 agreement for a take-out plan, the producing agent of record  
7 of the association policy is entitled to retain any unearned  
8 commission on the policy and the insurer shall:

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

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

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

23 6.a. The plan of operation may authorize the formation  
24 of a private nonprofit corporation, a private nonprofit  
25 unincorporated association, a partnership, a trust, a limited  
26 liability company, or a nonprofit mutual company which may be  
27 empowered, among other things, to borrow money by issuing  
28 bonds or by incurring other indebtedness and to accumulate  
29 reserves or funds to be used for the payment of insured  
30 catastrophe losses. The plan may authorize all actions  
31



1 necessary to facilitate the issuance of bonds, including the  
2 pledging of assessments or other revenues.

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

1 under the plan. The assets and obligations of the plan in  
2 effect immediately prior to the effective date of chapter  
3 76-96 shall be construed to be the assets and obligations of  
4 the successor plan created herein.

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

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

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

1 for an effective date of coverage later than the date of the  
2 closing of the transfer as established by the transferor, the  
3 transferee, and, if applicable, the lender.

4 9. Notwithstanding any other provision of law:

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

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

23 c. Each such pledge or sale of, lien upon, and  
24 security interest in, including the priority of such pledge,  
25 lien, or security interest, any such assessments, emergency  
26 assessments, market equalization or renewal surcharges,  
27 projected recoveries from the Florida Hurricane Catastrophe  
28 Fund, reinsurance recoverables, or other rights, revenues, or  
29 other assets which are collected, or levied and collected,  
30 after the commencement of and during the pendency of or after  
31

1 any such proceeding shall continue unaffected by such  
2 proceeding.

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

14 e. Any such pledge or sale of assessments, revenues,  
15 contract rights or other rights or assets of the association  
16 shall constitute a lien and security interest, or sale, as the  
17 case may be, that is immediately effective and attaches to  
18 such assessments, revenues, contract, or other rights or  
19 assets, whether or not imposed or collected at the time the  
20 pledge or sale is made. Any such pledge or sale is effective,  
21 valid, binding, and enforceable against the association or  
22 other entity making such pledge or sale, and valid and binding  
23 against and superior to any competing claims or obligations  
24 owed to any other person or entity, including policyholders in  
25 this state, asserting rights in any such assessments,  
26 revenues, contract, or other rights or assets to the extent  
27 set forth in and in accordance with the terms of the pledge or  
28 sale contained in the applicable financing documents, whether  
29 or not any such person or entity has notice of such pledge or  
30 sale and without the need for any physical delivery,  
31 recordation, filing, or other action.

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

10 10. It is the intent of the Legislature that the  
11 association vigorously pursue an exemption from federal income  
12 taxation and tax-free status for bonds issued by or on behalf  
13 of the association. In furtherance of this intent:

14 a. The association shall retain such expert tax  
15 counsel and bond counsel as necessary and expend such funds as  
16 necessary to pursue such negotiations or litigation as may  
17 lead to favorable tax rulings.

18 b. The association shall, no later than January 1,  
19 2003, provide a report to the Governor, the Insurance  
20 Commissioner, the President of the Senate, and the Speaker of  
21 the House of Representatives detailing the status of the  
22 negotiations or litigation and recommending statutory changes,  
23 if any, needed to secure favorable tax rulings.

24 (f)1. In recognition of the fact that the association  
25 created under this subsection furthers an essentially  
26 governmental purpose, the association is exempt from premium  
27 taxes effective July 1, 2003.

28 2. Beginning with the 2003-2004 fiscal year, and  
29 except for years in which the association is collecting  
30 regular or emergency assessments under this subsection, the  
31 association shall annually transfer the sum of \$5 million to

1 the General Revenue Fund, which moneys shall be appropriated  
2 for hurricane loss mitigation purposes as specified in s.  
3 215.555(7)(c). Such appropriations are in addition to any  
4 appropriations required or authorized by s. 215.555(7)(c).

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

7 (c) The plan of operation of the association:

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

19 2. Must provide for adoption of residential property  
20 and casualty insurance policy forms, which forms must be  
21 approved by the department prior to use. The association  
22 shall adopt the following policy forms:

23 a. Standard personal lines policy forms including wind  
24 coverage, which are multiperil policies providing what is  
25 generally considered to be full coverage of a residential  
26 property similar to the coverage provided under an HO-2, HO-3,  
27 HO-4, or HO-6 policy.

28 b. Standard personal lines policy forms without wind  
29 coverage, which are the same as the policies described in  
30 sub-subparagraph a. except that they do not include wind  
31 coverage.

1           c. Basic personal lines policy forms including wind  
2 coverage, which are policies similar to an HO-8 policy or a  
3 dwelling fire policy that provide coverage meeting the  
4 requirements of the secondary mortgage market, but which  
5 coverage is more limited than the coverage under a standard  
6 policy.

7           d. Basic personal lines policy forms without wind  
8 coverage, which are the same as the policies described in  
9 sub-subparagraph c. except that they do not include wind  
10 coverage.

11           e. Commercial lines residential policy forms including  
12 wind coverage that are generally similar to the basic perils  
13 of full coverage obtainable for commercial residential  
14 structures in the admitted voluntary market.

15           f. Commercial lines residential policy forms without  
16 wind coverage, which are the same as the policies described in  
17 sub-subparagraph e. except that they do not include wind  
18 coverage.

19           3. May provide that the association may employ or  
20 otherwise contract with individuals or other entities to  
21 provide administrative or professional services that may be  
22 appropriate to effectuate the plan. The association shall  
23 have the power to borrow funds, by issuing bonds or by  
24 incurring other indebtedness, and shall have other powers  
25 reasonably necessary to effectuate the requirements of this  
26 subsection. The association may issue bonds or incur other  
27 indebtedness, or have bonds issued on its behalf by a unit of  
28 local government pursuant to subparagraph (g)2., in the  
29 absence of a hurricane or other weather-related event, upon a  
30 determination by the association, subject to approval by the  
31 department, that such action would enable it to efficiently

1 meet the financial obligations of the association and that  
2 such financings are reasonably necessary to effectuate the  
3 requirements of this subsection. The association is  
4 authorized to take all actions needed to facilitate tax-free  
5 status for any such bonds or indebtedness, including formation  
6 of trusts or other affiliated entities. The association shall  
7 have the authority to pledge assessments, projected recoveries  
8 from the Florida Hurricane Catastrophe Fund, other reinsurance  
9 recoverables, market equalization and other surcharges, and  
10 other funds available to the association as security for bonds  
11 or other indebtedness. In recognition of s. 10, Art. I of the  
12 State Constitution, prohibiting the impairment of obligations  
13 of contracts, it is the intent of the Legislature that no  
14 action be taken whose purpose is to impair any bond indenture  
15 or financing agreement or any revenue source committed by  
16 contract to such bond or other indebtedness.

17 4. Must require that the association operate subject  
18 to the supervision and approval of a board of governors  
19 consisting of the members of the State Board of  
20 Administration.~~13 individuals, including 1 who is elected as~~  
21 ~~chair. The board shall consist of:~~

22 a. ~~The insurance consumer advocate appointed under s.~~  
23 ~~627.0613.~~

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

25 c. ~~Five consumer representatives appointed by the~~  
26 ~~Insurance Commissioner. Two of the consumer representatives~~  
27 ~~must, at the time of appointment, be holders of policies~~  
28 ~~issued by the association, who are selected with consideration~~  
29 ~~given to reflecting the geographic balance of association~~  
30 ~~policyholders. Two of the consumer members must be individuals~~  
31 ~~who are minority persons as defined in s. 288.703(3). One of~~



1 ~~the consumer members shall have expertise in the field of~~  
2 ~~mortgage lending.~~

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

8  
9 ~~Any board member may be disapproved or removed and replaced by~~  
10 ~~the commissioner at any time for cause. All board members,~~  
11 ~~including the chair, must be appointed to serve for 3-year~~  
12 ~~terms beginning annually on a date designated by the plan.~~

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

15 a. With respect to personal lines residential risks,  
16 if the risk is offered coverage from an authorized insurer at  
17 the insurer's approved rate under either a standard policy  
18 including wind coverage or, if consistent with the insurer's  
19 underwriting rules as filed with the department, a basic  
20 policy including wind coverage, the risk is not eligible for  
21 any policy issued by the association.

22 (I) If the risk accepts an offer of coverage through  
23 the market assistance program or through a mechanism  
24 established by the association, either before the policy is  
25 issued by the association or during the first 30 days of  
26 coverage by the association, and the producing agent who  
27 submitted the application to the association is not currently  
28 appointed by the insurer, the insurer shall:

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

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

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

8  
9 If the new or producing agent is unwilling or unable to accept  
10 appointment, the new insurer shall pay the agent in accordance  
11 with sub-sub-sub-subparagraph (A).

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

16 (A) Pay to the producing agent of record of the  
17 association policy, for the first year, an amount that is the  
18 greater of the insurer's usual and customary commission for  
19 the type of policy written or a fee equal to the usual and  
20 customary commission of the association; 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 new or producing agent is unwilling or unable to accept  
28 appointment, the new insurer shall pay the agent in accordance  
29 with sub-sub-sub-subparagraph (A).~~If the risk accepts an~~  
30 ~~offer of coverage through the market assistance plan or an~~  
31 ~~offer of coverage through a mechanism established by the~~

1 ~~association before a policy is issued to the risk by the~~  
2 ~~association or during the first 30 days of coverage by the~~  
3 ~~association, and the producing agent who submitted the~~  
4 ~~application to the plan or to the association is not currently~~  
5 ~~appointed by the insurer, the insurer shall either 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. If the risk is not~~  
14 ~~able to obtain any such offer, the risk is eligible for either~~  
15 ~~a standard policy including wind coverage or a basic policy~~  
16 ~~including wind coverage issued by the association; however, if~~  
17 ~~the risk could not be insured under a standard policy~~  
18 ~~including wind coverage regardless of market conditions, the~~  
19 ~~risk shall be eligible for a basic policy including wind~~  
20 ~~coverage unless rejected under subparagraph 8. The association~~  
21 ~~shall determine the type of policy to be provided on the basis~~  
22 ~~of objective standards specified in the underwriting manual~~  
23 ~~and based on generally accepted underwriting practices.~~

24       b. With respect to commercial lines residential risks,  
25 if the risk is offered coverage under a policy including wind  
26 coverage from an authorized insurer at its approved rate, the  
27 risk is not eligible for any policy issued by the association.

28       (I) If the risk accepts an offer of coverage through  
29 the market assistance program or through a mechanism  
30 established by the association, either before the policy is  
31 issued by the association or during the first 30 days of

1 coverage by the association, and the producing agent who  
2 submitted the application to the association is not currently  
3 appointed by the insurer, the insurer shall:

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

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

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

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

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

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

1  
2 If the new or producing agent is unwilling or unable to accept  
3 appointment, the new insurer shall pay the agent in accordance  
4 with sub-sub-sub-subparagraph (A).~~If the risk accepts an~~  
5 ~~offer of coverage through the market assistance plan or an~~  
6 ~~offer of coverage through a mechanism established by the~~  
7 ~~association before a policy is issued to the risk by the~~  
8 ~~association, and the producing agent who submitted the~~  
9 ~~application to the plan or the association is not currently~~  
10 ~~appointed by the insurer, the insurer shall either appoint the~~  
11 ~~agent to service the risk or, if the insurer places the~~  
12 ~~coverage through a new agent, require the new agent who then~~  
13 ~~writes the policy to pay not less than 50 percent of the first~~  
14 ~~year's commission to the producing agent who submitted the~~  
15 ~~application to the plan, except that if the new agent is an~~  
16 ~~employee or exclusive agent of the insurer, the new agent~~  
17 ~~shall pay a policy fee of \$50 to the producing agent in lieu~~  
18 ~~of splitting the commission.~~If the risk is not able to obtain  
19 any such offer, the risk is eligible for a policy including  
20 wind coverage issued by the association.

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

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

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

1 be used for that purpose prior to assessing member insurers as  
2 to any plan year.

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

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

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

14

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

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

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

1 equalization surcharges under this subparagraph are not  
2 considered premium and are not subject to commissions, fees,  
3 or premium taxes; however, failure to pay a market  
4 equalization surcharge shall be treated as failure to pay  
5 premium.

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

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

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

17           Section 2. Subsection (4) of section 627.3511, Florida  
18 Statutes, is amended to read:

19           627.3511 Depopulation of Residential Property and  
20 Casualty Joint Underwriting Association.--

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

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



1 ~~insurer's usual and customary commission for the type of~~  
2 ~~policy written if the term of the association policy was in~~  
3 ~~excess of 6 months, or one-half of such usual and customary~~  
4 ~~commission if the term of the association policy was 6 months~~  
5 ~~or less; or~~

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

11  
12 If the new or producing agent is unwilling or unable to accept  
13 appointment, the new insurer shall pay the agent in accordance  
14 with paragraph (a).The insurer need not take any further  
15 action if the offer is rejected. This subsection does not  
16 apply to any reciprocal interinsurance exchange, nonprofit  
17 federation, or any subsidiary or affiliate of such  
18 organization. This subsection does not apply if the agent is  
19 also the agent of record on the new coverage. The requirement  
20 of this subsection that the producing agent of record is  
21 entitled to retain the unearned commission on an association  
22 policy does not apply to a policy for which coverage has been  
23 provided in the association for 30 days or less or for which a  
24 cancellation notice has been issued pursuant to s.  
25 627.351(6)(c)11. during the first 30 days of coverage.

26 Section 3. Subsection (2) of section 627.7013, Florida  
27 Statutes, is amended to read:

28 627.7013 Orderly markets for personal lines  
29 residential property insurance.--

30 (2) MORATORIUM COMPLETION.--

31

1 (a) As used in this subsection, the term "total number  
2 of policies" means the number of an insurer's policies of a  
3 specified type that were in force on June 1, 1996, or the date  
4 on which this section became law, whichever was later.

5 (b) The following restrictions apply only to  
6 cancellation or nonrenewal of personal lines residential  
7 property insurance policies that were in force on June 1,  
8 1996, or the date on which this section became law, whichever  
9 was later.

10 1. In any 12-month period, an insurer may not cancel  
11 or nonrenew more than 5 percent of such insurer's total number  
12 of homeowner's policies, 5 percent of such insurer's total  
13 number of mobile home owner's policies, or 5 percent of such  
14 insurer's total number of personal lines residential policies  
15 of all types and classes in the state for the purpose of  
16 reducing the insurer's exposure to hurricane claims and may  
17 not, with respect to any county, cancel or nonrenew more than  
18 10 percent of its total number of homeowner's policies, 10  
19 percent of its total number of mobile home owner's policies,  
20 or 10 percent of its total number of personal lines  
21 residential policies of all types and classes in the county  
22 for the purpose of reducing the insurer's exposure to  
23 hurricane claims. This subparagraph does not prohibit any  
24 cancellations or nonrenewals of such policies for any other  
25 lawful reason unrelated to the risk of loss from hurricane  
26 exposure.

27 2.a. If, for any 12-month period, an insurer proposes  
28 to cancel or nonrenew personal lines residential policies to  
29 an extent not authorized by subparagraph 1. for the purpose of  
30 reducing exposure to hurricane claims, the insurer must file a  
31 phaseout plan with the department at least 90 days prior to

1 the effective date of the plan. In the plan, the insurer must  
2 demonstrate to the department that the insurer is protecting  
3 market stability and the interests of its policyholders. The  
4 plan may not be implemented unless it is approved by the  
5 department. In developing the plan, the insurer must consider  
6 policyholder longevity, the use of voluntary incentives to  
7 accomplish the reduction, and geographic distribution. The  
8 insurer must demonstrate that under the plan the insurer will  
9 not cancel or nonrenew more policies in the 12-month period  
10 than the largest number of similar policies the insurer  
11 canceled or nonrenewed for any reason in any 12-month period  
12 between August 24, 1989, and August 24, 1992.

13           b. If the insurer considers the number of  
14 cancellations and nonrenewals under sub-subparagraph a. to be  
15 insufficient, the insurer may apply for approval of additional  
16 cancellations or nonrenewals on the basis of an unreasonable  
17 risk of insolvency. In evaluating a request under this  
18 sub-subparagraph, the department shall consider and shall  
19 require the insurer to provide information relevant to: the  
20 insurer's size, market concentration, and general financial  
21 condition; the portion of the insurer's business in this state  
22 represented by personal lines residential property insurance;  
23 the reasonableness of assumptions with respect to size,  
24 frequency, severity, and path of hurricanes; the reinsurance  
25 available to the insurer and potential recoveries from the  
26 Florida Hurricane Catastrophe Fund; and the extent to which  
27 the insurer's assets have been voluntarily transferred by  
28 dividend or otherwise from the insurer to its stockholders,  
29 parent companies, or affiliated companies since June 1, 1996,  
30 or the date on which this section became law, whichever was  
31 later. In the implementation of exposure reductions under this

1 sub-subparagraph, the department and the insurer shall  
2 consider such factors as policyholder longevity, the use of  
3 voluntary incentives to accomplish the exposure reduction, and  
4 geographic distribution.

5 c. A policy shall not be counted as having been  
6 canceled or nonrenewed for purposes of this subsection if any  
7 of the following apply:

8 (I) The policy was canceled or nonrenewed for an  
9 underwriting reason unrelated to the risk of loss from  
10 hurricane exposure, nonpayment of premium, or any other lawful  
11 reason that is unrelated to the risk of loss from hurricane  
12 exposure. The department shall consider the reason specified  
13 in the notice of cancellation or nonrenewal to be the reason  
14 for the cancellation or nonrenewal unless the department finds  
15 by a preponderance of the evidence that the stated reason was  
16 not the insurer's actual reason for the cancellation or  
17 nonrenewal.

18 (II) The cancellation or nonrenewal was initiated by  
19 the insured.

20 (III) The insurer has offered the policyholder  
21 replacement or alternative coverage at approved rates, which  
22 coverage meets the requirements of the secondary mortgage  
23 market.

24 d. In addition to any other cancellations or  
25 nonrenewals subject to the limitations in this subsection, a  
26 policy shall be considered as having been canceled or  
27 nonrenewed for purposes of this subsection if:

28 (I) The insurer implements a rate increase under the  
29 use-and-file provisions of s. 627.062(2)(a)2., which rate  
30 increase exceeds 150 percent of the increase ultimately  
31 approved by the department, and, while the rate filing was

1 pending, the policyholder voluntarily canceled or nonrenewed  
2 the policy and obtained replacement coverage from another  
3 insurer, including the Residential Property and Casualty Joint  
4 Underwriting Association; or

5 (II) The insurer reduces the commission to an agent by  
6 more than 25 percent and the agent thereafter places the risk  
7 with another insurer, including the Residential Property and  
8 Casualty Joint Underwriting Association, or the Florida  
9 Windstorm Underwriting Association.

10 e. The department must approve or disapprove an  
11 application for a waiver within 90 days after the department  
12 receives the application for waiver.

13 3. In addition to the cancellations or nonrenewals  
14 authorized under this section, an insurer may cancel or  
15 nonrenew policies to the extent authorized by an exemption  
16 from or waiver of either the moratorium created by chapter  
17 93-401, Laws of Florida, or the moratorium phaseout under  
18 former s. 627.7013(2).

19 4. Notwithstanding any provisions of this section to  
20 the contrary, this section does not apply to any insurer that,  
21 prior to August 24, 1992, filed notice of such insurer's  
22 intent to discontinue writing insurance in this state under s.  
23 624.430, and for which a finding has been made by the  
24 department, the Division of Administrative Hearings of the  
25 Department of Management Services, or a court that such notice  
26 satisfied all requirements of s. 624.430. Nothing in this  
27 section shall be construed to authorize an insurer to withdraw  
28 from any line of property insurance business for the purpose  
29 of reducing exposure to risk of hurricane loss if such  
30 withdrawal commenced at any time that the moratorium under  
31

1 chapter 93-401, Laws of Florida, or the moratorium phaseout  
2 under this section is in effect.

3 5. The following actions by an insurer do not  
4 constitute cancellations or nonrenewals for purposes of this  
5 subsection:

6 a. The transfer of a risk from one admitted insurer to  
7 another admitted insurer, unless the terms of the new or  
8 replacement policy place the policyholder in default of a  
9 mortgage obligation.

10 b. An increase in the hurricane deductible applicable  
11 to the policy, unless the new deductible places the  
12 policyholder in default of a mortgage obligation or the  
13 deductible exceeds the limits specified in s. 627.701.

14 c. Any other lawful change in coverage that does not  
15 place the policyholder in default of a mortgage obligation.

16 d. A cancellation or nonrenewal that is part of the  
17 same action as the removal of a policy including windstorm or  
18 hurricane coverage from the Residential Property and Casualty  
19 Joint Underwriting Association.

20 6. In order to assure fair and effective enforcement  
21 of this subsection, each insurer shall, no later than October  
22 1, 1996, report to the department the policy number of each  
23 policy subject to this subsection, arranged by county. The  
24 report shall include the policy number for each personal lines  
25 residential policy that was in force on June 1, 1996, or the  
26 date this section became law, whichever was later. Beginning  
27 October 1, 1996, each insurer shall also report, on a monthly  
28 basis, all cancellations and nonrenewals of policies included  
29 in such policy list and the reasons for the cancellations and  
30 nonrenewals.

31

1 (c) The department may adopt rules to implement this  
2 subsection.

3 (d) This section shall cease to operate at such time  
4 as the department determines that the insured value of all  
5 residential properties insured by the Florida Windstorm  
6 Underwriting Association and all properties insured by the  
7 Residential Property and Casualty Joint Underwriting  
8 Association under policies providing wind coverage, combined,  
9 has remained below \$25 billion for 3 consecutive months, based  
10 on exposure data reported to the department by the  
11 associations.

12 (e) This subsection is repealed on June 1, 2005 ~~2001~~.  
13 Section 4. Subsections (1) and (4) of section  
14 624.4072, Florida Statutes, are amended to read:

15 624.4072 Minority-owned property and casualty  
16 insurers; limited exemption for taxation and assessments.--

17 (1) A minority business that is at least 51 percent  
18 owned by minority persons, as defined in s. 288.703(3),  
19 initially issued a certificate of authority in this state as  
20 an authorized insurer after May 1, 1998, to write property and  
21 casualty insurance shall be exempt, for a period not to exceed  
22 10 ~~5~~ years from the date of receiving its certificate of  
23 authority, from the following taxes and assessments:

24 (a) Taxes imposed under ss. 175.101, 185.08, and  
25 624.509;

26 (b) Assessments by the Florida Residential Property  
27 and Casualty Joint Underwriting Association or by the Florida  
28 Windstorm Underwriting Association, as provided under s.  
29 627.351, except for emergency assessments collected from  
30 policyholders pursuant to s. 627.351(2)(b)2.d.(III) and  
31 (6)(b)3.d. Any such insurer shall be a member insurer of the

1 Florida Windstorm Underwriting Association and the Florida  
2 Residential Property and Casualty Joint Underwriting  
3 Association. The premiums of such insurer shall be included in  
4 determining, for the Florida Windstorm Underwriting  
5 Association, the aggregate statewide direct written premium  
6 for property insurance and in determining, for the Florida  
7 Residential Property and Casualty Joint Underwriting  
8 Association, the aggregate statewide direct written premium  
9 for the subject lines of business for all member insurers.

10 (4) This section is repealed effective December 31,  
11 2011 ~~July 1, 2003~~, and the tax and assessment exemptions  
12 authorized by this section shall terminate on such date.

13 Section 5. Except as otherwise provided in this act,  
14 this act shall take effect upon becoming a law.

15  
16 \*\*\*\*\*

17 LEGISLATIVE SUMMARY

18 Specifies membership of the boards of the Florida  
19 Windstorm Underwriting Association and the Residential  
20 Property and Casualty Joint Underwriting Association.  
21 Revises criteria for limited apportionment, provides rate  
22 standards, specifies duties with respect to pursuit of  
23 federal tax exemptions and tax-free bond status, provides  
24 a premium tax exemption, provides for appropriation of  
25 funds for hurricane loss mitigation purposes, and  
26 provides standards for payments to agents of record of  
27 Florida Windstorm Underwriting Association and  
28 Residential Property and Casualty Joint Underwriting  
29 Association policies. Revises agent compensation in  
30 connection with take-out plans. Delays the repeal date of  
31 the moratorium on hurricane-related cancellation or  
nonrenewal of property insurance policies. Increases a  
period of exemption from taxes and assessments for  
minority businesses and extends a future repeal. (See  
bill for details.)