

By Senator Geller

31-413A-03

1                                   A bill to be entitled  
2           An act relating to insurance rate standards;  
3           amending s. 627.062, F.S.; deleting a provision  
4           that allows insurers to require arbitration in  
5           rate-filing matters; amending s. 627.351, F.S.,  
6           relating to windstorm risk apportionment;  
7           conforming a cross-reference; providing an  
8           effective date.

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

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12           Section 1. Subsection (6) of section 627.062, Florida  
13   Statutes, is amended to read:

14           627.062 Rate standards.--

15           ~~(6)(a) After any action with respect to a rate filing~~  
16   ~~that constitutes agency action for purposes of the~~  
17   ~~Administrative Procedure Act, an insurer may, in lieu of~~  
18   ~~demanding a hearing under s. 120.57, require arbitration of~~  
19   ~~the rate filing. Arbitration shall be conducted by a board of~~  
20   ~~arbitrators consisting of an arbitrator selected by the~~  
21   ~~department, an arbitrator selected by the insurer, and an~~  
22   ~~arbitrator selected jointly by the other two arbitrators. Each~~  
23   ~~arbitrator must be certified by the American Arbitration~~  
24   ~~Association. A decision is valid only upon the affirmative~~  
25   ~~vote of at least two of the arbitrators. No arbitrator may be~~  
26   ~~an employee of any insurance regulator or regulatory body or~~  
27   ~~of any insurer, regardless of whether or not the employing~~  
28   ~~insurer does business in this state. The department and the~~  
29   ~~insurer must treat the decision of the arbitrators as the~~  
30   ~~final approval of a rate filing. Costs of arbitration shall be~~  
31   ~~paid by the insurer.~~

1           ~~(b) Arbitration under this subsection shall be~~  
2 ~~conducted pursuant to the procedures specified in ss.~~  
3 ~~682.06-682.10. Either party may apply to the circuit court to~~  
4 ~~vacate or modify the decision pursuant to s. 682.13 or s.~~  
5 ~~682.14. The department shall adopt rules for arbitration under~~  
6 ~~this subsection, which rules may not be inconsistent with the~~  
7 ~~arbitration rules of the American Arbitration Association as~~  
8 ~~of January 1, 1996.~~

9           ~~(c) Upon initiation of the arbitration process, the~~  
10 ~~insurer waives all rights to challenge the action of the~~  
11 ~~department under the Administrative Procedure Act or any other~~  
12 ~~provision of law; however, such rights are restored to the~~  
13 ~~insurer if the arbitrators fail to render a decision within 90~~  
14 ~~days after initiation of the arbitration process.~~

15           Section 2. Paragraph (b) of subsection (2) of section  
16 627.351, Florida Statutes, is amended to read:

17           627.351 Insurance risk apportionment plans.--

18           (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

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

1 624.604, including insurance for fire, industrial fire, allied  
2 lines, farmowners multiperil, homeowners' multiperil,  
3 commercial multiperil, and mobile homes, and including  
4 liability coverages on all such insurance, but excluding  
5 inland marine as defined in s. 624.607(3) and excluding  
6 vehicle insurance as defined in s. 624.605(1)(a) other than  
7 insurance on mobile homes used as permanent dwellings. The  
8 department shall adopt rules that provide a formula for the  
9 recovery and repayment of any deferred assessments.

10 1. For the purpose of this section, properties  
11 eligible for such windstorm coverage are defined as dwellings,  
12 buildings, and other structures, including mobile homes which  
13 are used as dwellings and which are tied down in compliance  
14 with mobile home tie-down requirements prescribed by the  
15 Department of Highway Safety and Motor Vehicles pursuant to s.  
16 320.8325, and the contents of all such properties. An  
17 applicant or policyholder is eligible for coverage only if an  
18 offer of coverage cannot be obtained by or for the applicant  
19 or policyholder from an admitted insurer at approved rates.

20 2.a.(I) All insurers required to be members of such  
21 association shall participate in its writings, expenses, and  
22 losses. Surplus of the association shall be retained for the  
23 payment of claims and shall not be distributed to the member  
24 insurers. Such participation by member insurers shall be in  
25 the proportion that the net direct premiums of each member  
26 insurer written for property insurance in this state during  
27 the preceding calendar year bear to the aggregate net direct  
28 premiums for property insurance of all member insurers, as  
29 reduced by any credits for voluntary writings, in this state  
30 during the preceding calendar year. For the purposes of this  
31 subsection, the term "net direct premiums" means direct

1 written premiums for property insurance, reduced by premium  
2 for liability coverage and for the following if included in  
3 allied lines: rain and hail on growing crops; livestock;  
4 association direct premiums booked; National Flood Insurance  
5 Program direct premiums; and similar deductions specifically  
6 authorized by the plan of operation and approved by the  
7 department. A member's participation shall begin on the first  
8 day of the calendar year following the year in which it is  
9 issued a certificate of authority to transact property  
10 insurance in the state and shall terminate 1 year after the  
11 end of the calendar year during which it no longer holds a  
12 certificate of authority to transact property insurance in the  
13 state. The commissioner, after review of annual statements,  
14 other reports, and any other statistics that the commissioner  
15 deems necessary, shall certify to the association the  
16 aggregate direct premiums written for property insurance in  
17 this state by all member insurers.

18 (II) Effective July 1, 2002, the association shall  
19 operate subject to the supervision and approval of a board of  
20 governors who are the same individuals that have been  
21 appointed by the Treasurer to serve on the board of governors  
22 of the Citizens Property Insurance Corporation.

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

28 (IV) A company which is a member of a group of  
29 companies under common management may elect to have its  
30 credits applied on a group basis, and any company or group may  
31

1 elect to have its credits applied to any other company or  
2 group.

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

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

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

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

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

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

29           (II) When the deficit incurred in a particular  
30 calendar year exceeds 10 percent of the aggregate statewide  
31 direct written premium for property insurance for the prior

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

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

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

30 |           (IV) Each member insurer's share of the total regular  
31 | assessments under sub-sub-subparagraph (I) or



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

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

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

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

1 insurer shall not be required to purchase the bonds to the  
2 extent that the department determines that the purchase would  
3 endanger or impair the solvency of the insurer. The authority  
4 granted by this sub-subparagraph is additional to any bonding  
5 authority granted by subparagraph 6.

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

29           4. The plan shall provide for the deferment, in whole  
30 or in part, of a regular assessment of a member insurer under  
31 sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II),

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

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

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

29 c. The association shall provide for windstorm  
30 coverage on residential properties in limits up to \$10 million  
31 for commercial lines residential risks and up to \$1 million

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

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

20 (I) Whether the likelihood of a loss for the  
21 individual risk is substantially higher than for other risks  
22 of the same class; and

23 (II) Whether the uncertainty associated with the  
24 individual risk is such that an appropriate premium cannot be  
25 determined.

26  
27 The acceptance or rejection of a risk by the association  
28 pursuant to such criteria and procedures must be construed as  
29 the private placement of insurance, and the provisions of  
30 chapter 120 do not apply.

31

1 e. If the risk accepts an offer of coverage through  
2 the market assistance program or through a mechanism  
3 established by the association, either before the policy is  
4 issued by the association or during the first 30 days of  
5 coverage by the association, and the producing agent who  
6 submitted the application to the association is not currently  
7 appointed by the insurer, the insurer shall:

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

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

18  
19 If the producing agent is unwilling or unable to accept  
20 appointment, the new insurer shall pay the agent in accordance  
21 with sub-sub-subparagraph (I). Subject to the provisions of s.  
22 627.3517, the policies issued by the association must provide  
23 that if the association obtains an offer from an authorized  
24 insurer to cover the risk at its approved rates under either a  
25 standard policy including wind coverage or, if consistent with  
26 the insurer's underwriting rules as filed with the department,  
27 a basic policy including wind coverage, the risk is no longer  
28 eligible for coverage through the association. Upon  
29 termination of eligibility, the association shall provide  
30 written notice to the policyholder and agent of record stating  
31 that the association policy must be canceled as of 60 days

1 after the date of the notice because of the offer of coverage  
2 from an authorized insurer. Other provisions of the insurance  
3 code relating to cancellation and notice of cancellation do  
4 not apply to actions under this sub-subparagraph.

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

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

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

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

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

31

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

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



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

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

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

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

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

4 9. Notwithstanding any other provision of law:

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

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

23 c. Each such pledge or sale of, lien upon, and  
24 security interest in, including the priority of such pledge,  
25 lien, or security interest, any such assessments, emergency  
26 assessments, market equalization or renewal surcharges,  
27 projected recoveries from the Florida Hurricane Catastrophe  
28 Fund, reinsurance recoverables, or other rights, revenues, or  
29 other assets which are collected, or levied and collected,  
30 after the commencement of and during the pendency of or after  
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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 Section 3. This act shall take effect July 1, 2003.

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12 SENATE SUMMARY

13 Deletes a provision that permits an insurer to require  
14 arbitration in matters regarding rate filings.  
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