

By the Fiscal Responsibility Council and Representatives
Alexander and Atwater

1 A bill to be entitled
2 An act relating to insurance; amending s.
3 215.555, F.S.; revising a definition; providing
4 for certain additional coverages under the
5 Florida Hurricane Catastrophe Fund; increasing
6 the cap on fund liability; imposing an
7 additional liquidity enhancement factor to
8 reimbursement premiums; amending s. 627.062,
9 F.S.; specifying the Department of Insurance as
10 having the burden of proof with respect to
11 certain property insurance rate filings under
12 certain circumstances; amending s. 627.351,
13 F.S.; providing for waiver of required flood
14 insurance under certain circumstances;
15 specifying policyholder burden of proof under
16 certain circumstances; authorizing an
17 association to deny certain coverage under
18 certain circumstances; renaming the Residential
19 Property and Casualty Joint Underwriting
20 Association as the Citizens Property Insurance
21 Corporation to provide residential and
22 commercial property insurance; requiring
23 insurers writing property insurance to
24 participate in the corporation; providing for
25 dividing the revenues, assets, liabilities,
26 losses, and expenses of the corporation into
27 three accounts; authorizing the Department of
28 Insurance to remove certain territories from
29 certain eligible areas under certain
30 circumstances; providing for emergency
31 assessments for policyholders of participating

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

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

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

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

1 215.555 Florida Hurricane Catastrophe Fund.--
2 (2) DEFINITIONS.--As used in this section:
3 (d) "Losses" means direct incurred losses under
4 covered policies, including up to 20 percent of the value of
5 the residential structure or up to 40 percent of the value of
6 the residential contents for ~~excluding~~ losses attributable to
7 additional living expense coverages on mobile homes and
8 personal residential exposures, but excluding fair rental
9 value losses associated with personal and commercial
10 residential exposures, business interruption losses associated
11 with commercial residential exposures, and also excluding loss
12 adjustment expenses.
13 (5) REIMBURSEMENT PREMIUMS.--
14 (b) The State Board of Administration shall select an
15 independent consultant to develop a formula for determining
16 the actuarially indicated premium to be paid to the fund. The
17 formula shall specify, for each zip code or other limited
18 geographical area, the amount of premium to be paid by an
19 insurer for each \$1,000 of insured value under covered
20 policies in that zip code or other area. In establishing
21 premiums, the board shall consider the coverage elected under
22 paragraph (4)(b) and any factors that tend to enhance the
23 actuarial sophistication of ratemaking for the fund, including
24 deductibles, type of construction, type of coverage provided,
25 relative concentration of risks, a factor providing for more
26 rapid cash buildup in the fund until the fund capacity for a
27 single hurricane season is fully funded, and other such
28 factors deemed by the board to be appropriate. The formula
29 may provide for a procedure to determine the premiums to be
30 paid by new insurers that begin writing covered policies after
31 the beginning of a contract year, taking into consideration

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

8 Section 2. Paragraph (g) of subsection (2) of section
9 627.062, Florida Statutes, is amended to read:

10 627.062 Rate standards.--

11 (2) As to all such classes of insurance:

12 (g)1. The department may at any time review a rate,
13 rating schedule, rating manual, or rate change; the pertinent
14 records of the insurer; and market conditions. If the
15 department finds on a preliminary basis that a rate may be
16 excessive, inadequate, or unfairly discriminatory, the
17 department shall initiate proceedings to disapprove the rate
18 and shall so notify the insurer. However, the department may
19 not disapprove as excessive any rate for which it has given
20 final approval or which has been deemed approved for a period
21 of 1 year after the effective date of the filing unless the
22 department finds that a material misrepresentation or material
23 error was made by the insurer or was contained in the filing.
24 Upon being so notified, the insurer or rating organization
25 shall, within 60 days, file with the department all
26 information which, in the belief of the insurer or
27 organization, proves the reasonableness, adequacy, and
28 fairness of the rate or rate change. The department shall
29 issue a notice of intent to approve or a notice of intent to
30 disapprove pursuant to the procedures of paragraph (a) within
31 90 days after receipt of the insurer's initial response.

1 2. Except as otherwise provided in this subparagraph,
2 in such instances and in any administrative proceeding
3 relating to the legality of the rate, the insurer or rating
4 organization shall carry the burden of proof by a
5 preponderance of the evidence to show that the rate is not
6 excessive, inadequate, or unfairly discriminatory. However,
7 with respect to property insurance, the department shall carry
8 the burden of proof by a preponderance of the evidence with
9 respect to the issue of whether the rate for a particular line
10 of business is excessive and the insurer shall carry the
11 burden of proof with respect to the issues of whether rates
12 for a particular line of business are unfairly discriminatory
13 or inadequate.

14 3. After the department notifies an insurer that a
15 rate may be excessive, inadequate, or unfairly discriminatory,
16 unless the department withdraws the notification, the insurer
17 shall not alter the rate except to conform with the
18 department's notice until the earlier of 120 days after the
19 date the notification was provided or 180 days after the date
20 of the implementation of the rate. The department may,
21 subject to chapter 120, disapprove without the 60-day
22 notification any rate increase filed by an insurer within the
23 prohibited time period or during the time that the legality of
24 the increased rate is being contested.

25
26 The provisions of this subsection shall not apply to workers'
27 compensation and employer's liability insurance and to motor
28 vehicle insurance.

29 Section 3. Paragraph (b) of subsection (2) and
30 subsection (6) of section 627.351, Florida Statutes, are
31 amended to read:

1 627.351 Insurance risk apportionment plans.--
2 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--
3 (b) The department shall require all insurers holding
4 a certificate of authority to transact property insurance on a
5 direct basis in this state, other than joint underwriting
6 associations and other entities formed pursuant to this
7 section, to provide windstorm coverage to applicants from
8 areas determined to be eligible pursuant to paragraph (c) who
9 in good faith are entitled to, but are unable to procure, such
10 coverage through ordinary means; or it shall adopt a
11 reasonable plan or plans for the equitable apportionment or
12 sharing among such insurers of windstorm coverage, which may
13 include formation of an association for this purpose. As used
14 in this subsection, the term "property insurance" means
15 insurance on real or personal property, as defined in s.
16 624.604, including insurance for fire, industrial fire, allied
17 lines, farmowners multiperil, homeowners' multiperil,
18 commercial multiperil, and mobile homes, and including
19 liability coverages on all such insurance, but excluding
20 inland marine as defined in s. 624.607(3) and excluding
21 vehicle insurance as defined in s. 624.605(1)(a) other than
22 insurance on mobile homes used as permanent dwellings. The
23 department shall adopt rules that provide a formula for the
24 recovery and repayment of any deferred assessments.
25 1. For the purpose of this section, properties
26 eligible for such windstorm coverage are defined as dwellings,
27 buildings, and other structures, including mobile homes which
28 are used as dwellings and which are tied down in compliance
29 with mobile home tie-down requirements prescribed by the
30 Department of Highway Safety and Motor Vehicles pursuant to s.
31 320.8325, and the contents of all such properties. An

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

3 (II) The plan of operation shall provide for a board
4 of directors consisting of the Insurance Consumer Advocate
5 appointed under s. 627.0613, 1 consumer representative
6 appointed by the Insurance Commissioner, 1 consumer
7 representative appointed by the Governor, and 12 additional
8 members appointed as specified in the plan of operation. One
9 of the 12 additional members shall be elected by the domestic
10 companies of this state on the basis of cumulative weighted
11 voting based on the net direct premiums of domestic companies
12 in this state. Nothing in the 1997 amendments to this
13 paragraph terminates the existing board or the terms of any
14 members of the board.

15 (III) The plan of operation shall provide a formula
16 whereby a company voluntarily providing windstorm coverage in
17 affected areas will be relieved wholly or partially from
18 apportionment of a regular assessment pursuant to
19 sub-sub-subparagraph d.(I) or sub-sub-subparagraph d.(II).

20 (IV) A company which is a member of a group of
21 companies under common management may elect to have its
22 credits applied on a group basis, and any company or group may
23 elect to have its credits applied to any other company or
24 group.

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

28 (VI) The plan of operation may also provide for the
29 award of credits, for a period not to exceed 3 years, from a
30 regular assessment pursuant to sub-sub-subparagraph d.(I) or
31 sub-sub-subparagraph d.(II) as an incentive for taking

1 policies out of the Residential Property and Casualty Joint
2 Underwriting Association. In order to qualify for the
3 exemption under this sub-sub-subparagraph, the take-out plan
4 must provide that at least 40 percent of the policies removed
5 from the Residential Property and Casualty Joint Underwriting
6 Association cover risks located in Dade, Broward, and Palm
7 Beach Counties or at least 30 percent of the policies so
8 removed cover risks located in Dade, Broward, and Palm Beach
9 Counties and an additional 50 percent of the policies so
10 removed cover risks located in other coastal counties, and
11 must also provide that no more than 15 percent of the policies
12 so removed may exclude windstorm coverage. With the approval
13 of the department, the association may waive these geographic
14 criteria for a take-out plan that removes at least the lesser
15 of 100,000 Residential Property and Casualty Joint
16 Underwriting Association policies or 15 percent of the total
17 number of Residential Property and Casualty Joint Underwriting
18 Association policies, provided the governing board of the
19 Residential Property and Casualty Joint Underwriting
20 Association certifies that the take-out plan will materially
21 reduce the Residential Property and Casualty Joint
22 Underwriting Association's 100-year probable maximum loss from
23 hurricanes. With the approval of the department, the board
24 may extend such credits for an additional year if the insurer
25 guarantees an additional year of renewability for all policies
26 removed from the Residential Property and Casualty Joint
27 Underwriting Association, or for 2 additional years if the
28 insurer guarantees 2 additional years of renewability for all
29 policies removed from the Residential Property and Casualty
30 Joint Underwriting Association.
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1 b. Assessments to pay deficits in the association
2 under this subparagraph shall be included as an appropriate
3 factor in the making of rates as provided in s. 627.3512.

4 c. The Legislature finds that the potential for
5 unlimited deficit assessments under this subparagraph may
6 induce insurers to attempt to reduce their writings in the
7 voluntary market, and that such actions would worsen the
8 availability problems that the association was created to
9 remedy. It is the intent of the Legislature that insurers
10 remain fully responsible for paying regular assessments and
11 collecting emergency assessments for any deficits of the
12 association; however, it is also the intent of the Legislature
13 to provide a means by which assessment liabilities may be
14 amortized over a period of years.

15 d.(I) When the deficit incurred in a particular
16 calendar year is 10 percent or less of the aggregate statewide
17 direct written premium for property insurance for the prior
18 calendar year for all member insurers, the association shall
19 levy an assessment on member insurers in an amount equal to
20 the deficit.

21 (II) When the deficit incurred in a particular
22 calendar year exceeds 10 percent of the aggregate statewide
23 direct written premium for property insurance for the prior
24 calendar year for all member insurers, the association shall
25 levy an assessment on member insurers in an amount equal to
26 the greater of 10 percent of the deficit or 10 percent of the
27 aggregate statewide direct written premium for property
28 insurance for the prior calendar year for member insurers. Any
29 remaining deficit shall be recovered through emergency
30 assessments under sub-sub-subparagraph (III).

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1 (III) Upon a determination by the board of directors
2 that a deficit exceeds the amount that will be recovered
3 through regular assessments on member insurers, pursuant to
4 sub-sub-subparagraph (I) or sub-sub-subparagraph (II), the
5 board shall levy, after verification by the department,
6 emergency assessments to be collected by member insurers and
7 by underwriting associations created pursuant to this section
8 which write property insurance, upon issuance or renewal of
9 property insurance policies other than National Flood
10 Insurance policies in the year or years following levy of the
11 regular assessments. The amount of the emergency assessment
12 collected in a particular year shall be a uniform percentage
13 of that year's direct written premium for property insurance
14 for all member insurers and underwriting associations,
15 excluding National Flood Insurance policy premiums, as
16 annually determined by the board and verified by the
17 department. The department shall verify the arithmetic
18 calculations involved in the board's determination within 30
19 days after receipt of the information on which the
20 determination was based. Notwithstanding any other provision
21 of law, each member insurer and each underwriting association
22 created pursuant to this section shall collect emergency
23 assessments from its policyholders without such obligation
24 being affected by any credit, limitation, exemption, or
25 deferment. The emergency assessments so collected shall be
26 transferred directly to the association on a periodic basis as
27 determined by the association. The aggregate amount of
28 emergency assessments levied under this sub-sub-subparagraph
29 in any calendar year may not exceed the greater of 10 percent
30 of the amount needed to cover the original deficit, plus
31 interest, fees, commissions, required reserves, and other

1 costs associated with financing of the original deficit, or 10
2 percent of the aggregate statewide direct written premium for
3 property insurance written by member insurers and underwriting
4 associations for the prior year, plus interest, fees,
5 commissions, required reserves, and other costs associated
6 with financing the original deficit. The board may pledge the
7 proceeds of the emergency assessments under this
8 sub-sub-subparagraph as the source of revenue for bonds, to
9 retire any other debt incurred as a result of the deficit or
10 events giving rise to the deficit, or in any other way that
11 the board determines will efficiently recover the deficit. The
12 emergency assessments under this sub-sub-subparagraph shall
13 continue as long as any bonds issued or other indebtedness
14 incurred with respect to a deficit for which the assessment
15 was imposed remain outstanding, unless adequate provision has
16 been made for the payment of such bonds or other indebtedness
17 pursuant to the document governing such bonds or other
18 indebtedness. Emergency assessments collected under this
19 sub-sub-subparagraph are not part of an insurer's rates, are
20 not premium, and are not subject to premium tax, fees, or
21 commissions; however, failure to pay the emergency assessment
22 shall be treated as failure to pay premium.

23 (IV) Each member insurer's share of the total regular
24 assessments under sub-sub-subparagraph (I) or
25 sub-sub-subparagraph (II) shall be in the proportion that the
26 insurer's net direct premium for property insurance in this
27 state, for the year preceding the assessment bears to the
28 aggregate statewide net direct premium for property insurance
29 of all member insurers, as reduced by any credits for
30 voluntary writings for that year.

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

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

1 determine that it is in the best interests of, and necessary
2 for, the protection of the public health, safety, and general
3 welfare of residents of this state and the protection and
4 preservation of the economic stability of insurers operating
5 in this state, and declaring it an essential public purpose to
6 permit certain municipalities or counties to issue bonds as
7 will provide relief to claimants and policyholders of the
8 association and insurers responsible for apportionment of plan
9 losses. Any such unit of local government may enter into such
10 contracts with the association and with any other entity
11 created pursuant to this subsection as are necessary to carry
12 out this paragraph. Any bonds issued under this
13 sub-subparagraph shall be payable from and secured by moneys
14 received by the association from assessments under this
15 subparagraph, and assigned and pledged to or on behalf of the
16 unit of local government for the benefit of the holders of
17 such bonds. The funds, credit, property, and taxing power of
18 the state or of the unit of local government shall not be
19 pledged for the payment of such bonds. If any of the bonds
20 remain unsold 60 days after issuance, the department shall
21 require all insurers subject to assessment to purchase the
22 bonds, which shall be treated as admitted assets; each insurer
23 shall be required to purchase that percentage of the unsold
24 portion of the bond issue that equals the insurer's relative
25 share of assessment liability under this subsection. An
26 insurer shall not be required to purchase the bonds to the
27 extent that the department determines that the purchase would
28 endanger or impair the solvency of the insurer. The authority
29 granted by this sub-subparagraph is additional to any bonding
30 authority granted by subparagraph 6.
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1 3. The plan shall also provide that any member with a
2 surplus as to policyholders of \$20 million or less writing 25
3 percent or more of its total countrywide property insurance
4 premiums in this state may petition the department, within the
5 first 90 days of each calendar year, to qualify as a limited
6 apportionment company. The apportionment of such a member
7 company in any calendar year for which it is qualified shall
8 not exceed its gross participation, which shall not be
9 affected by the formula for voluntary writings. In no event
10 shall a limited apportionment company be required to
11 participate in any apportionment of losses pursuant to
12 sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II)
13 in the aggregate which exceeds \$50 million after payment of
14 available plan funds in any calendar year. However, a limited
15 apportionment company shall collect from its policyholders any
16 emergency assessment imposed under sub-sub-subparagraph
17 2.d.(III). The plan shall provide that, if the department
18 determines that any regular assessment will result in an
19 impairment of the surplus of a limited apportionment company,
20 the department may direct that all or part of such assessment
21 be deferred. However, there shall be no limitation or
22 deferment of an emergency assessment to be collected from
23 policyholders under sub-sub-subparagraph 2.d.(III).

24 4. The plan shall provide for the deferment, in whole
25 or in part, of a regular assessment of a member insurer under
26 sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II),
27 but not for an emergency assessment collected from
28 policyholders under sub-sub-subparagraph 2.d.(III), if, in the
29 opinion of the commissioner, payment of such regular
30 assessment would endanger or impair the solvency of the member
31 insurer. In the event a regular assessment against a member

1 insurer is deferred in whole or in part, the amount by which
2 such assessment is deferred may be assessed against the other
3 member insurers in a manner consistent with the basis for
4 assessments set forth in sub-sub-subparagraph 2.d.(I) or
5 sub-sub-subparagraph 2.d.(II).

6 5.a. The plan of operation may include deductibles and
7 rules for classification of risks and rate modifications
8 consistent with the objective of providing and maintaining
9 funds sufficient to pay catastrophe losses.

10 b. The association may require arbitration of a rate
11 filing under s. 627.062(6). It is the intent of the
12 Legislature that the rates for coverage provided by the
13 association be actuarially sound and not competitive with
14 approved rates charged in the admitted voluntary market such
15 that the association functions as a residual market mechanism
16 to provide insurance only when the insurance cannot be
17 procured in the voluntary market. The plan of operation shall
18 provide a mechanism to assure that, beginning no later than
19 January 1, 1999, the rates charged by the association for each
20 line of business are reflective of approved rates in the
21 voluntary market for hurricane coverage for each line of
22 business in the various areas eligible for association
23 coverage.

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

1 located in the authorized market. The association must accept
2 a commercial lines residential risk with limits above \$10
3 million or a personal lines residential risk with limits above
4 \$1 million if coverage is not available in the authorized
5 market. The association may write coverage above the limits
6 specified in this subparagraph with or without facultative or
7 other reinsurance coverage, as the association determines
8 appropriate.

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

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

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

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

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

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

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

17 g. The association shall not require the securing of
18 flood insurance as a condition of coverage if the insured or
19 applicant executes a form approved by the department affirming
20 that flood insurance is not provided by the association and
21 that if flood insurance is not secured by the applicant or
22 insured in addition to coverage by the association, the risk
23 will not be covered for flood damage. An association
24 policyholder electing not to secure flood insurance and
25 executing a form as provided herein making a claim for water
26 damage against the association shall have the burden of
27 proving the damage was not caused by flooding.
28 Notwithstanding other provisions of this subsection, the
29 association may deny coverage to an applicant or insured who
30 refuses to execute the form described herein.

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1 6.a. The plan of operation may authorize the formation
2 of a private nonprofit corporation, a private nonprofit
3 unincorporated association, a partnership, a trust, a limited
4 liability company, or a nonprofit mutual company which may be
5 empowered, among other things, to borrow money by issuing
6 bonds or by incurring other indebtedness and to accumulate
7 reserves or funds to be used for the payment of insured
8 catastrophe losses. The plan may authorize all actions
9 necessary to facilitate the issuance of bonds, including the
10 pledging of assessments or other revenues.

11 b. Any entity created under this subsection, or any
12 entity formed for the purposes of this subsection, may sue and
13 be sued, may borrow money; issue bonds, notes, or debt
14 instruments; pledge or sell assessments, market equalization
15 surcharges and other surcharges, rights, premiums, contractual
16 rights, projected recoveries from the Florida Hurricane
17 Catastrophe Fund, other reinsurance recoverables, and other
18 assets as security for such bonds, notes, or debt instruments;
19 enter into any contracts or agreements necessary or proper to
20 accomplish such borrowings; and take other actions necessary
21 to carry out the purposes of this subsection. The association
22 may issue bonds or incur other indebtedness, or have bonds
23 issued on its behalf by a unit of local government pursuant to
24 subparagraph (g)2., in the absence of a hurricane or other
25 weather-related event, upon a determination by the association
26 subject to approval by the department that such action would
27 enable it to efficiently meet the financial obligations of the
28 association and that such financings are reasonably necessary
29 to effectuate the requirements of this subsection. Any such
30 entity may accumulate reserves and retain surpluses as of the
31 end of any association year to provide for the payment of

1 losses incurred by the association during that year or any
2 future year. The association shall incorporate and continue
3 the plan of operation and articles of agreement in effect on
4 the effective date of chapter 76-96, Laws of Florida, to the
5 extent that it is not inconsistent with chapter 76-96, and as
6 subsequently modified consistent with chapter 76-96. The board
7 of directors and officers currently serving shall continue to
8 serve until their successors are duly qualified as provided
9 under the plan. The assets and obligations of the plan in
10 effect immediately prior to the effective date of chapter
11 76-96 shall be construed to be the assets and obligations of
12 the successor plan created herein.

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

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

27 8. Subject to approval by the department, the
28 association may establish different eligibility requirements
29 and operational procedures for any line or type of coverage
30 for any specified eligible area or portion of an eligible area
31 if the board determines that such changes to the eligibility

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

12 9. Notwithstanding any other provision of law:

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

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

31

1 c. Each such pledge or sale of, lien upon, and
2 security interest in, including the priority of such pledge,
3 lien, or security interest, any such assessments, emergency
4 assessments, market equalization or renewal surcharges,
5 projected recoveries from the Florida Hurricane Catastrophe
6 Fund, reinsurance recoverables, or other rights, revenues, or
7 other assets which are collected, or levied and collected,
8 after the commencement of and during the pendency of or after
9 any such proceeding shall continue unaffected by such
10 proceeding.

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

22 e. Any such pledge or sale of assessments, revenues,
23 contract rights or other rights or assets of the association
24 shall constitute a lien and security interest, or sale, as the
25 case may be, that is immediately effective and attaches to
26 such assessments, revenues, contract, or other rights or
27 assets, whether or not imposed or collected at the time the
28 pledge or sale is made. Any such pledge or sale is effective,
29 valid, binding, and enforceable against the association or
30 other entity making such pledge or sale, and valid and binding
31 against and superior to any competing claims or obligations

1 owed to any other person or entity, including policyholders in
2 this state, asserting rights in any such assessments,
3 revenues, contract, or other rights or assets to the extent
4 set forth in and in accordance with the terms of the pledge or
5 sale contained in the applicable financing documents, whether
6 or not any such person or entity has notice of such pledge or
7 sale and without the need for any physical delivery,
8 recordation, filing, or other action.

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

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

20 (a)1. The Legislature finds that actual and threatened
21 catastrophic losses to property in this state from hurricanes
22 have caused insurers to be unwilling or unable to provide
23 property insurance coverage to the extent sought and needed.
24 It is in the public interest and a public purpose to assist in
25 assuring that property in the state is insured so as to
26 facilitate the remediation, reconstruction, and replacement of
27 damaged or destroyed property in order to reduce or avoid the
28 negative effects otherwise resulting to the public health,
29 safety, and welfare; to the economy of the state; and to the
30 revenues of the state and local governments needed to provide
31 for the public welfare. It is necessary, therefore, to provide

1 property insurance to applicants who are in good faith
2 entitled to procure insurance through the voluntary market but
3 are unable to do so. The Legislature intends by this
4 subsection that property insurance be provided and that it
5 continues, as long as necessary, through an entity organized
6 to achieve efficiencies and economies, all toward the
7 achievement of the foregoing public purposes. Because it is
8 essential for the corporation to have the maximum financial
9 resources to pay claims following a catastrophic hurricane, it
10 is the intent of the Legislature that the income of the
11 corporation be exempt from federal income taxation and that
12 interest on the debt obligations issued by the corporation be
13 exempt from federal income taxation.

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

19 ~~(a) There is created a joint underwriting association~~
20 ~~for equitable apportionment or sharing among insurers of~~
21 ~~property and casualty insurance covering residential property,~~
22 ~~for applicants who are in good faith entitled, but are unable,~~
23 ~~to procure insurance through the voluntary market. The~~
24 ~~corporation association shall operate pursuant to a plan of~~
25 ~~operation approved by order of the department. The plan is~~
26 ~~subject to continuous review by the department. The department~~
27 ~~may, by order, withdraw approval of all or part of a plan if~~
28 ~~the department determines that conditions have changed since~~
29 ~~approval was granted and that the purposes of the plan require~~
30 ~~changes in the plan. For the purposes of this subsection,~~
31 ~~residential coverage includes both personal lines residential~~

1 coverage, which consists of the type of coverage provided by
2 homeowner's, mobile home owner's, dwelling, tenant's,
3 condominium unit owner's, and similar policies, and commercial
4 lines residential coverage, which consists of the type of
5 coverage provided by condominium association, apartment
6 building, and similar policies.

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

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

1 (I) A personal lines account for personal residential
2 policies issued by the corporation or issued by the
3 Residential Property and Casualty Joint Underwriting
4 Association and renewed by the corporation on risks that are
5 not located in areas eligible for coverage in the Florida
6 Windstorm Underwriting Association as those areas were defined
7 on January 1, 2002;

8 (II) A commercial lines account for commercial
9 residential policies issued by the corporation or issued by
10 the Residential Property and Casualty Joint Underwriting
11 Association and renewed by the corporation on risks that are
12 not located in areas eligible for coverage in the Florida
13 Windstorm Underwriting Association as those areas were defined
14 on January 1, 2002; and

15 (III) A high-risk account for personal residential
16 policies and commercial residential and commercial
17 nonresidential 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 area eligible
22 for coverage under the high-risk account also includes the
23 area within Port Canaveral, which is bordered on the south by
24 the City of Cape Canaveral, bordered on the west by the Banana
25 River, and bordered on the north by Federal Government
26 property. The department may remove territory from the area
27 eligible for wind-only and quota share coverage if, after a
28 public hearing, the department finds that authorized insurers
29 in the voluntary market are willing and able to write
30 sufficient amounts of personal and commercial residential
31 coverage for all perils in the territory, including coverage

1 for the peril of wind, such that risks covered by wind-only
2 policies in the removed territory could be issued a policy by
3 the corporation in either the personal lines or commercial
4 lines account without a significant increase in the
5 corporation's probable maximum loss in such account. The
6 high-risk account must also include quota share primary
7 insurance under subparagraph (c)2.

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

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

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

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

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

30 a. When the deficit incurred in a particular calendar
31 year is not greater than 10 percent of the aggregate statewide

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

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

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

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

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

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

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

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

1 homes, and including liability coverage on all such insurance,
2 but excluding inland marine as defined in s. 624.607(3) and
3 excluding vehicle insurance as defined in s. 624.605(1) other
4 than insurance on mobile homes used as permanent dwellings.

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

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

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

25 ~~1. May provide for one or more designated insurers,~~
26 ~~able and willing to provide policy and claims service, to act~~
27 ~~on behalf of the association to provide such service. Each~~
28 ~~licensed agent shall be entitled to indicate the order of~~
29 ~~preference regarding who will service the business placed by~~
30 ~~the agent. The association shall adhere to each agent's~~
31 ~~preferences unless after consideration of other factors in~~

1 ~~assigning agents, including, but not limited to, servicing~~
2 ~~capacity and fee arrangements, the association has reason to~~
3 ~~believe it is in the best interest of the association to make~~
4 ~~a different assignment.~~

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

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

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

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

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

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

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

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

8 e. Commercial lines nonresidential property insurance
9 forms that cover the peril of wind only. The forms are
10 applicable only to nonresidential properties located in areas
11 eligible for coverage under the high-risk account referred to
12 in sub-subparagraph (b)2.a.

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

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

1 the other party to the agreement to pay its specified
2 percentage of hurricane losses. Eligible risks that are
3 provided hurricane coverage through a quota share primary
4 insurance arrangement must be provided policy forms that set
5 forth the obligations of the corporation and authorized
6 insurer under the arrangement, clearly specify the percentages
7 of quota share primary insurance provided by the corporation
8 and authorized insurer, and conspicuously and clearly state
9 that neither the authorized insurer nor the corporation may be
10 held responsible beyond its specified percentage of coverage
11 of hurricane losses.

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

17 b. The corporation may enter into quota share primary
18 insurance agreements with authorized insurers at corporation
19 coverage levels of 90 percent and 50 percent.

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

26 d. Any quota share primary insurance agreement entered
27 into between an authorized insurer and the corporation must
28 provide for a uniform, specified percentage of coverage of
29 hurricane losses, by county or territory as set forth by the
30 corporation board, for all eligible risks of the authorized
31

1 insurer covered under the quota share primary insurance
2 agreement.

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

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

18 g. The corporation board shall establish in its plan
19 of operation standards for quota share agreements which ensure
20 that there is no discriminatory application among insurers as
21 to the terms of quota share agreements, pricing of quota share
22 agreements, incentive provisions if any, and consideration
23 paid for servicing policies or adjusting claims.

24 h. The quota share primary insurance agreement between
25 the corporation and an authorized insurer must set forth the
26 specific terms under which coverage is provided, including,
27 but not limited to, the sale and servicing of policies issued
28 under the agreement by the insurance agent of the authorized
29 insurer producing the business, the reporting of information
30 concerning eligible risks, the payment of premium to the
31 corporation, and arrangements for the adjustment and payment

1 of hurricane claims incurred on eligible risks by the claims
2 adjuster and personnel of the authorized insurer. Entering
3 into a quota sharing insurance agreement between the
4 corporation and an authorized insurer shall be voluntary and
5 at the discretion of the authorized insurer.

6 ~~f. Commercial lines residential policy forms without~~
7 ~~wind coverage, which are the same as the policies described in~~
8 ~~sub-subparagraph e. except that they do not include wind~~
9 ~~coverage.~~

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

1 affiliated entities. The corporation ~~association~~ shall have
2 the authority to pledge assessments, projected recoveries from
3 the Florida Hurricane Catastrophe Fund, other reinsurance
4 recoverables, market equalization and other surcharges, and
5 other funds available to the corporation ~~association~~ as
6 security for bonds or other indebtedness. In recognition of s.
7 10, Art. I of the State Constitution, prohibiting the
8 impairment of obligations of contracts, it is the intent of
9 the Legislature that no action be taken whose purpose is to
10 impair any bond indenture or financing agreement or any
11 revenue source committed by contract to such bond or other
12 indebtedness.

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

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

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

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

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. Any~~
13 ~~board vacancy shall be filled for the unexpired term by the~~
14 ~~Treasurer. The Treasurer shall appoint a technical advisory~~
15 ~~group to provide information and advice to the board of~~
16 ~~governors in connection with the board's duties under this~~
17 ~~subsection. The executive director and senior managers of the~~
18 ~~corporation shall be engaged by the Treasurer and serve at the~~
19 ~~pleasure of the Treasurer. The executive director is~~
20 ~~responsible for employing other staff as the corporation may~~
21 ~~require, subject to review and concurrence by the Office of~~
22 ~~the Treasurer.~~

23 ~~b. To ensure the effective and efficient~~
24 ~~implementation of this subsection, the Treasurer shall appoint~~
25 ~~the board of governors by July 1, 2002. The board of governors~~
26 ~~shall work in conjunction with the Residential Property~~
27 ~~Insurance Market Coordinating Council to address appropriate~~
28 ~~organizational, operational, and financial matters relating to~~
29 ~~the corporation. In addition, after consultation with the~~
30 ~~Residential Property Insurance Market Coordinating Council,~~
31 ~~the Treasurer may postpone the implementation of the~~

1 provisions of paragraph (1) and any other provision of this
2 section related to the operation of the corporation for a
3 period not to exceed 180 days if the Treasurer determines that
4 phasing-in these provisions is necessary to ensure the
5 effective and efficient implementation of the corporation's
6 operations or financing arrangements. However, the Treasurer
7 may not affect any provision in paragraph (b) or any other
8 provision of this section related to financing arrangements
9 entered into by the Florida Windstorm Underwriting Association
10 or the Florida Residential Property and Casualty Joint
11 Underwriting Association and the ability of those entities or
12 the corporation to service its debts and maintain the capacity
13 to repay funds secured under those arrangements.

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

16 a. With respect to personal lines residential risks,
17 if the risk is offered full coverage from an authorized
18 insurer at the insurer's approved rate under either a standard
19 policy ~~including wind coverage~~ or, if consistent with the
20 insurer's underwriting rules as filed with the department, a
21 basic policy ~~including wind coverage~~, the risk is not eligible
22 for any policy issued by the corporation ~~association~~. If the
23 risk accepts an offer of coverage through the market
24 assistance plan or an offer of coverage through a mechanism
25 established by the corporation ~~association~~ before a policy is
26 issued to the risk by the corporation ~~association~~ or during
27 the first 30 days of coverage by the corporation ~~association~~,
28 and the producing agent who submitted the application to the
29 plan or to the corporation ~~association~~ is not currently
30 appointed by the insurer, the insurer shall either:
31

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). ~~appoint the~~
13 agent to service the risk or, if the insurer places the
14 coverage through a new agent, require the new agent who then
15 writes the policy to pay not less than 50 percent of the first
16 year's commission to the producing agent who submitted the
17 application to the plan or the association, except that if the
18 new agent is an employee or exclusive agent of the insurer,
19 the new agent shall pay a policy fee of \$50 to the producing
20 agent in lieu of splitting the commission.

21
22 If the risk is not able to obtain any such offer, the risk is
23 eligible for either a standard policy ~~including wind coverage~~
24 or a basic policy ~~including wind coverage~~ issued by the
25 corporation ~~association~~; however, if the risk could not be
26 insured under a standard policy ~~including wind coverage~~
27 regardless of market conditions, the risk shall be eligible
28 for a basic policy ~~including wind coverage~~ unless rejected
29 under subparagraph 8. The corporation ~~association~~ shall
30 determine the type of policy to be provided on the basis of
31

1 objective standards specified in the underwriting manual and
2 based on generally accepted underwriting practices.

3 b. With respect to commercial lines ~~residential~~ risks,
4 if the risk is offered coverage under a policy ~~including wind~~
5 ~~coverage~~ from an authorized insurer at its approved rate, the
6 risk is not eligible for any policy issued by the corporation
7 ~~association~~. If the risk accepts an offer of coverage through
8 the market assistance plan or an offer of coverage through a
9 mechanism established by the corporation association before a
10 policy is issued to the risk by the corporation association,
11 and the producing agent who submitted the application to the
12 plan or the corporation association is not currently appointed
13 by the insurer, the insurer shall either:

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

19 (II) Offer to allow the producing agent of record of
20 the policy to continue servicing the policy for a period of
21 not less than 1 year and offer to pay the agent the insurer's
22 usual and customary commission for the type of policy written.
23 If the producing agent is unwilling or unable to accept
24 appointment by the new insurer, the new insurer shall pay the
25 agent in accordance with sub-sub-subparagraph (I).~~appoint the~~
26 ~~agent to service the risk or, if the insurer places the~~
27 ~~coverage through a new agent, require the new agent who then~~
28 ~~writes the policy to pay not less than 50 percent of the first~~
29 ~~year's commission to the producing agent who submitted the~~
30 ~~application to the plan, except that if the new agent is an~~
31 ~~employee or exclusive agent of the insurer, the new agent~~

1 ~~shall pay a policy fee of \$50 to the producing agent in lieu~~
2 ~~of splitting the commission.~~

3
4 If the risk is not able to obtain any such offer, the risk is
5 eligible for a policy ~~including wind coverage~~ issued by the
6 corporation association.

7 ~~c. This subparagraph does not require the association~~
8 ~~to provide wind coverage or hurricane coverage in any area in~~
9 ~~which such coverage is available through the Florida Windstorm~~
10 ~~Underwriting Association.~~

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

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

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

27 a. Whether the likelihood of a loss for the individual
28 risk is substantially higher than for other risks of the same
29 class; and

30
31

1 b. Whether the uncertainty associated with the
2 individual risk is such that an appropriate premium cannot be
3 determined.

4
5 The acceptance or rejection of a risk by the corporation
6 ~~association~~ shall be construed as the private placement of
7 insurance, and the provisions of chapter 120 shall not apply.

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

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

29 11. The policies issued by the corporation ~~association~~
30 must provide that, if the corporation ~~association~~ or the
31 market assistance plan obtains an offer from an authorized

1 insurer to cover the risk at its approved rates ~~under either a~~
2 ~~standard policy including wind coverage or a basic policy~~
3 ~~including wind coverage~~, the risk is no longer eligible for
4 renewal coverage through the corporation association. ~~However,~~
5 ~~if the risk is located in an area in which Florida Windstorm~~
6 ~~Underwriting Association coverage is available, such an offer~~
7 ~~of a standard or basic policy terminates eligibility~~
8 ~~regardless of whether or not the offer includes wind coverage.~~
9 ~~Upon termination of eligibility, the association shall provide~~
10 ~~written notice to the policyholder and agent of record stating~~
11 ~~that the association policy shall be canceled as of 60 days~~
12 ~~after the date of the notice because of the offer of coverage~~
13 ~~from an authorized insurer. Other provisions of the insurance~~
14 ~~code relating to cancellation and notice of cancellation do~~
15 ~~not apply to actions under this subparagraph.~~

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

25 13. May establish, subject to approval by the
26 department, different eligibility requirements and operational
27 procedures for any line or type of coverage for any specified
28 county or area if the board determines that such changes to
29 the eligibility requirements and operational procedures are
30 justified due to the voluntary market being sufficiently
31 stable and competitive in such area or for such line or type

1 of coverage and that consumers who, in good faith, are unable
2 to obtain insurance through the voluntary market through
3 ordinary methods would continue to have access to coverage
4 from the corporation ~~association~~. When coverage is sought in
5 connection with a real property transfer, such requirements
6 and procedures shall not provide for an effective date of
7 coverage later than the date of the closing of the transfer as
8 established by the transferor, the transferee, and, if
9 applicable, the lender.

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

1 15. Must provide that the corporation appoint as its
2 licensed agents only those agents who also hold an appointment
3 as defined in s. 626.104 with an insurer who at the time of
4 the agent's initial appointment by the corporation is
5 authorized to write and is actually writing personal lines
6 residential property coverage, commercial residential property
7 coverage, or commercial nonresidential property coverage
8 within the state.

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

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

1 insurer that had the highest average rate in that county among
2 the 5 insurers with the greatest total written premium for
3 mobile home owner's policies in the state in the preceding
4 year.

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

1 total direct written premium in the state for personal lines
2 residential property insurance for the preceding year. With
3 respect to mobile homes, the five insurers with the greatest
4 total written premium for that line of business in the
5 preceding year shall be used. The corporation shall certify
6 to the department that its average personal lines residential
7 wind-only rates are no lower in each county than the average
8 rates provided by the department. The department is
9 authorized to adopt rules to establish reporting requirements
10 to obtain the necessary wind-only rate information from
11 insurers to implement this provision.

12 ~~4.3.~~ Rates for commercial lines ~~residential~~ coverage
13 shall not be subject to the requirements of subparagraph 2.,
14 but shall be subject to all other requirements of this
15 paragraph and s. 627.062.

16 ~~5.4.~~ Nothing in this paragraph shall require or allow
17 the corporation ~~association~~ to adopt a rate that is inadequate
18 under s. 627.062 or to reduce rates approved under s. 627.062.

19 ~~6.5.~~ ~~The association may require arbitration of a~~
20 ~~filing pursuant to s. 627.062(6). Rate filings of the~~
21 ~~association under this paragraph shall be made on a use and~~
22 ~~file basis under s. 627.062(2)(a)2.~~ The corporation
23 ~~association~~ shall make a rate filing at least once a year, but
24 no more often than quarterly.

25 7. In addition to the rates otherwise determined
26 pursuant to this paragraph, the corporation shall impose and
27 collect an amount equal to the premium tax provided for in s.
28 624.509 to augment the financial resources of the corporation.

29 (e) If coverage in an account through the association
30 ~~is hereby activated effective upon approval of the plan, and~~
31 ~~shall remain activated until coverage is deactivated pursuant~~

1 to paragraph (f). ~~Thereafter~~, coverage through the corporation
2 ~~association~~ shall be reactivated by order of the department
3 only under one of the following circumstances:

4 1. If the market assistance plan receives a minimum of
5 100 applications for coverage within a 3-month period, or 200
6 applications for coverage within a 1-year period or less for
7 residential coverage, unless the market assistance plan
8 provides a quotation from admitted carriers at their filed
9 rates for at least 90 percent of such applicants. Any market
10 assistance plan application that is rejected because an
11 individual risk is so hazardous as to be uninsurable using the
12 criteria specified in subparagraph (c)8. shall not be included
13 in the minimum percentage calculation provided herein. In the
14 event that there is a legal or administrative challenge to a
15 determination by the department that the conditions of this
16 subparagraph have been met for eligibility for coverage in the
17 corporation association, any eligible risk may obtain coverage
18 during the pendency of such challenge.

19 2. In response to a state of emergency declared by the
20 Governor under s. 252.36, the department may activate coverage
21 by order for the period of the emergency upon a finding by the
22 department that the emergency significantly affects the
23 availability of residential property insurance.

24 (f)1. The corporation shall file with the department
25 quarterly statements of financial condition, an annual
26 statement of financial condition, and audited financial
27 statements in the manner prescribed by law. In addition, the
28 corporation shall report to the department monthly on the
29 types, premium, exposure, and distribution by county of its
30 policies in force, and shall submit other reports as the
31

1 department requires to carry out its oversight of the
2 corporation.

3 2. The activities of the corporation ~~association~~ shall
4 be reviewed at least annually by the department to determine
5 ~~whether board and, upon recommendation by the board or~~
6 ~~petition of any interested party,~~ coverage shall be
7 deactivated in an account on the basis ~~if the department finds~~
8 that the conditions giving rise to its activation no longer
9 exist.

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

1 remit any regular or emergency assessment levied by the
2 corporation is considered to be a violation of s. 626.936 and
3 subjects the surplus lines agent to the penalties provided in
4 that section.

5 2. The governing body of any unit of local government,
6 any residents of which are insured by the corporation
7 ~~association~~, may issue bonds as defined in s. 125.013 or s.
8 166.101 from time to time to fund an assistance program, in
9 conjunction with the corporation ~~association~~, for the purpose
10 of defraying deficits of the corporation ~~association~~. In order
11 to avoid needless and indiscriminate proliferation,
12 duplication, and fragmentation of such assistance programs,
13 any unit of local government, any residents of which are
14 insured by the corporation ~~association~~, may provide for the
15 payment of losses, regardless of whether or not the losses
16 occurred within or outside of the territorial jurisdiction of
17 the local government. Revenue bonds under this subparagraph
18 may not be issued until validated pursuant to chapter 75,
19 unless a state of emergency is declared by executive order or
20 proclamation of the Governor pursuant to s. 252.36 making such
21 findings as are necessary to determine that it is in the best
22 interests of, and necessary for, the protection of the public
23 health, safety, and general welfare of residents of this state
24 ~~and the protection and preservation of the economic stability~~
25 ~~of insurers operating in this state, and declaring it an~~
26 essential public purpose to permit certain municipalities or
27 counties to issue such bonds as will permit relief to
28 claimants and policyholders of the corporation ~~joint~~
29 ~~underwriting association and insurers responsible for~~
30 ~~apportionment of association losses~~. Any such unit of local
31 government may enter into such contracts with the corporation

1 ~~association~~ and with any other entity created pursuant to this
2 subsection as are necessary to carry out this paragraph. Any
3 bonds issued under this subparagraph shall be payable from and
4 secured by moneys received by the corporation ~~association~~ from
5 emergency assessments under sub-subparagraph (b)3.d., and
6 assigned and pledged to or on behalf of the unit of local
7 government for the benefit of the holders of such bonds. The
8 funds, credit, property, and taxing power of the state or of
9 the unit of local government shall not be pledged for the
10 payment of such bonds. If any of the bonds remain unsold 60
11 days after issuance, the department shall require all insurers
12 subject to assessment to purchase the bonds, which shall be
13 treated as admitted assets; each insurer shall be required to
14 purchase that percentage of the unsold portion of the bond
15 issue that equals the insurer's relative share of assessment
16 liability under this subsection. An insurer shall not be
17 required to purchase the bonds to the extent that the
18 department determines that the purchase would endanger or
19 impair the solvency of the insurer.

20 3.a. ~~In addition to any credits, bonuses, or~~
21 ~~exemptions provided under s. 627.3511, The~~ corporation ~~board~~
22 shall adopt one or more programs ~~a program~~ subject to approval
23 by the department for the reduction of both new and renewal
24 writings in the corporation ~~association~~. The corporation ~~board~~
25 may consider any prudent and not unfairly discriminatory
26 approach to reducing corporation ~~association~~ writings, and may
27 ~~but must~~ adopt ~~at least~~ a credit against assessment liability
28 or other liability that provides an incentive for insurers to
29 take risks out of the corporation ~~association~~ and to keep
30 risks out of the corporation ~~association~~ by maintaining or
31 increasing voluntary writings in counties or areas in which

1 corporation ~~association~~ risks are highly concentrated and a
2 program to provide a formula under which an insurer
3 voluntarily taking risks out of the corporation ~~association~~ by
4 maintaining or increasing voluntary writings will be relieved
5 wholly or partially from assessments under sub-subparagraphs
6 (b)3.a. and b. When the corporation enters into a contractual
7 agreement for a take-out plan, the producing agent of record
8 of the corporation policy is entitled to retain any unearned
9 commission on such policy, and the insurer shall either:
10 (I) Pay to the producing agent of record of the
11 policy, for the first year, an amount which is the greater of
12 the insurer's usual and customary commission for the type of
13 policy written or a policy fee equal to the usual and
14 customary commission of the corporation; or
15 (II) Offer to allow the producing agent of record of
16 the policy to continue servicing the policy for a period of
17 not less than 1 year and offer to pay the agent the insurer's
18 usual and customary commission for the type of policy written.
19 If the producing agent is unwilling or unable to accept
20 appointment by the new insurer, the new insurer shall pay the
21 agent in accordance with sub-sub-subparagraph (I).
22 b. Any credit or exemption from regular assessments
23 adopted under this subparagraph shall last no longer than the
24 3 years following the cancellation or expiration of the policy
25 by the corporation ~~association~~. With the approval of the
26 department, the board may extend such credits for an
27 additional year if the insurer guarantees an additional year
28 of renewability for all policies removed from the corporation
29 ~~association~~, or for 2 additional years if the insurer
30 guarantees 2 additional years of renewability for all policies
31 so removed.

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

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

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

18 (i) There shall be no liability on the part of, and no
19 cause of action of any nature shall arise against, any
20 assessable ~~member~~ insurer or its agents or employees, the
21 corporation ~~association~~ or its agents or employees, members of
22 the board of governors or their respective designees at a
23 board meeting, corporation ~~association~~ committee members, or
24 the department or its representatives, for any action taken by
25 them in the performance of their duties or responsibilities
26 under this subsection. Such immunity does not apply to:

27 1. Any of the foregoing persons or entities for any
28 willful tort;

29 2. The corporation ~~association~~ or its ~~servicing or~~
30 producing agents for breach of any contract or agreement
31 pertaining to insurance coverage;

1 3. The corporation ~~association~~ with respect to
2 issuance or payment of debt; or

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

6 (j) ~~The Residential Property and Casualty Joint~~
7 ~~Underwriting Association is not a state agency, board, or~~
8 ~~commission. However, For the purposes of s. 199.183(1), the~~
9 corporation Residential Property and Casualty Joint
10 Underwriting Association shall be considered a political
11 subdivision of the state and shall be exempt from the
12 corporate income tax. The premiums, assessments, investment
13 income, and other revenue of the corporation are funds
14 received for providing property insurance coverage as required
15 by this subsection, paying claims for Florida citizens insured
16 by the corporation, securing and repaying debt obligations
17 issued by the corporation, and conducting all other activities
18 of the corporation, and shall not be considered taxes, fees,
19 licenses, or charges for services imposed by the Legislature
20 on individuals, businesses, or agencies outside state
21 government. Bonds and other debt obligations issued by or on
22 behalf of the corporation are not to be considered "State
23 bonds" within the meaning of s. 215.58(10). The corporation is
24 not subject to the procurement provisions of chapter 287, and
25 policies and decisions of the corporation relating to
26 incurring debt, levying of assessments and the sale, issuance,
27 continuation, terms and claims under corporation policies, and
28 all services relating thereto, are not subject to the
29 provisions of chapter 120. The corporation is not required to
30 obtain or to hold a certificate of authority issued by the
31 department, nor is it required to participate as a member

1 insurer of the Florida Insurance Guaranty Association.
2 However, the corporation is required to pay, in the same
3 manner as an authorized insurer, assessments pledged by the
4 Florida Insurance Guaranty Association to secure bonds issued
5 or other indebtedness incurred to pay covered claims arising
6 from insurer insolvencies caused by, or proximately related
7 to, hurricane losses. It is the intent of the Legislature that
8 the tax exemptions provided in this paragraph will augment the
9 financial resources of the corporation to better enable the
10 corporation to fulfill its public purposes. Any bonds issued
11 by the corporation, their transfer, and the income therefrom,
12 including any profit made on the sale thereof, shall at all
13 times be free from taxation of every kind by the state and any
14 political subdivision or local unit or other instrumentality
15 thereof; however, this exemption does not apply to any tax
16 imposed by chapter 200 on interest, income, or profits on debt
17 obligations owned by corporations other than the corporation.

18 (k) Upon a determination by the department ~~board of~~
19 ~~governors~~ that the conditions giving rise to the establishment
20 and activation of the corporation ~~association~~ no longer exist,
21 ~~and upon the consent thereto by order of the department,~~ the
22 corporation ~~association~~ is dissolved. Upon dissolution, the
23 assets of the association shall be applied first to pay all
24 debts, liabilities, and obligations of the corporation
25 ~~association~~, including the establishment of reasonable
26 reserves for any contingent liabilities or obligations, and
27 all remaining assets of the corporation ~~association~~ shall
28 become property of the state and deposited in the Florida
29 Hurricane Catastrophe Fund.

30 (l)1. Effective July 1, 2002, policies of the
31 Residential Property and Casualty Joint Underwriting

1 Association shall become policies of the corporation. All
2 obligations, rights, assets and liabilities of the Residential
3 Property and Casualty Joint Underwriting Association,
4 including bonds, note and debt obligations, and the financing
5 documents pertaining to them become those of the corporation
6 as of July 1, 2002. The corporation is not required to issue
7 endorsements or certificates of assumption to insureds during
8 the remaining term of in-force transferred policies.

9 2. Effective July 1, 2002, policies of the Florida
10 Windstorm Underwriting Association are transferred to the
11 corporation and shall become policies of the corporation. All
12 obligations, rights, assets, and liabilities of the Florida
13 Windstorm Underwriting Association, including bonds, note, and
14 debt obligations, and the financing documents pertaining to
15 them are transferred to and assumed by the corporation on July
16 1, 2002. The corporation is not required to issue endorsement
17 or certificates of assumption to insureds during the remaining
18 term of in-force transferred policies.

19 3. The Florida Windstorm Underwriting Association and
20 the Residential Property and Casualty Joint Underwriting
21 Association shall take all actions as may be proper to further
22 evidence the transfers and shall provide the documents and
23 instruments of further assurance as may reasonably be
24 requested by the corporation for that purpose. The corporation
25 shall execute assumptions and instruments as the trustees or
26 other parties to the financing documents of the Florida
27 Windstorm Underwriting Association or the Residential Property
28 and Casualty Joint Underwriting Association may reasonably
29 request to further evidence the transfers and assumptions,
30 which transfers and assumptions, however, are effective on the
31 date provided under this paragraph whether or not, and

1 regardless of the date on which, the assumptions or
2 instruments are executed by the corporation. Subject to the
3 relevant financing documents pertaining to their outstanding
4 bonds, notes, indebtedness, or other financing obligations,
5 the moneys, investments, receivables, choses in action, and
6 other intangibles of the Florida Windstorm Underwriting
7 Association shall be credited to the high-risk account of the
8 corporation, and those of the personal lines residential
9 coverage account and the commercial lines residential coverage
10 account of the Residential Property and Casualty Joint
11 Underwriting Association shall be credited to the personal
12 lines account and the commercial lines account, respectively,
13 of the corporation.

14 4. Effective July 1, 2002, a new applicant for
15 property insurance coverage who would otherwise have been
16 eligible for coverage in the Florida Windstorm Underwriting
17 Association is eligible for coverage from the corporation as
18 provided in this subsection.

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

1 provided by the Florida Hurricane Catastrophe Fund to the
2 Residential Property and Casualty Joint Underwriting
3 Association based on its exposures as of June 30, 2002, and
4 each June 30 thereafter shall be transferred to the personal
5 lines account and the commercial lines account of the
6 corporation. Notwithstanding any other provision of law, the
7 high-risk account shall be treated, for all Florida Hurricane
8 Catastrophe Fund purposes, as if it were a separate
9 participating insurer with its own exposures, reimbursement
10 premium, and loss reimbursement. Likewise, the personal lines
11 and commercial lines accounts shall be viewed together, for
12 all Florida Hurricane Catastrophe Fund purposes, as if the two
13 accounts were one and represent a single, separate
14 participating insurer with its own exposures, reimbursement
15 premium, and loss reimbursement. The coverage provided by the
16 Florida Hurricane Catastrophe Fund to the corporation shall
17 constitute and operate as a full transfer of coverage from the
18 Florida Windstorm Underwriting Association and Residential
19 Property and Casualty Joint Underwriting to the corporation.

20 6. The department may, by order, postpone the July 1,
21 2002, effective dates set forth in this paragraph if the
22 department finds that effectuation of these dates cannot be
23 accomplished due to emergency conditions.~~All obligations,~~
24 ~~rights, assets, and liabilities of the Florida Property and~~
25 ~~Casualty Joint Underwriting Association created by subsection~~
26 ~~(5), which obligations, rights, assets, or liabilities relate~~
27 ~~to the provision of commercial lines residential property~~
28 ~~insurance coverage as described in this section are hereby~~
29 ~~transferred to the Residential Property and Casualty Joint~~
30 ~~Underwriting Association. The Residential Property and~~
31 ~~Casualty Joint Underwriting Association is not required to~~

1 ~~issue endorsements or certificates of assumption to insureds~~
2 ~~during the remaining term of in-force transferred policies.~~
3 (m) Notwithstanding any other provision of law:
4 1. The pledge or sale of, the lien upon, and the
5 security interest in any rights, revenues, or other assets of
6 the corporation ~~association~~ created or purported to be created
7 pursuant to any financing documents to secure any bonds or
8 other indebtedness of the corporation ~~association~~ shall be and
9 remain valid and enforceable, notwithstanding the commencement
10 of and during the continuation of, and after, any
11 rehabilitation, insolvency, liquidation, bankruptcy,
12 receivership, conservatorship, reorganization, or similar
13 proceeding against the corporation ~~association~~ under the laws
14 of this state.
15 2. No such proceeding shall relieve the corporation
16 ~~association~~ of its obligation, or otherwise affect its ability
17 to perform its obligation, to continue to collect, or levy and
18 collect, assessments, market equalization or other surcharges
19 under subparagraph (c)10., or any other rights, revenues, or
20 other assets of the corporation ~~association~~ pledged pursuant
21 to any financing documents.
22 3. Each such pledge or sale of, lien upon, and
23 security interest in, including the priority of such pledge,
24 lien, or security interest, any such assessments, market
25 equalization or other surcharges, or other rights, revenues,
26 or other assets which are collected, or levied and collected,
27 after the commencement of and during the pendency of, or
28 after, any such proceeding shall continue unaffected by such
29 proceeding. As used in this subsection, the term "financing
30 documents" means any agreement or agreements, instrument or
31 instruments, or other document or documents now existing or

1 hereafter created evidencing any bonds or other indebtedness
2 of the corporation ~~association~~ or pursuant to which any such
3 bonds or other indebtedness has been or may be issued and
4 pursuant to which any rights, revenues, or other assets of the
5 corporation ~~association~~ are pledged or sold to secure the
6 repayment of such bonds or indebtedness, together with the
7 payment of interest on such bonds or such indebtedness, or the
8 payment of any other obligation or financial product, as
9 defined in the plan of operation of the corporation
10 ~~association~~ related to such bonds or indebtedness.

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

30 (n)1. The following records of the corporation
31 ~~Residential Property and Casualty Joint Underwriting~~

1 ~~Association~~ are confidential and exempt from the provisions of
2 s. 119.07(1) and s. 24(a), Art. I of the State Constitution:
3 a. Underwriting files, except that a policyholder or
4 an applicant shall have access to his or her own underwriting
5 files.
6 b. Claims files, until termination of all litigation
7 and settlement of all claims arising out of the same incident,
8 although portions of the claims files may remain exempt, as
9 otherwise provided by law. Confidential and exempt claims file
10 records may be released to other governmental agencies upon
11 written request and demonstration of need; such records held
12 by the receiving agency remain confidential and exempt as
13 provided for herein.
14 c. Records obtained or generated by an internal
15 auditor pursuant to a routine audit, until the audit is
16 completed, or if the audit is conducted as part of an
17 investigation, until the investigation is closed or ceases to
18 be active. An investigation is considered "active" while the
19 investigation is being conducted with a reasonable, good faith
20 belief that it could lead to the filing of administrative,
21 civil, or criminal proceedings.
22 d. Matters reasonably encompassed in privileged
23 attorney-client communications.
24 e. Proprietary information licensed to the corporation
25 ~~association~~ under contract and the contract provides for the
26 confidentiality of such proprietary information.
27 f. All information relating to the medical condition
28 or medical status of a corporation ~~an association~~ employee
29 which is not relevant to the employee's capacity to perform
30 his or her duties, except as otherwise provided in this
31 paragraph. Information which is exempt shall include, but is

1 not limited to, information relating to workers' compensation,
2 insurance benefits, and retirement or disability benefits.

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

11 h. Information relating to negotiations for financing,
12 reinsurance, depopulation, or contractual services, until the
13 conclusion of the negotiations.

14 i. Minutes of closed meetings regarding underwriting
15 files, and minutes of closed meetings regarding an open claims
16 file until termination of all litigation and settlement of all
17 claims with regard to that claim, except that information
18 otherwise confidential or exempt by law will be redacted.

19
20 When an authorized insurer is considering underwriting a risk
21 insured by the corporation ~~association~~, relevant underwriting
22 files and confidential claims files may be released to the
23 insurer provided the insurer agrees in writing, notarized and
24 under oath, to maintain the confidentiality of such files.

25 When a file is transferred to an insurer that file is no
26 longer a public record because it is not held by an agency
27 subject to the provisions of the public records law.

28 Underwriting files and confidential claims files may also be
29 released to staff of and the board of governors of the market
30 assistance plan established pursuant to s. 627.3515, who must
31 retain the confidentiality of such files, except such files

1 may be released to authorized insurers that are considering
2 assuming the risks to which the files apply, provided the
3 insurer agrees in writing, notarized and under oath, to
4 maintain the confidentiality of such files. Finally, the
5 corporation ~~association~~ or the board or staff of the market
6 assistance plan may make the following information obtained
7 from underwriting files and confidential claims files
8 available to licensed general lines insurance agents: name,
9 address, and telephone number of the residential property
10 owner or insured; location of the risk; rating information;
11 loss history; and policy type. The receiving licensed general
12 lines insurance agent must retain the confidentiality of the
13 information received.

14 2. Portions of meetings of the corporation ~~Residential~~
15 ~~Property and Casualty Joint Underwriting Association~~ are
16 exempt from the provisions of s. 286.011 and s. 24(b), Art. I
17 of the State Constitution wherein confidential underwriting
18 files or confidential open claims files are discussed. All
19 portions of corporation ~~association~~ meetings which are closed
20 to the public shall be recorded by a court reporter. The
21 court reporter shall record the times of commencement and
22 termination of the meeting, all discussion and proceedings,
23 the names of all persons present at any time, and the names of
24 all persons speaking. No portion of any closed meeting shall
25 be off the record. Subject to the provisions hereof and s.
26 119.07(2)(a), the court reporter's notes of any closed meeting
27 shall be retained by the corporation ~~association~~ for a minimum
28 of 5 years. A copy of the transcript, less any exempt matters,
29 of any closed meeting wherein claims are discussed shall
30 become public as to individual claims after settlement of the
31 claim.

1 (o) It is the intent of the Legislature that the
2 amendments to this subsection enacted in 2002 should, over
3 time, reduce the probable maximum windstorm losses in the
4 residual markets and should reduce the potential assessments
5 to be levied on property insurers and policyholders statewide.
6 In furtherance of this intent:

7 1. The board shall, on or before February 1 of each
8 year, provide a report to the President of the Senate and the
9 Speaker of the House of Representatives showing the reduction
10 or increase in the 100-year probable maximum loss attributable
11 to wind-only coverages and the quota share program under this
12 subsection combined, as compared to the benchmark 100-year
13 probable maximum loss of the Florida Windstorm Underwriting
14 Association. For purposes of this paragraph, the benchmark
15 100-year probable maximum loss of the Florida Windstorm
16 Underwriting Association shall be the calculation dated
17 February 2001 and based on November 30, 2000, exposures. In
18 order to ensure comparability of data, the board shall use the
19 same methods for calculating its probable maximum loss as were
20 used to calculate the benchmark probable maximum loss.

21 2. Beginning February 1, 2007, if the report under
22 subparagraph 1. for any year indicates that the 100-year
23 probable maximum loss attributable to wind-only coverages and
24 the quota share program combined does not reflect a reduction
25 of at least 25 percent from the benchmark, the board shall
26 reduce the boundaries of the high-risk area eligible for
27 wind-only coverages under this subsection in a manner
28 calculated to reduce such probable maximum loss to an amount
29 at least 25 percent below the benchmark.

30 3. Beginning February 1, 2012, if the report under
31 subparagraph 1. for any year indicates that the 100-year

1 probable maximum loss attributable to wind-only coverages and
2 the quota share program combined does not reflect a reduction
3 of at least 50 percent from the benchmark, the boundaries of
4 the high-risk area eligible for wind-only coverages under this
5 subsection shall be reduced by the elimination of any area
6 that is not seaward of a line 1,000 feet inland from the
7 Intracoastal Waterway.

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

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

24 (q) Effective January 7, 2003, any reference in this
25 subsection to the Treasurer shall be deemed to be a reference
26 to the Chief Financial Officer and any reference to the
27 Department of Insurance shall be deemed to be a reference to
28 the Department of Insurance and Financial Services or other
29 successor to the Department of Insurance specified by law.

30 Section 4. Section 627.3517, Florida Statutes, is
31 created to read:

1 627.3517 Consumer choice.--No provision of s. 627.351,
2 s. 627.3511, or s. 627.3515 shall be construed to impair the
3 right of any insurance risk apportionment plan policyholder,
4 upon receipt of any keepout or takeout offer, to retain his or
5 her current agent so long as that agent is duly licensed and
6 appointed by the insurance risk apportionment plan or
7 otherwise authorized to place business with the insurance risk
8 apportionment plan. This right shall not be cancelled,
9 suspended, impeded, abridged, or otherwise compromised by any
10 rule, plan of operation, or depopulation plan, whether through
11 keepout, takeout, midterm assumption, or any other means, or
12 any insurance risk apportionment plan or depopulation plan,
13 including, but not limited to, those described in s. 627.351,
14 s. 627.3511, or s. 627.3515. The department shall adopt any
15 rules necessary to cause any insurance risk apportionment plan
16 or market assistance plan under such sections to demonstrate
17 that the operations of the plan do not interfere with,
18 promote, or allow interference with the rights created under
19 this section. If the policyholder's current agent is unable or
20 unwilling to be appointed with the insurer making the takeout
21 or keepout offer, the policyholder shall not be disqualified
22 from participation in the appropriate insurance risk
23 apportionment plan because of an offer of coverage in the
24 voluntary market. Any rule, plan of operation, or plan of
25 depopulation, through keepout, takeout, midterm assumption, or
26 any other means, of any property insurance risk apportionment
27 plan under s. 627.351(2) or s. 627.351(6) is subject to ss.
28 627.351(2)(b) and (6)(c) and 627.3511(4).

29 Section 5. This act shall take effect July 1, 2002.

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HOUSE SUMMARY

Provides for additional coverages under the Florida Hurricane Catastrophe Fund, increases the cap on fund liability, and imposes an additional liquidity enhancement factor on reimbursement premiums. Specifies the Department of Insurance as having the burden of proof with respect to property insurance rate filings under specified conditions. Provides for waiver of required flood insurance, specifies policyholder burden of proof, and authorizes an association to deny coverage, under specified conditions. Renames the Residential Property and Casualty Joint Underwriting Association as the Citizens Property Insurance Corporation to provide residential and commercial property insurance. Requires insurers selling property insurance in this state to participate in the corporation. Provides for a plan of operation and a board of governors. Divides the revenues, assets, liabilities, losses, and expenses of the corporation into three accounts and provides for emergency assessments for policyholders of participating insurers. Provides for the corporation to enter into quota share primary insurance agreements with authorized insurers. Provides that the corporation need not obtain a certificate of authority from the Department of Insurance or be a member of the Florida Insurance Guaranty Association. Requires the corporation to pay assessments pledged to secure bonds to pay covered claims arising from insurer insolvencies caused by hurricane losses. Provides for the transfer of policies, assets, and liabilities of the association and the Florida Windstorm Underwriting Association to the corporation. Preserves the right of a residual market policyholder to select and maintain an agent of his or her own choice. See bill for details.