

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; amending s.
 22 627.3511, F.S.; revising certain agent
 23 commission payment policy servicing procedures
 24 and requirements; creating s. 627.3517, F.S.;
 25 preserving the right of a residual-market
 26 policyholder to select and maintain an agent of
 27 his or her own choice; providing an effective
 28 date.

29
 30 Be It Enacted by the Legislature of the State of Florida:
 31

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

4 215.555 Florida Hurricane Catastrophe Fund.--

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

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

18 (5) REIMBURSEMENT PREMIUMS.--

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

1 single hurricane season is fully funded,and other such
 2 factors deemed by the board to be appropriate. The formula
 3 may provide for a procedure to determine the premiums to be
 4 paid by new insurers that begin writing covered policies after
 5 the beginning of a contract year, taking into consideration
 6 when the insurer starts writing covered policies, the
 7 potential exposure of the insurer, the potential exposure of
 8 the fund, the administrative costs to the insurer and to the
 9 fund, and any other factors deemed appropriate by the board.
 10 The formula must be approved by unanimous vote of the board.
 11 The board may, at any time, revise the formula pursuant to the
 12 procedure provided in this paragraph.

13 Section 2. Paragraph (g) of subsection (2) of section
 14 627.062, Florida Statutes, is amended to read:

15 627.062 Rate standards.--

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

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

1 organization, proves the reasonableness, adequacy, and
2 fairness of the rate or rate change. The department shall
3 issue a notice of intent to approve or a notice of intent to
4 disapprove pursuant to the procedures of paragraph (a) within
5 90 days after receipt of the insurer's initial response.

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

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

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1 The provisions of this subsection shall not apply to workers'
2 compensation and employer's liability insurance and to motor
3 vehicle insurance.

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

7 627.351 Insurance risk apportionment plans.--

8 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

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

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

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

1 insurance in the state and shall terminate 1 year after the
2 end of the calendar year during which it no longer holds a
3 certificate of authority to transact property insurance in the
4 state. The commissioner, after review of annual statements,
5 other reports, and any other statistics that the commissioner
6 deems necessary, shall certify to the association the
7 aggregate direct premiums written for property insurance in
8 this state by all member insurers.

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

25 (III) The plan of operation shall provide a formula
26 whereby a company voluntarily providing windstorm coverage in
27 affected areas will be relieved wholly or partially from
28 apportionment of a regular assessment pursuant to
29 sub-sub-subparagraph d.(I) or sub-sub-subparagraph d.(II).

30 (IV) A company which is a member of a group of
31 companies under common management may elect to have its

1 credits applied on a group basis, and any company or group may
2 elect to have its credits applied to any other company or
3 group.

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

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

1 Underwriting Association's 100-year probable maximum loss from
2 hurricanes. With the approval of the department, the board
3 may extend such credits for an additional year if the insurer
4 guarantees an additional year of renewability for all policies
5 removed from the Residential Property and Casualty Joint
6 Underwriting Association, or for 2 additional years if the
7 insurer guarantees 2 additional years of renewability for all
8 policies removed from the Residential Property and Casualty
9 Joint Underwriting Association.

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

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

24 d.(I) When the deficit incurred in a particular
25 calendar year is 10 percent or less of the aggregate statewide
26 direct written premium for property insurance for the prior
27 calendar year for all member insurers, the association shall
28 levy an assessment on member insurers in an amount equal to
29 the deficit.

30 (II) When the deficit incurred in a particular
31 calendar year exceeds 10 percent of the aggregate statewide

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

9 (III) Upon a determination by the board of directors
 10 that a deficit exceeds the amount that will be recovered
 11 through regular assessments on member insurers, pursuant to
 12 sub-sub-subparagraph (I) or sub-sub-subparagraph (II), the
 13 board shall levy, after verification by the department,
 14 emergency assessments to be collected by member insurers and
 15 by underwriting associations created pursuant to this section
 16 which write property insurance, upon issuance or renewal of
 17 property insurance policies other than National Flood
 18 Insurance policies in the year or years following levy of the
 19 regular assessments. The amount of the emergency assessment
 20 collected in a particular year shall be a uniform percentage
 21 of that year's direct written premium for property insurance
 22 for all member insurers and underwriting associations,
 23 excluding National Flood Insurance policy premiums, as
 24 annually determined by the board and verified by the
 25 department. The department shall verify the arithmetic
 26 calculations involved in the board's determination within 30
 27 days after receipt of the information on which the
 28 determination was based. Notwithstanding any other provision
 29 of law, each member insurer and each underwriting association
 30 created pursuant to this section shall collect emergency
 31 assessments from its policyholders without such obligation

1 being affected by any credit, limitation, exemption, or
2 deferment. The emergency assessments so collected shall be
3 transferred directly to the association on a periodic basis as
4 determined by the association. The aggregate amount of
5 emergency assessments levied under this sub-sub-subparagraph
6 in any calendar year may not exceed the greater of 10 percent
7 of the amount needed to cover the original deficit, plus
8 interest, fees, commissions, required reserves, and other
9 costs associated with financing of the original deficit, or 10
10 percent of the aggregate statewide direct written premium for
11 property insurance written by member insurers and underwriting
12 associations for the prior year, plus interest, fees,
13 commissions, required reserves, and other costs associated
14 with financing the original deficit. The board may pledge the
15 proceeds of the emergency assessments under this
16 sub-sub-subparagraph as the source of revenue for bonds, to
17 retire any other debt incurred as a result of the deficit or
18 events giving rise to the deficit, or in any other way that
19 the board determines will efficiently recover the deficit. The
20 emergency assessments under this sub-sub-subparagraph shall
21 continue as long as any bonds issued or other indebtedness
22 incurred with respect to a deficit for which the assessment
23 was imposed remain outstanding, unless adequate provision has
24 been made for the payment of such bonds or other indebtedness
25 pursuant to the document governing such bonds or other
26 indebtedness. Emergency assessments collected under this
27 sub-sub-subparagraph are not part of an insurer's rates, are
28 not premium, and are not subject to premium tax, fees, or
29 commissions; however, failure to pay the emergency assessment
30 shall be treated as failure to pay premium.
31

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

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

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

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

1 portion of the bond issue that equals the insurer's relative
2 share of assessment liability under this subsection. An
3 insurer shall not be required to purchase the bonds to the
4 extent that the department determines that the purchase would
5 endanger or impair the solvency of the insurer. The authority
6 granted by this sub-subparagraph is additional to any bonding
7 authority granted by subparagraph 6.

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

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

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

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

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

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

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

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

29
30 The acceptance or rejection of a risk by the association
31 pursuant to such criteria and procedures must be construed as

1 the private placement of insurance, and the provisions of
2 chapter 120 do not apply.

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

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

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

1 catastrophe losses. The plan may authorize all actions
 2 necessary to facilitate the issuance of bonds, including the
 3 pledging of assessments or other revenues.

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

1 serve until their successors are duly qualified as provided
2 under the plan. The assets and obligations of the plan in
3 effect immediately prior to the effective date of chapter
4 76-96 shall be construed to be the assets and obligations of
5 the successor plan created herein.

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

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

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

1 transfer, such requirements and procedures shall not provide
2 for an effective date of coverage later than the date of the
3 closing of the transfer as established by the transferor, the
4 transferee, and, if applicable, the lender.

5 9. Notwithstanding any other provision of law:

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

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

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

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

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

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

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

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

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

1 resources to pay claims following a catastrophic hurricane, it
2 is the intent of the Legislature that the income of the
3 corporation be exempt from federal income taxation and that
4 interest on the debt obligations issued by the corporation be
5 exempt from federal income taxation.

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

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

30 (b)1. All insurers authorized to write one or more
31 subject lines of business in this state are subject to

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

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

24 (I) A personal lines account for personal residential
 25 policies issued by the corporation or issued by the
 26 Residential Property and Casualty Joint Underwriting
 27 Association and renewed by the corporation that provide
 28 comprehensive, multi-peril coverage on risks that are not
 29 located in areas eligible for coverage in the Florida
 30 Windstorm Underwriting Association as those areas were defined
 31 on January 1, 2002 and for such policies that do not provide

1 coverage for the peril of wind on risks that are located in
2 such areas;

3 (II) A commercial lines account for commercial
4 residential policies issued by the corporation or issued by
5 the Residential Property and Casualty Joint Underwriting
6 Association and renewed by the corporation that provide
7 coverage for basic property perils on risks that are not
8 located in areas eligible for coverage in the Florida
9 Windstorm Underwriting Association as those areas were defined
10 on January 1, 2002 and for such policies that do not provide
11 coverage for the peril of wind on risks that are located in
12 such areas; and

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

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

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

21 c. Creditors of the joint underwriting association
 22 shall have a claim against, and recourse to, the accounts
 23 referred to in sub-sub-subparagraphs a.(I) and (II) and shall
 24 have no claim against, or recourse to, the account referred to
 25 in sub-sub-subparagraph a.(III). Creditors of the Florida
 26 Windstorm Underwriting Association shall have a claim against,
 27 and recourse to, the account referred to in
 28 sub-sub-subparagraph a.(III) and shall have no claim against,
 29 or recourse to, the accounts referred to in
 30 sub-sub-subparagraphs a.(I) and (II).

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

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

8 f. No part of the income of the corporation may inure
9 to the benefit of any private person.

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

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

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

30 c. Each assessable member insurer's share of the
31 amount being assessed ~~total assessment~~ under sub-subparagraph

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

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

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

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

11 e. The corporation ~~board~~ may pledge the proceeds of
 12 assessments, projected recoveries from the Florida Hurricane
 13 Catastrophe Fund, other insurance and reinsurance
 14 recoverables, market equalization surcharges and other
 15 surcharges, and other funds available to the corporation
 16 ~~association~~ as the source of revenue for and to secure bonds
 17 issued under paragraph (g), bonds or other indebtedness issued
 18 under subparagraph (c)3., or lines of credit or other
 19 financing mechanisms issued or created under this subsection,
 20 or to retire any other debt incurred as a result of deficits
 21 or events giving rise to deficits, or in any other way that
 22 the board determines will efficiently recover such deficits.
 23 The purpose of the lines of credit or other financing
 24 mechanisms is to provide additional resources to assist the
 25 corporation ~~association~~ in covering claims and expenses
 26 attributable to a catastrophe. As used in this subsection, the
 27 term "assessments" includes regular assessments under
 28 sub-subparagraph a., sub-subparagraph b., or subparagraph
 29 (g)1. and emergency assessments under sub-subparagraph d.
 30 Emergency assessments collected under sub-subparagraph d. are
 31 not part of an insurer's rates, are not premium, and are not

1 subject to premium tax, fees, or commissions; however, failure
 2 to pay the emergency assessment shall be treated as failure to
 3 pay premium. The emergency assessments under sub-subparagraph
 4 d. shall continue as long as any bonds issued or other
 5 indebtedness incurred with respect to a deficit for which the
 6 assessment was imposed remain outstanding, unless adequate
 7 provision has been made for the payment of such bonds or other
 8 indebtedness pursuant to the documents governing such bonds or
 9 other indebtedness.

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

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

27 h. The Florida Surplus Lines Service Office shall
 28 verify the proper application by surplus lines agents of
 29 assessment percentages for regular assessments and emergency
 30 assessments levied under this subparagraph on assessable
 31 insureds and shall assist the corporation in ensuring the

1 accurate, timely collection and payment of assessments by
2 surplus lines agents as required by the corporation., with
3 ~~respect to the personal lines account, any personal lines~~
4 ~~policy defined in s. 627.4025, and means, with respect to the~~
5 ~~commercial lines account, all commercial property and~~
6 ~~commercial fire insurance.~~

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

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

20 1.2. Must provide for adoption of residential property
21 and casualty insurance policy forms and commercial residential
22 and nonresidential property insurance forms, which forms must
23 be approved by the department prior to use. The corporation
24 association shall adopt the following policy forms:

25 a. Standard personal lines policy forms that including
26 ~~wind coverage, which are comprehensive~~ multiperil policies
27 providing ~~what is generally considered to be~~ full coverage of
28 a residential property equivalent ~~similar~~ to the coverage
29 provided in the private insurance market under an ~~HO-2~~, HO-3,
30 HO-4, or HO-6 policy.

31

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

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

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

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

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

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

29 2.a. Must provide that the corporation adopt a program
30 in which the corporation and authorized insurers enter into
31 quota share primary insurance agreements for hurricane

1 coverage, as defined in s. 627.4025(2)(a), for eligible risks,
2 and adopt property insurance forms for eligible risks which
3 cover the peril of wind only. As used in this subsection, the
4 term:

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

28 (II) "Eligible risks" means personal lines residential
29 and commercial lines residential risks that meet the
30 underwriting criteria of the corporation and are located in
31

1 areas that were eligible for coverage by the Florida Windstorm
2 Underwriting Association on January 1, 2002.

3 b. The corporation may enter into quota share primary
4 insurance agreements with authorized insurers at corporation
5 coverage levels of 90 percent and 50 percent.

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

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

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

26 f. For all eligible risks covered under quota share
27 primary insurance agreements, the exposure and coverage levels
28 for both the corporation and authorized insurers shall be
29 reported by the corporation to the Florida Hurricane
30 Catastrophe Fund. For all policies of eligible risks covered
31 under quota share primary insurance agreements, the

1 corporation and the authorized insurer shall maintain complete
2 and accurate records for the purpose of exposure and loss
3 reimbursement audits as required by Florida Hurricane
4 Catastrophe Fund rules. The corporation and the authorized
5 insurer shall each maintain duplicate copies of policy
6 declaration pages and supporting claims documents.

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

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

26 ~~f. Commercial lines residential policy forms without~~
27 ~~wind coverage, which are the same as the policies described in~~
28 ~~sub-subparagraph e. except that they do not include wind~~
29 ~~coverage.~~

30 3. May provide that the corporation ~~association~~ may
31 employ or otherwise contract with individuals or other

1 entities to provide administrative or professional services
2 that may be appropriate to effectuate the plan. The
3 corporation ~~association~~ shall have the power to borrow funds,
4 by issuing bonds or by incurring other indebtedness, and shall
5 have other powers reasonably necessary to effectuate the
6 requirements of this subsection. The corporation may, but is
7 not required to, seek judicial validation of its bonds or
8 other indebtedness under chapter 75.The corporation
9 ~~association~~ may issue bonds or incur other indebtedness, or
10 have bonds issued on its behalf by a unit of local government
11 pursuant to subparagraph (g)2., in the absence of a hurricane
12 or other weather-related event, upon a determination by the
13 corporation ~~association~~, subject to approval by the
14 department, that such action would enable it to efficiently
15 meet the financial obligations of the corporation ~~association~~
16 and that such financings are reasonably necessary to
17 effectuate the requirements of this subsection. The
18 corporation ~~association~~ is authorized to take all actions
19 needed to facilitate tax-free status for any such bonds or
20 indebtedness, including formation of trusts or other
21 affiliated entities. The corporation ~~association~~ shall have
22 the authority to pledge assessments, projected recoveries from
23 the Florida Hurricane Catastrophe Fund, other reinsurance
24 recoverables, market equalization and other surcharges, and
25 other funds available to the corporation ~~association~~ as
26 security for bonds or other indebtedness. In recognition of s.
27 10, Art. I of the State Constitution, prohibiting the
28 impairment of obligations of contracts, it is the intent of
29 the Legislature that no action be taken whose purpose is to
30 impair any bond indenture or financing agreement or any
31

1 revenue source committed by contract to such bond or other
2 indebtedness.

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

11 a. ~~The insurance consumer advocate appointed under s.~~
12 ~~627.0613.~~

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

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

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

28
29 ~~Any board member may be disapproved or removed and replaced by~~
30 ~~the commissioner at any time for cause.~~All board members,
31 including the chair, must be appointed to serve for 3-year

1 terms beginning annually on a date designated by the plan. Any
 2 board vacancy shall be filled for the unexpired term by the
 3 Treasurer. The Treasurer shall appoint a technical advisory
 4 group to provide information and advice to the board of
 5 governors in connection with the board's duties under this
 6 subsection. The executive director and senior managers of the
 7 corporation shall be engaged by the Treasurer and serve at the
 8 pleasure of the Treasurer. The executive director is
 9 responsible for employing other staff as the corporation may
 10 require, subject to review and concurrence by the Office of
 11 the Treasurer.

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

- 29 (i) Due to emergency conditions;
 30 (ii) To ensure the effective and efficient
 31 implementation of the corporation's operations; or

1 (iii) To maintain existing financing arrangements
2 without a material adverse effect on the creditors of the
3 Residential Property and Casualty Joint Underwriting
4 Association or the Florida Windstorm Underwriting Association.

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

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

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

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

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

11
 12 If the risk is not able to obtain any such offer, the risk is
 13 eligible for either a standard policy ~~including wind coverage~~
 14 or a basic policy ~~including wind coverage~~ issued by the
 15 corporation association; however, if the risk could not be
 16 insured under a standard policy ~~including wind coverage~~
 17 regardless of market conditions, the risk shall be eligible
 18 for a basic policy ~~including wind coverage~~ unless rejected
 19 under subparagraph 8. The corporation association shall
 20 determine the type of policy to be provided on the basis of
 21 objective standards specified in the underwriting manual and
 22 based on generally accepted underwriting practices.

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

1 plan or the corporation ~~association~~ is not currently appointed
2 by the insurer, the insurer shall either:

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

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

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

23
24 If the risk is not able to obtain any such offer, the risk is
25 eligible for a policy ~~including wind coverage~~ issued by the
26 corporation association.

27 ~~c. This subparagraph does not require the association~~
28 ~~to provide wind coverage or hurricane coverage in any area in~~
29 ~~which such coverage is available through the Florida Windstorm~~
30 ~~Underwriting Association.~~

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

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

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

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

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

23
24 The acceptance or rejection of a risk by the corporation
25 ~~association~~ shall be construed as the private placement of
26 insurance, and the provisions of chapter 120 shall not apply.

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

30 10. Must provide that in the event of regular deficit
31 assessments under sub-subparagraph (b)3.a. or sub-subparagraph

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

17 11. The policies issued by the corporation association
 18 must provide that, if the corporation association or the
 19 market assistance plan obtains an offer from an authorized
 20 insurer to cover the risk at its approved rates ~~under either a~~
 21 ~~standard policy including wind coverage or a basic policy~~
 22 ~~including wind coverage~~, the risk is no longer eligible for
 23 renewal coverage through the corporation association. However,
 24 ~~if the risk is located in an area in which Florida Windstorm~~
 25 ~~Underwriting Association coverage is available, such an offer~~
 26 ~~of a standard or basic policy terminates eligibility~~
 27 ~~regardless of whether or not the offer includes wind coverage.~~
 28 ~~Upon termination of eligibility, the association shall provide~~
 29 ~~written notice to the policyholder and agent of record stating~~
 30 ~~that the association policy shall be canceled as of 60 days~~
 31 ~~after the date of the notice because of the offer of coverage~~

1 ~~from an authorized insurer. Other provisions of the insurance~~
 2 ~~code relating to cancellation and notice of cancellation do~~
 3 ~~not apply to actions under this subparagraph.~~

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

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

29 14. Must provide that, with respect to the high-risk
 30 account, any assessable insurer with a surplus as to
 31 policyholders of \$25 million or less writing 25 percent or

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

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

28 (d)1. It is the intent of the Legislature that the
 29 rates for coverage provided by the corporation ~~association~~ be
 30 actuarially sound and not competitive with approved rates
 31 charged in the admitted voluntary market, so that the

1 corporation ~~association~~ functions as a residual market
 2 mechanism to provide insurance only when the insurance cannot
 3 be procured in the voluntary market. Rates shall include an
 4 appropriate catastrophe loading factor that reflects the
 5 actual catastrophic exposure of the corporation ~~association~~
 6 ~~and recognizes that the association has little or no capital~~
 7 ~~or surplus; and the association shall carefully review each~~
 8 ~~rate filing to assure that provider compensation is not~~
 9 ~~excessive.~~

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

24 3. Rates for personal lines residential wind-only
 25 policies must be actuarially sound and not competitive with
 26 approved rates charged by authorized insurers. However, for
 27 personal lines residential wind-only policies issued or
 28 renewed between July 1, 2002, and June 30, 2003, the maximum
 29 premium increase must be no greater than 10 percent of the
 30 Florida Windstorm Underwriting Association premium for that
 31 policy in effect on June 30, 2002, as adjusted for coverage

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

31

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (m) Notwithstanding any other provision of law:
21 1. The pledge or sale of, the lien upon, and the
22 security interest in any rights, revenues, or other assets of
23 the corporation ~~association~~ created or purported to be created
24 pursuant to any financing documents to secure any bonds or
25 other indebtedness of the corporation ~~association~~ shall be and
26 remain valid and enforceable, notwithstanding the commencement
27 of and during the continuation of, and after, any
28 rehabilitation, insolvency, liquidation, bankruptcy,
29 receivership, conservatorship, reorganization, or similar
30 proceeding against the corporation ~~association~~ under the laws
31 of this state.

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

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

28 4. Any such pledge or sale of assessments, revenues,
29 contract rights, or other rights or assets of the corporation
30 ~~association~~ shall constitute a lien and security interest, or
31 sale, as the case may be, that is immediately effective and

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

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

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

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

31

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

9 d. Matters reasonably encompassed in privileged
10 attorney-client communications.

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

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

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

29 h. Information relating to negotiations for financing,
30 reinsurance, depopulation, or contractual services, until the
31 conclusion of the negotiations.

1 i. Minutes of closed meetings regarding underwriting
 2 files, and minutes of closed meetings regarding an open claims
 3 file until termination of all litigation and settlement of all
 4 claims with regard to that claim, except that information
 5 otherwise confidential or exempt by law will be redacted.
 6
 7 When an authorized insurer is considering underwriting a risk
 8 insured by the corporation ~~association~~, relevant underwriting
 9 files and confidential claims files may be released to the
 10 insurer provided the insurer agrees in writing, notarized and
 11 under oath, to maintain the confidentiality of such files.
 12 When a file is transferred to an insurer that file is no
 13 longer a public record because it is not held by an agency
 14 subject to the provisions of the public records law.
 15 Underwriting files and confidential claims files may also be
 16 released to staff of and the board of governors of the market
 17 assistance plan established pursuant to s. 627.3515, who must
 18 retain the confidentiality of such files, except such files
 19 may be released to authorized insurers that are considering
 20 assuming the risks to which the files apply, provided the
 21 insurer agrees in writing, notarized and under oath, to
 22 maintain the confidentiality of such files. Finally, the
 23 corporation ~~association~~ or the board or staff of the market
 24 assistance plan may make the following information obtained
 25 from underwriting files and confidential claims files
 26 available to licensed general lines insurance agents: name,
 27 address, and telephone number of the residential property
 28 owner or insured; location of the risk; rating information;
 29 loss history; and policy type. The receiving licensed general
 30 lines insurance agent must retain the confidentiality of the
 31 information received.

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

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

25 1. The board shall, on or before February 1 of each
 26 year, provide a report to the President of the Senate and the
 27 Speaker of the House of Representatives showing the reduction
 28 or increase in the 100-year probable maximum loss attributable
 29 to wind-only coverages and the quota share program under this
 30 subsection combined, as compared to the benchmark 100-year
 31 probable maximum loss of the Florida Windstorm Underwriting

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

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

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

26 (p) In enacting the provisions of this section, the
 27 Legislature recognizes that both the Florida Windstorm
 28 Underwriting Association and the Residential Property and
 29 Casualty Joint Underwriting Association have entered into
 30 financing arrangements that obligate each entity to service
 31 its debts and maintain the capacity to repay funds secured

1 under these financing arrangements. It is the intent of the
 2 Legislature that nothing in this section be construed to
 3 compromise, diminish, or interfere with the rights of
 4 creditors under such financing arrangements. It is further the
 5 intent of the Legislature to preserve the obligations of the
 6 Florida Windstorm Underwriting Association and Residential
 7 Property and Casualty Joint Underwriting Association with
 8 regard to outstanding financing arrangements, with such
 9 obligations passing entirely and unchanged to the corporation
 10 and, specifically, to the applicable account of the
 11 corporation. So long as any bonds, notes, indebtedness, or
 12 other financing obligations of the Florida Windstorm
 13 Underwriting Association or the Residential Property and
 14 Casualty Joint Underwriting Association are outstanding, under
 15 the terms of the financing documents pertaining to them, the
 16 governing board of the corporation shall have and shall
 17 exercise the authority to levy, charge, collect, and receive
 18 all premiums, assessments, surcharges, charges, revenues and
 19 receipts that the associations had authority to levy, charge,
 20 collect, or receive under the provisions of subsection (2) and
 21 subsection (6), respectively, as they existed on January 1,
 22 2002, to the extent necessary to provide moneys, together with
 23 other available moneys of the corporation in the applicable
 24 account without exercise of the authority provided by this
 25 paragraph, in at least the amounts, and by the times, as would
 26 be provided under those former provisions of subsection (2) or
 27 subsection (6), respectively, so that the value, amount, and
 28 collectability of any assets, revenues, or revenue source
 29 pledged or committed to, or any lien thereon securing such
 30 outstanding bonds, notes, indebtedness, or other financing
 31 obligations will not be diminished, impaired, or adversely

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

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

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

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

3 627.3511 Depopulation of Residential Property and
4 Casualty Joint Underwriting Association.--

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

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

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

23
24 If the producing agent is unwilling or unable to accept
25 appointment, the new insurer shall pay the agent in accordance
26 with paragraph (a).~~The insurer need not take any further~~
27 ~~action if the offer is rejected. This subsection does not~~
28 ~~apply to any reciprocal interinsurance exchange, nonprofit~~
29 ~~federation, or any subsidiary or affiliate of such~~
30 ~~organization. This subsection does not apply if the agent is~~
31 ~~also the agent of record on the new coverage.~~The requirement

1 of this subsection that the producing agent of record is
 2 entitled to retain the unearned commission on an association
 3 policy does not apply to a policy for which coverage has been
 4 provided in the association for 30 days or less or for which a
 5 cancellation notice has been issued pursuant to s.
 6 627.351(6)(c)11. during the first 30 days of coverage.

7 Section 5. Section 627.3517, Florida Statutes, is
 8 created to read:

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

1 voluntary market. Any rule, plan of operation, or plan of
2 depopulation, through keepout, takeout, midterm assumption, or
3 any other means, of any property insurance risk apportionment
4 plan under s. 627.351(2) or s. 627.351(6) is subject to ss.
5 627.351(2)(b) and (6)(c) and 627.3511(4).

6 Section 6. This act shall take effect July 1, 2002.

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