

1 A bill to be entitled
2 An act relating to property and casualty insurance;
3 transferring, renumbering, and amending ss. 350.061,
4 350.0611, 350.0612, 350.0613, and 350.0614, F.S.;
5 authorizing the Public Counsel to represent the general
6 public before the Office of Insurance Regulation;
7 including certain proceedings related to rules and rate
8 filings for residential property insurance; authorizing
9 the Public Counsel to have access to files of the office,
10 to seek review of orders of the office, to issue reports,
11 recommendations, and proposed orders to the office;
12 specifying where the Public Counsel shall maintain his or
13 her office; authorizing the Joint Legislative Auditing
14 Committee to authorize the Public Counsel to employ
15 certain types of employees; requiring the Office of
16 Insurance Regulation to provide copies of certain filings
17 to the Public Counsel; amending s. 112.3145, F.S.;
18 conforming a cross-reference; amending s. 215.559, F.S.;
19 revising the distribution of funds in the Hurricane Loss
20 Mitigation Program; providing for a low-interest loan
21 program; amending s. 408.40, F.S.; conforming a cross
22 reference; amending s. 624.319, F.S.; authorizing the
23 Public Counsel to have access to certain confidential
24 information held by the Department of Financial Services
25 or the Office of Insurance Regulation; amending s.
26 627.062, F.S.; deleting provisions that allow an insurer
27 to require arbitration of a rate filing for property and
28 casualty insurance; amending s. 627.0629, F.S.; requiring

29 | underwriting rules for homeowners' insurance to be filed
 30 | with and approved by the Office of Insurance Regulation;
 31 | providing for filing and approval provisions; amending s.
 32 | 627.0651, F.S.; deleting reference to the filing of
 33 | specified underwriting rules for homeowners' insurance;
 34 | amending s. 627.351, F.S.; deleting a cross reference to
 35 | conform; amending s. 627.4133, F.S.; prohibiting an
 36 | insurer from canceling or nonrenewing a residential
 37 | property insurance policy for certain reasons; amending s.
 38 | 627.4145, F.S.; increasing the minimum score on the
 39 | reading ease test for insurance policies; creating s.
 40 | 627.41494, F.S.; providing for consumer participation in
 41 | review of insurance rate changes; providing for public
 42 | inspection of rate filings; providing for adoption of
 43 | rules by the Financial Services Commission; requiring
 44 | insurers to pay costs of consumer advocacy groups under
 45 | certain circumstances; amending s. 627.701, F.S.; revising
 46 | the hurricane deductibles that insurers must offer for
 47 | personal lines residential property insurance policies;
 48 | providing an appropriation; providing effective dates.

49 |
 50 | Be It Enacted by the Legislature of the State of Florida:

51 |
 52 | Section 1. Section 350.061, Florida Statutes, is
 53 | transferred, renumbered as section 11.402, Florida Statutes, and
 54 | amended to read:

55 | 11.402 ~~350.061~~ Public Counsel; appointment; oath;
 56 | restrictions on Public Counsel and his or her employees.--

CODING: Words **stricken** are deletions; words **underlined** are additions.

57 (1) The Joint Legislative Auditing Committee shall appoint
 58 a Public Counsel by majority vote of the members of the
 59 committee to represent the general public of Florida before the
 60 Florida Public Service Commission and the Office of Insurance
 61 Regulation. The Public Counsel shall be an attorney admitted to
 62 practice before the Florida Supreme Court and shall serve at the
 63 pleasure of the Joint Legislative Auditing Committee, subject to
 64 annual reconfirmation by the committee. Vacancies in the office
 65 shall be filled in the same manner as the original appointment.

66 (2) The Public Counsel shall take and subscribe to the
 67 oath of office required of state officers by the State
 68 Constitution.

69 (3) No officer or full-time employee of the Public Counsel
 70 shall actively engage in any other business or profession; serve
 71 as the representative of any political party or on any executive
 72 committee or other governing body thereof; serve as an
 73 executive, officer, or employee of any political party,
 74 committee, organization, or association; receive remuneration
 75 for activities on behalf of any candidate for public office; or
 76 engage on behalf of any candidate for public office in the
 77 solicitation of votes or other activities in behalf of such
 78 candidacy. Neither the Public Counsel nor any employee of the
 79 Public Counsel shall become a candidate for election to public
 80 office unless he or she shall first resign from his or her
 81 office or employment.

82 Section 2. Section 350.0611, Florida Statutes, is
 83 transferred, renumbered as section 11.403, Florida Statutes, and
 84 amended to read:

85 11.403 ~~350.0611~~ Public Counsel; duties and powers.--It
 86 shall be the duty of the Public Counsel to provide legal
 87 representation for the people of the state in proceedings before
 88 the Public Service Commission and the Office of Insurance
 89 Regulation and in proceedings before counties pursuant to s.
 90 367.171(8). The Public Counsel shall have such powers as are
 91 necessary to carry out the duties of his or her office,
 92 including, but not limited to, the following specific powers:

93 (1) To recommend to the Public Service Commission or the
 94 counties, by petition, the commencement of any proceeding or
 95 action or to appear, in the name of the state or its citizens,
 96 in any proceeding or action before the commission or the
 97 counties.

98 (2) To recommend to the Office of Insurance Regulation, by
 99 petition, the commencement of, and to appear in the name of the
 100 state or its citizens in, any proceeding or action before the
 101 office relating to:

102 (a) Rules governing residential property insurance; or

103 (b) Rate filings for residential property insurance which,
 104 pursuant to standards determined by the office, request an
 105 average statewide rate increase of 10 percent or greater as
 106 compared to the current rates in effect or the rates in effect
 107 12 months prior to the proposed effective date.

108
 109 The Public Counsel may not stay any final order of the Office of
 110 Insurance Regulation.

111 (3) To and urge in any proceeding or action to which he or
 112 she is a party therein any position that which he or she deems

HB 0507

2005

113 to be in the public interest, whether consistent or inconsistent
 114 with positions previously adopted by the commission, ~~or~~ the
 115 counties, or the office, and utilize therein all forms of
 116 discovery available to attorneys in civil actions generally,
 117 subject to protective orders of the commission, ~~or~~ the counties,
 118 or the office, which shall be reviewable by summary procedure in
 119 the circuit courts of this state.†

120 ~~(4)(2)~~ To have access to and use of all files, records,
 121 and data of the commission, ~~or~~ the counties, or the office
 122 available to any other attorney representing parties in a
 123 proceeding before the commission, ~~or~~ the counties, or the
 124 office.†

125 ~~(5)(3)~~ In any proceeding in which he or she has
 126 participated as a party, to seek review of any determination,
 127 finding, or order of the commission, ~~or~~ the counties, or the
 128 office, or of any hearing examiner designated by the commission,
 129 ~~or~~ the counties, or the office, in the name of the state or its
 130 citizens.†

131 ~~(6)(4)~~ To prepare and issue reports, recommendations, and
 132 proposed orders to the commission or office, the Governor, and
 133 the Legislature on any matter or subject within the jurisdiction
 134 of the commission or office, and to make such recommendations as
 135 he or she deems appropriate for legislation relative to
 136 commission or office procedures, rules, jurisdiction, personnel,
 137 and functions.†~~and~~

138 ~~(7)(5)~~ To appear before other state agencies, federal
 139 agencies, and state and federal courts in connection with
 140 matters under the jurisdiction of the commission or office, in

141 the name of the state or its citizens.

142 Section 3. Section 350.0612, Florida Statutes, is
 143 transferred, renumbered as section 11.404, Florida Statutes, and
 144 amended to read:

145 11.404 ~~350.0612~~ Public Counsel; location.--The Public
 146 Counsel shall maintain his or her office in Leon County ~~on the~~
 147 ~~premises of the commission or, if suitable space there cannot be~~
 148 ~~provided,~~ at such ~~other~~ place convenient to the offices of the
 149 Public Services Commission or the Office of Insurance Regulation
 150 ~~commissioners~~ as will enable him or her to carry out
 151 expeditiously the duties and functions of his or her office.

152 Section 4. Section 350.0613, Florida Statutes, is
 153 transferred, renumbered as section 11.405, Florida Statutes, and
 154 amended to read:

155 11.405 ~~350.0613~~ Public Counsel; employees; receipt of
 156 pleadings.--The Joint Legislative Auditing Committee may
 157 authorize the Public Counsel to employ clerical and technical
 158 assistants whose qualifications, duties, and responsibilities
 159 the committee shall from time to time prescribe. The committee
 160 may from time to time authorize retention of the services of
 161 additional attorneys, actuaries, economists, or experts to the
 162 extent that the best interests of the people of the state will
 163 be better served thereby, including the retention of expert
 164 witnesses and other technical personnel for participation in
 165 contested proceedings before the Public Service Commission or
 166 Office of Insurance Regulation. The commission shall furnish the
 167 Public Counsel with copies of the initial pleadings in all
 168 proceedings before the commission. The office shall furnish the

169 Public Counsel with copies of all filings that relate to the
 170 jurisdiction of the Public Counsel pursuant to s. 11.403(2).
 171 ~~and~~ If the Public Counsel intervenes as a party in any
 172 proceeding he or she shall be served with copies of all
 173 subsequent pleadings, exhibits, and prepared testimony, if used.
 174 Upon filing notice of intervention, the Public Counsel shall
 175 serve all interested parties with copies of such notice and all
 176 of his or her subsequent pleadings and exhibits.

177 Section 5. Section 350.0614, Florida Statutes, is
 178 transferred, renumbered as section 11.406, Florida Statutes, and
 179 amended to read:

180 11.406 ~~350.0614~~ Public Counsel; compensation and
 181 expenses.--

182 (1) The salaries and expenses of the Public Counsel and
 183 his or her employees shall be allocated by the committee only
 184 from moneys appropriated to the Public Counsel by the
 185 Legislature.

186 (2) The Legislature hereby declares and determines that
 187 the Public Counsel is under the legislative branch of government
 188 within the intention of the legislation as expressed in chapter
 189 216, and no power shall be in the Executive Office of the
 190 Governor or its successor to release or withhold funds
 191 appropriated to it, but the same shall be available for
 192 expenditure as provided by law and the rules or decisions of the
 193 Joint Auditing Committee.

194 (3) Neither the Executive Office of the Governor nor the
 195 Department of Management Services or its successor shall have
 196 power to determine the number, or fix the compensation, of the

197 employees of the Public Counsel or to exercise any manner of
 198 control over them.

199 Section 6. Paragraph (b) of subsection (1) of section
 200 112.3145, Florida Statutes, is amended to read:

201 112.3145 Disclosure of financial interests and clients
 202 represented before agencies.--

203 (1) For purposes of this section, unless the context
 204 otherwise requires, the term:

205 (b) "Specified state employee" means:

206 1. Public counsel created by chapter 11 350, an assistant
 207 state attorney, an assistant public defender, a full-time state
 208 employee who serves as counsel or assistant counsel to any state
 209 agency, the Deputy Chief Judge of Compensation Claims, a judge
 210 of compensation claims, an administrative law judge, or a
 211 hearing officer.

212 2. Any person employed in the office of the Governor or in
 213 the office of any member of the Cabinet if that person is exempt
 214 from the Career Service System, except persons employed in
 215 clerical, secretarial, or similar positions.

216 3. Each appointed secretary, assistant secretary, deputy
 217 secretary, executive director, assistant executive director, or
 218 deputy executive director of each state department, commission,
 219 board, or council; unless otherwise provided, the division
 220 director, assistant division director, deputy director, bureau
 221 chief, and assistant bureau chief of any state department or
 222 division; or any person having the power normally conferred upon
 223 such persons, by whatever title.

224 4. The superintendent or institute director of a state

225 mental health institute established for training and research in
 226 the mental health field or the warden or director of any major
 227 state institution or facility established for corrections,
 228 training, treatment, or rehabilitation.

229 5. Business managers, purchasing agents having the power
 230 to make any purchase exceeding the threshold amount provided for
 231 in s. 287.017 for CATEGORY ONE, finance and accounting
 232 directors, personnel officers, or grants coordinators for any
 233 state agency.

234 6. Any person, other than a legislative assistant exempted
 235 by the presiding officer of the house by which the legislative
 236 assistant is employed, who is employed in the legislative branch
 237 of government, except persons employed in maintenance, clerical,
 238 secretarial, or similar positions.

239 7. Each employee of the Commission on Ethics.

240 Section 7. Section 215.559, Florida Statutes, is amended
 241 to read:

242 215.559 Hurricane Loss Mitigation Program.--

243 (1) There is created a Hurricane Loss Mitigation Program.
 244 The Legislature shall annually appropriate \$10 million of the
 245 moneys authorized for appropriation under s. 215.555(7)(c) from
 246 the Florida Hurricane Catastrophe Fund to the Department of
 247 Community Affairs for the purposes set forth in this section.

248 (2)(a) One ~~Seven~~ million dollars in funds provided in
 249 subsection (1) shall be used for programs to improve the wind
 250 resistance of ~~residences and mobile homes, including loans,~~
 251 ~~subsidies, grants, demonstration projects, and direct~~
 252 ~~assistance; cooperative programs with local governments and the~~

253 ~~Federal Government; and other efforts~~ to prevent or reduce
 254 losses or reduce the cost of rebuilding after a disaster.

255 (b) Six million dollars in funds provided in subsection
 256 (1) shall be used for programs to improve the wind resistance of
 257 residences to prevent or reduce losses or reduce the cost of
 258 rebuilding after a disaster.

259 (c) The department shall, with the funds authorized in
 260 paragraphs (a) and (b), establish a program of low-interest
 261 loans to qualified owners of residences and qualified owners of
 262 mobile homes. For the purpose of this section, the term "low-
 263 interest loan" means any direct loan or loan guarantee issued or
 264 backed by such authorized funds to a qualified owner to finance
 265 efforts to prevent or reduce losses or reduce the cost of
 266 rebuilding after a disaster with a requirement for repayment by
 267 the owner. Loans provided under this section shall be made at a
 268 rate of up to 2 percent below the qualified loan rate as
 269 determined by the department. The terms and conditions of the
 270 low-interest loan program, including loan incentive provisions,
 271 and the qualifications required of owners of residences and
 272 owners of mobile homes shall be determined by the department.

273 (d)~~(b)~~ Three million dollars in funds provided in
 274 subsection (1) shall be used to retrofit existing facilities
 275 used as public hurricane shelters. The department must
 276 prioritize the use of these funds for projects included in the
 277 September 1, 2000, version of the Shelter Retrofit Report
 278 prepared in accordance with s. 252.385(3), and each annual
 279 report thereafter. The department must give funding priority to
 280 projects in regional planning council regions that have shelter

281 deficits and to projects that maximize use of state funds.

282 (3) Forty percent of the total appropriation in paragraph
 283 (2)(a) shall be used to inspect and improve tie-downs for mobile
 284 homes. Within 30 days after the effective date of that
 285 appropriation, the department shall contract with a public
 286 higher educational institution in this state which has previous
 287 experience in administering the programs set forth in this
 288 subsection to serve as the administrative entity and fiscal
 289 agent pursuant to s. 216.346 for the purpose of administering
 290 the programs set forth in this subsection in accordance with
 291 established policy and procedures. The administrative entity
 292 working with the advisory council set up under subsection (5)
 293 shall develop a list of mobile home parks and counties that may
 294 be eligible to participate in the tie-down program.

295 (4) Of moneys provided to the Department of Community
 296 Affairs in paragraphs ~~paragraph~~ (2)(a) and (b), 10 percent shall
 297 be allocated to a Type I Center within the State University
 298 System dedicated to hurricane research. The Type I Center shall
 299 develop a preliminary work plan approved by the advisory council
 300 set forth in subsection (5) to eliminate the state and local
 301 barriers to upgrading existing residences, mobile homes, and
 302 communities; ~~research~~ and develop a program for the recycling
 303 of existing older mobile homes; ~~and~~ support programs of
 304 research and development relating to hurricane loss reduction
 305 devices and techniques for site-built residences. The State
 306 University System also shall consult with the Department of
 307 Community Affairs and assist the department with the report
 308 required under subsection (7).

309 (5) Except for the program set forth in subsection (3),
 310 the Department of Community Affairs shall develop the programs
 311 set forth in this section in consultation with an advisory
 312 council consisting of a representative designated by the Chief
 313 Financial Officer, a representative designated by the Florida
 314 Home Builders Association, a representative designated by the
 315 Florida Insurance Council, a representative designated by the
 316 Federation of Manufactured Home Owners, a representative
 317 designated by the Florida Association of Counties, and a
 318 representative designated by the Florida Manufactured Housing
 319 Association.

320 (6) Moneys provided to the Department of Community Affairs
 321 under this section are intended to supplement other funding
 322 sources of the Department of Community Affairs and may not
 323 supplant other funding sources of the Department of Community
 324 Affairs.

325 (7) On January 1st of each year, the Department of
 326 Community Affairs shall provide a full report and accounting of
 327 activities under this section and an evaluation of such
 328 activities to the Speaker of the House of Representatives, the
 329 President of the Senate, and the Majority and Minority Leaders
 330 of the House of Representatives and the Senate.

331 (8) This section is repealed June 30, 2011.

332 Section 8. Subsection (1) of section 408.40, Florida
 333 Statutes, is amended to read:

334 408.40 Public Counsel.--

335 (1) Notwithstanding any other provisions of this chapter,
 336 the Public Counsel shall represent the public in any proceeding

337 before the agency or its advisory panels in any administrative
 338 hearing conducted pursuant to chapter 120 or before any other
 339 state and federal agencies and courts in any issue before the
 340 agency, any court, or any agency. With respect to any such
 341 proceeding, the Public Counsel is subject to the provisions of
 342 and may use the powers granted to him or her by ss. 11.402-
 343 11.406 ~~ss. 350.061-350.0614~~.

344 Section 9. Paragraph (b) of subsection (3) of section
 345 624.319, Florida Statutes, is amended to read:

346 624.319 Examination and investigation reports.--

347 (3)

348 (b) Workpapers and other information held by the
 349 department or office, and workpapers and other information
 350 received from another governmental entity or the National
 351 Association of Insurance Commissioners, for the department's or
 352 office's use in the performance of its examination or
 353 investigation duties pursuant to this section and ss. 624.316,
 354 624.3161, 624.317, and 624.318 are confidential and exempt from
 355 the provisions of s. 119.07(1) and s. 24(a), Art. I of the State
 356 Constitution. This exemption applies to workpapers and other
 357 information held by the department or office before, on, or
 358 after the effective date of this exemption. Such confidential
 359 and exempt information may be disclosed to another governmental
 360 entity, if disclosure is necessary for the receiving entity to
 361 perform its duties and responsibilities, and may be disclosed to
 362 the National Association of Insurance Commissioners. The Public
 363 Counsel shall have access to such confidential and exempt
 364 information pertaining to residential property insurance at any

365 time. The receiving governmental entity or the association must
 366 maintain the confidential and exempt status of the information.
 367 The information made confidential and exempt by this paragraph
 368 may be used in a criminal, civil, or administrative proceeding
 369 so long as the confidential and exempt status of such
 370 information is maintained. This paragraph is subject to the Open
 371 Government Sunset Review Act of 1995 in accordance with s.
 372 119.15 and shall stand repealed on October 2, 2007, unless
 373 reviewed and saved from repeal through reenactment by the
 374 Legislature.

375 Section 10. Effective upon this act becoming a law,
 376 subsection (6) of section 627.062, Florida Statutes, is amended,
 377 and subsections (7) and (8) of said section are renumbered as
 378 subsections (6) and (7), respectively, to read:

379 627.062 Rate standards.--

380 ~~(6)(a) After any action with respect to a rate filing that~~
 381 ~~constitutes agency action for purposes of the Administrative~~
 382 ~~Procedure Act, except for a rate filing for medical malpractice,~~
 383 ~~an insurer may, in lieu of demanding a hearing under s. 120.57,~~
 384 ~~require arbitration of the rate filing. Arbitration shall be~~
 385 ~~conducted by a board of arbitrators consisting of an arbitrator~~
 386 ~~selected by the office, an arbitrator selected by the insurer,~~
 387 ~~and an arbitrator selected jointly by the other two arbitrators.~~
 388 ~~Each arbitrator must be certified by the American Arbitration~~
 389 ~~Association. A decision is valid only upon the affirmative vote~~
 390 ~~of at least two of the arbitrators. No arbitrator may be an~~
 391 ~~employee of any insurance regulator or regulatory body or of any~~
 392 ~~insurer, regardless of whether or not the employing insurer does~~

393 ~~business in this state. The office and the insurer must treat~~
 394 ~~the decision of the arbitrators as the final approval of a rate~~
 395 ~~filing. Costs of arbitration shall be paid by the insurer.~~

396 ~~(b) Arbitration under this subsection shall be conducted~~
 397 ~~pursuant to the procedures specified in ss. 682.06-682.10.~~
 398 ~~Either party may apply to the circuit court to vacate or modify~~
 399 ~~the decision pursuant to s. 682.13 or s. 682.14. The commission~~
 400 ~~shall adopt rules for arbitration under this subsection, which~~
 401 ~~rules may not be inconsistent with the arbitration rules of the~~
 402 ~~American Arbitration Association as of January 1, 1996.~~

403 ~~(c) Upon initiation of the arbitration process, the~~
 404 ~~insurer waives all rights to challenge the action of the office~~
 405 ~~under the Administrative Procedure Act or any other provision of~~
 406 ~~law; however, such rights are restored to the insurer if the~~
 407 ~~arbitrators fail to render a decision within 90 days after~~
 408 ~~initiation of the arbitration process.~~

409 Section 11. Subsection (11) is added to section 627.0629,
 410 Florida Statutes, to read:

411 627.0629 Residential property insurance; rate filings;
 412 underwriting rules.--

413 (11) The underwriting rules for homeowners' insurance not
 414 contained in rating manuals shall be filed with the office. All
 415 underwriting rules for homeowners' insurance must be approved by
 416 the office and be reasonable and comply with applicable
 417 provisions of law. The filing and form-approval provisions under
 418 s. 627.410 apply to the filing and approval of underwriting
 419 rules for homeowners' insurance.

420 Section 12. Subsection (13) of section 627.0651, Florida

421 Statutes, is amended to read:

422 627.0651 Making and use of rates for motor vehicle
423 insurance.--

424 (13)(a) Underwriting rules not contained in rating manuals
425 shall be filed for private passenger automobile insurance ~~and~~
426 ~~homeowners' insurance.~~

427 (b) The submission of rates, rating schedules, and rating
428 manuals to the office by a licensed rating organization of which
429 an insurer is a member or subscriber will be sufficient
430 compliance with this subsection for any insurer maintaining
431 membership or subscribership in such organization, to the extent
432 that the insurer uses the rates, rating schedules, and rating
433 manuals of such organization. All such information shall be
434 available for public inspection, upon receipt by the office,
435 during usual business hours.

436 Section 13. Paragraph (b) of subsection (2) of section
437 627.351, Florida Statutes, is amended to read:

438 627.351 Insurance risk apportionment plans.--

439 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

440 (b) The department shall require all insurers holding a
441 certificate of authority to transact property insurance on a
442 direct basis in this state, other than joint underwriting
443 associations and other entities formed pursuant to this section,
444 to provide windstorm coverage to applicants from areas
445 determined to be eligible pursuant to paragraph (c) who in good
446 faith are entitled to, but are unable to procure, such coverage
447 through ordinary means; or it shall adopt a reasonable plan or
448 plans for the equitable apportionment or sharing among such

449 insurers of windstorm coverage, which may include formation of
 450 an association for this purpose. As used in this subsection, the
 451 term "property insurance" means insurance on real or personal
 452 property, as defined in s. 624.604, including insurance for
 453 fire, industrial fire, allied lines, farmowners multiperil,
 454 homeowners' multiperil, commercial multiperil, and mobile homes,
 455 and including liability coverages on all such insurance, but
 456 excluding inland marine as defined in s. 624.607(3) and
 457 excluding vehicle insurance as defined in s. 624.605(1)(a) other
 458 than insurance on mobile homes used as permanent dwellings. The
 459 department shall adopt rules that provide a formula for the
 460 recovery and repayment of any deferred assessments.

461 1. For the purpose of this section, properties eligible
 462 for such windstorm coverage are defined as dwellings, buildings,
 463 and other structures, including mobile homes which are used as
 464 dwellings and which are tied down in compliance with mobile home
 465 tie-down requirements prescribed by the Department of Highway
 466 Safety and Motor Vehicles pursuant to s. 320.8325, and the
 467 contents of all such properties. An applicant or policyholder is
 468 eligible for coverage only if an offer of coverage cannot be
 469 obtained by or for the applicant or policyholder from an
 470 admitted insurer at approved rates.

471 2.a.(I) All insurers required to be members of such
 472 association shall participate in its writings, expenses, and
 473 losses. Surplus of the association shall be retained for the
 474 payment of claims and shall not be distributed to the member
 475 insurers. Such participation by member insurers shall be in the
 476 proportion that the net direct premiums of each member insurer

HB 0507

2005

477 written for property insurance in this state during the
478 preceding calendar year bear to the aggregate net direct
479 premiums for property insurance of all member insurers, as
480 reduced by any credits for voluntary writings, in this state
481 during the preceding calendar year. For the purposes of this
482 subsection, the term "net direct premiums" means direct written
483 premiums for property insurance, reduced by premium for
484 liability coverage and for the following if included in allied
485 lines: rain and hail on growing crops; livestock; association
486 direct premiums booked; National Flood Insurance Program direct
487 premiums; and similar deductions specifically authorized by the
488 plan of operation and approved by the department. A member's
489 participation shall begin on the first day of the calendar year
490 following the year in which it is issued a certificate of
491 authority to transact property insurance in the state and shall
492 terminate 1 year after the end of the calendar year during which
493 it no longer holds a certificate of authority to transact
494 property insurance in the state. The commissioner, after review
495 of annual statements, other reports, and any other statistics
496 that the commissioner deems necessary, shall certify to the
497 association the aggregate direct premiums written for property
498 insurance in this state by all member insurers.

499 (II) Effective July 1, 2002, the association shall operate
500 subject to the supervision and approval of a board of governors
501 who are the same individuals that have been appointed by the
502 Treasurer to serve on the board of governors of the Citizens
503 Property Insurance Corporation.

504 (III) The plan of operation shall provide a formula

505 whereby a company voluntarily providing windstorm coverage in
506 affected areas will be relieved wholly or partially from
507 apportionment of a regular assessment pursuant to sub-sub-
508 subparagraph d.(I) or sub-sub-subparagraph d.(II).

509 (IV) A company which is a member of a group of companies
510 under common management may elect to have its credits applied on
511 a group basis, and any company or group may elect to have its
512 credits applied to any other company or group.

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

516 (VI) The plan of operation may also provide for the award
517 of credits, for a period not to exceed 3 years, from a regular
518 assessment pursuant to sub-sub-subparagraph d.(I) or sub-sub-
519 subparagraph d.(II) as an incentive for taking policies out of
520 the Residential Property and Casualty Joint Underwriting
521 Association. In order to qualify for the exemption under this
522 sub-sub-subparagraph, the take-out plan must provide that at
523 least 40 percent of the policies removed from the Residential
524 Property and Casualty Joint Underwriting Association cover risks
525 located in Dade, Broward, and Palm Beach Counties or at least 30
526 percent of the policies so removed cover risks located in Dade,
527 Broward, and Palm Beach Counties and an additional 50 percent of
528 the policies so removed cover risks located in other coastal
529 counties, and must also provide that no more than 15 percent of
530 the policies so removed may exclude windstorm coverage. With the
531 approval of the department, the association may waive these
532 geographic criteria for a take-out plan that removes at least

533 the lesser of 100,000 Residential Property and Casualty Joint
534 Underwriting Association policies or 15 percent of the total
535 number of Residential Property and Casualty Joint Underwriting
536 Association policies, provided the governing board of the
537 Residential Property and Casualty Joint Underwriting Association
538 certifies that the take-out plan will materially reduce the
539 Residential Property and Casualty Joint Underwriting
540 Association's 100-year probable maximum loss from hurricanes.
541 With the approval of the department, the board may extend such
542 credits for an additional year if the insurer guarantees an
543 additional year of renewability for all policies removed from
544 the Residential Property and Casualty Joint Underwriting
545 Association, or for 2 additional years if the insurer guarantees
546 2 additional years of renewability for all policies removed from
547 the Residential Property and Casualty Joint Underwriting
548 Association.

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

552 c. The Legislature finds that the potential for unlimited
553 deficit assessments under this subparagraph may induce insurers
554 to attempt to reduce their writings in the voluntary market, and
555 that such actions would worsen the availability problems that
556 the association was created to remedy. It is the intent of the
557 Legislature that insurers remain fully responsible for paying
558 regular assessments and collecting emergency assessments for any
559 deficits of the association; however, it is also the intent of
560 the Legislature to provide a means by which assessment

561 liabilities may be amortized over a period of years.

562 d.(I) When the deficit incurred in a particular calendar
563 year is 10 percent or less of the aggregate statewide direct
564 written premium for property insurance for the prior calendar
565 year for all member insurers, the association shall levy an
566 assessment on member insurers in an amount equal to the deficit.

567 (II) When the deficit incurred in a particular calendar
568 year exceeds 10 percent of the aggregate statewide direct
569 written premium for property insurance for the prior calendar
570 year for all member insurers, the association shall levy an
571 assessment on member insurers in an amount equal to the greater
572 of 10 percent of the deficit or 10 percent of the aggregate
573 statewide direct written premium for property insurance for the
574 prior calendar year for member insurers. Any remaining deficit
575 shall be recovered through emergency assessments under sub-sub-
576 subparagraph (III).

577 (III) Upon a determination by the board of directors that
578 a deficit exceeds the amount that will be recovered through
579 regular assessments on member insurers, pursuant to sub-sub-
580 subparagraph (I) or sub-sub-subparagraph (II), the board shall
581 levy, after verification by the department, emergency
582 assessments to be collected by member insurers and by
583 underwriting associations created pursuant to this section which
584 write property insurance, upon issuance or renewal of property
585 insurance policies other than National Flood Insurance policies
586 in the year or years following levy of the regular assessments.
587 The amount of the emergency assessment collected in a particular
588 year shall be a uniform percentage of that year's direct written

589 premium for property insurance for all member insurers and
590 underwriting associations, excluding National Flood Insurance
591 policy premiums, as annually determined by the board and
592 verified by the department. The department shall verify the
593 arithmetic calculations involved in the board's determination
594 within 30 days after receipt of the information on which the
595 determination was based. Notwithstanding any other provision of
596 law, each member insurer and each underwriting association
597 created pursuant to this section shall collect emergency
598 assessments from its policyholders without such obligation being
599 affected by any credit, limitation, exemption, or deferment. The
600 emergency assessments so collected shall be transferred directly
601 to the association on a periodic basis as determined by the
602 association. The aggregate amount of emergency assessments
603 levied under this sub-sub-subparagraph in any calendar year may
604 not exceed the greater of 10 percent of the amount needed to
605 cover the original deficit, plus interest, fees, commissions,
606 required reserves, and other costs associated with financing of
607 the original deficit, or 10 percent of the aggregate statewide
608 direct written premium for property insurance written by member
609 insurers and underwriting associations for the prior year, plus
610 interest, fees, commissions, required reserves, and other costs
611 associated with financing the original deficit. The board may
612 pledge the proceeds of the emergency assessments under this sub-
613 sub-subparagraph as the source of revenue for bonds, to retire
614 any other debt incurred as a result of the deficit or events
615 giving rise to the deficit, or in any other way that the board
616 determines will efficiently recover the deficit. The emergency

617 assessments under this sub-sub-subparagraph shall continue as
 618 long as any bonds issued or other indebtedness incurred with
 619 respect to a deficit for which the assessment was imposed remain
 620 outstanding, unless adequate provision has been made for the
 621 payment of such bonds or other indebtedness pursuant to the
 622 document governing such bonds or other indebtedness. Emergency
 623 assessments collected under this sub-sub-subparagraph are not
 624 part of an insurer's rates, are not premium, and are not subject
 625 to premium tax, fees, or commissions; however, failure to pay
 626 the emergency assessment shall be treated as failure to pay
 627 premium.

628 (IV) Each member insurer's share of the total regular
 629 assessments under sub-sub-subparagraph (I) or sub-sub-
 630 subparagraph (II) shall be in the proportion that the insurer's
 631 net direct premium for property insurance in this state, for the
 632 year preceding the assessment bears to the aggregate statewide
 633 net direct premium for property insurance of all member
 634 insurers, as reduced by any credits for voluntary writings for
 635 that year.

636 (V) If regular deficit assessments are made under sub-sub-
 637 subparagraph (I) or sub-sub-subparagraph (II), or by the
 638 Residential Property and Casualty Joint Underwriting Association
 639 under sub-subparagraph (6)(b)3.a. or sub-subparagraph
 640 (6)(b)3.b., the association shall levy upon the association's
 641 policyholders, as part of its next rate filing, or by a separate
 642 rate filing solely for this purpose, a market equalization
 643 surcharge in a percentage equal to the total amount of such
 644 regular assessments divided by the aggregate statewide direct

645 written premium for property insurance for member insurers for
646 the prior calendar year. Market equalization surcharges under
647 this sub-sub-subparagraph are not considered premium and are not
648 subject to commissions, fees, or premium taxes; however, failure
649 to pay a market equalization surcharge shall be treated as
650 failure to pay premium.

651 e. The governing body of any unit of local government, any
652 residents of which are insured under the plan, may issue bonds
653 as defined in s. 125.013 or s. 166.101 to fund an assistance
654 program, in conjunction with the association, for the purpose of
655 defraying deficits of the association. In order to avoid
656 needless and indiscriminate proliferation, duplication, and
657 fragmentation of such assistance programs, any unit of local
658 government, any residents of which are insured by the
659 association, may provide for the payment of losses, regardless
660 of whether or not the losses occurred within or outside of the
661 territorial jurisdiction of the local government. Revenue bonds
662 may not be issued until validated pursuant to chapter 75, unless
663 a state of emergency is declared by executive order or
664 proclamation of the Governor pursuant to s. 252.36 making such
665 findings as are necessary to determine that it is in the best
666 interests of, and necessary for, the protection of the public
667 health, safety, and general welfare of residents of this state
668 and the protection and preservation of the economic stability of
669 insurers operating in this state, and declaring it an essential
670 public purpose to permit certain municipalities or counties to
671 issue bonds as will provide relief to claimants and
672 policyholders of the association and insurers responsible for

673 appportionment of plan losses. Any such unit of local government
 674 may enter into such contracts with the association and with any
 675 other entity created pursuant to this subsection as are
 676 necessary to carry out this paragraph. Any bonds issued under
 677 this sub-subparagraph shall be payable from and secured by
 678 moneys received by the association from assessments under this
 679 subparagraph, and assigned and pledged to or on behalf of the
 680 unit of local government for the benefit of the holders of such
 681 bonds. The funds, credit, property, and taxing power of the
 682 state or of the unit of local government shall not be pledged
 683 for the payment of such bonds. If any of the bonds remain unsold
 684 60 days after issuance, the department shall require all
 685 insurers subject to assessment to purchase the bonds, which
 686 shall be treated as admitted assets; each insurer shall be
 687 required to purchase that percentage of the unsold portion of
 688 the bond issue that equals the insurer's relative share of
 689 assessment liability under this subsection. An insurer shall not
 690 be required to purchase the bonds to the extent that the
 691 department determines that the purchase would endanger or impair
 692 the solvency of the insurer. The authority granted by this sub-
 693 subparagraph is additional to any bonding authority granted by
 694 subparagraph 6.

695 3. The plan shall also provide that any member with a
 696 surplus as to policyholders of \$20 million or less writing 25
 697 percent or more of its total countrywide property insurance
 698 premiums in this state may petition the department, within the
 699 first 90 days of each calendar year, to qualify as a limited
 700 appportionment company. The appportionment of such a member

HB 0507

2005

701 company in any calendar year for which it is qualified shall not
702 exceed its gross participation, which shall not be affected by
703 the formula for voluntary writings. In no event shall a limited
704 apportionment company be required to participate in any
705 apportionment of losses pursuant to sub-sub-subparagraph 2.d.(I)
706 or sub-sub-subparagraph 2.d.(II) in the aggregate which exceeds
707 \$50 million after payment of available plan funds in any
708 calendar year. However, a limited apportionment company shall
709 collect from its policyholders any emergency assessment imposed
710 under sub-sub-subparagraph 2.d.(III). The plan shall provide
711 that, if the department determines that any regular assessment
712 will result in an impairment of the surplus of a limited
713 apportionment company, the department may direct that all or
714 part of such assessment be deferred. However, there shall be no
715 limitation or deferment of an emergency assessment to be
716 collected from policyholders under sub-sub-subparagraph
717 2.d.(III).

718 4. The plan shall provide for the deferment, in whole or
719 in part, of a regular assessment of a member insurer under sub-
720 sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II), but
721 not for an emergency assessment collected from policyholders
722 under sub-sub-subparagraph 2.d.(III), if, in the opinion of the
723 commissioner, payment of such regular assessment would endanger
724 or impair the solvency of the member insurer. In the event a
725 regular assessment against a member insurer is deferred in whole
726 or in part, the amount by which such assessment is deferred may
727 be assessed against the other member insurers in a manner
728 consistent with the basis for assessments set forth in sub-sub-

729 subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II).

730 5.a. The plan of operation may include deductibles and
 731 rules for classification of risks and rate modifications
 732 consistent with the objective of providing and maintaining funds
 733 sufficient to pay catastrophe losses.

734 b. The association may require arbitration of a rate
 735 filing ~~under s. 627.062(6)~~. It is the intent of the Legislature
 736 that the rates for coverage provided by the association be
 737 actuarially sound and not competitive with approved rates
 738 charged in the admitted voluntary market such that the
 739 association functions as a residual market mechanism to provide
 740 insurance only when the insurance cannot be procured in the
 741 voluntary market. The plan of operation shall provide a
 742 mechanism to assure that, beginning no later than January 1,
 743 1999, the rates charged by the association for each line of
 744 business are reflective of approved rates in the voluntary
 745 market for hurricane coverage for each line of business in the
 746 various areas eligible for association coverage.

747 c. The association shall provide for windstorm coverage on
 748 residential properties in limits up to \$10 million for
 749 commercial lines residential risks and up to \$1 million for
 750 personal lines residential risks. If coverage with the
 751 association is sought for a residential risk valued in excess of
 752 these limits, coverage shall be available to the risk up to the
 753 replacement cost or actual cash value of the property, at the
 754 option of the insured, if coverage for the risk cannot be
 755 located in the authorized market. The association must accept a
 756 commercial lines residential risk with limits above \$10 million

757 or a personal lines residential risk with limits above \$1
 758 million if coverage is not available in the authorized market.
 759 The association may write coverage above the limits specified in
 760 this subparagraph with or without facultative or other
 761 reinsurance coverage, as the association determines appropriate.

762 d. The plan of operation must provide objective criteria
 763 and procedures, approved by the department, to be uniformly
 764 applied for all applicants in determining whether an individual
 765 risk is so hazardous as to be uninsurable. In making this
 766 determination and in establishing the criteria and procedures,
 767 the following shall be considered:

768 (I) Whether the likelihood of a loss for the individual
 769 risk is substantially higher than for other risks of the same
 770 class; and

771 (II) Whether the uncertainty associated with the
 772 individual risk is such that an appropriate premium cannot be
 773 determined.

774
 775 The acceptance or rejection of a risk by the association
 776 pursuant to such criteria and procedures must be construed as
 777 the private placement of insurance, and the provisions of
 778 chapter 120 do not apply.

779 e. If the risk accepts an offer of coverage through the
 780 market assistance program or through a mechanism established by
 781 the association, either before the policy is issued by the
 782 association or during the first 30 days of coverage by the
 783 association, and the producing agent who submitted the
 784 application to the association is not currently appointed by the

785 insurer, the insurer shall:

786 (I) Pay to the producing agent of record of the policy,
 787 for the first year, an amount that is the greater of the
 788 insurer's usual and customary commission for the type of policy
 789 written or a fee equal to the usual and customary commission of
 790 the association; or

791 (II) Offer to allow the producing agent of record of the
 792 policy to continue servicing the policy for a period of not less
 793 than 1 year and offer to pay the agent the greater of the
 794 insurer's or the association's usual and customary commission
 795 for the type of policy written.

796
 797 If the producing agent is unwilling or unable to accept
 798 appointment, the new insurer shall pay the agent in accordance
 799 with sub-sub-subparagraph (I). Subject to the provisions of s.
 800 627.3517, the policies issued by the association must provide
 801 that if the association obtains an offer from an authorized
 802 insurer to cover the risk at its approved rates under either a
 803 standard policy including wind coverage or, if consistent with
 804 the insurer's underwriting rules as filed with the department, a
 805 basic policy including wind coverage, the risk is no longer
 806 eligible for coverage through the association. Upon termination
 807 of eligibility, the association shall provide written notice to
 808 the policyholder and agent of record stating that the
 809 association policy must be canceled as of 60 days after the date
 810 of the notice because of the offer of coverage from an
 811 authorized insurer. Other provisions of the insurance code
 812 relating to cancellation and notice of cancellation do not apply

813 to actions under this sub-subparagraph.

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

818 (I) Pay to the producing agent of record of the
819 association policy, for the first year, an amount that is the
820 greater of the insurer's usual and customary commission for the
821 type of policy written or a fee equal to the usual and customary
822 commission of the association; or

823 (II) Offer to allow the producing agent of record of the
824 association policy to continue servicing the policy for a period
825 of not less than 1 year and offer to pay the agent the greater
826 of the insurer's or the association's usual and customary
827 commission for the type of policy written.

828

829 If the producing agent is unwilling or unable to accept
830 appointment, the new insurer shall pay the agent in accordance
831 with sub-sub-subparagraph (I).

832 6.a. The plan of operation may authorize the formation of
833 a private nonprofit corporation, a private nonprofit
834 unincorporated association, a partnership, a trust, a limited
835 liability company, or a nonprofit mutual company which may be
836 empowered, among other things, to borrow money by issuing bonds
837 or by incurring other indebtedness and to accumulate reserves or
838 funds to be used for the payment of insured catastrophe losses.
839 The plan may authorize all actions necessary to facilitate the
840 issuance of bonds, including the pledging of assessments or

HB 0507

2005

841 other revenues.

842 b. Any entity created under this subsection, or any entity
843 formed for the purposes of this subsection, may sue and be sued,
844 may borrow money; issue bonds, notes, or debt instruments;
845 pledge or sell assessments, market equalization surcharges and
846 other surcharges, rights, premiums, contractual rights,
847 projected recoveries from the Florida Hurricane Catastrophe
848 Fund, other reinsurance recoverables, and other assets as
849 security for such bonds, notes, or debt instruments; enter into
850 any contracts or agreements necessary or proper to accomplish
851 such borrowings; and take other actions necessary to carry out
852 the purposes of this subsection. The association may issue bonds
853 or incur other indebtedness, or have bonds issued on its behalf
854 by a unit of local government pursuant to subparagraph (6)(g)2.,
855 in the absence of a hurricane or other weather-related event,
856 upon a determination by the association subject to approval by
857 the department that such action would enable it to efficiently
858 meet the financial obligations of the association and that such
859 financings are reasonably necessary to effectuate the
860 requirements of this subsection. Any such entity may accumulate
861 reserves and retain surpluses as of the end of any association
862 year to provide for the payment of losses incurred by the
863 association during that year or any future year. The association
864 shall incorporate and continue the plan of operation and
865 articles of agreement in effect on the effective date of chapter
866 76-96, Laws of Florida, to the extent that it is not
867 inconsistent with chapter 76-96, and as subsequently modified
868 consistent with chapter 76-96. The board of directors and

869 officers currently serving shall continue to serve until their
870 successors are duly qualified as provided under the plan. The
871 assets and obligations of the plan in effect immediately prior
872 to the effective date of chapter 76-96 shall be construed to be
873 the assets and obligations of the successor plan created herein.

874 c. In recognition of s. 10, Art. I of the State
875 Constitution, prohibiting the impairment of obligations of
876 contracts, it is the intent of the Legislature that no action be
877 taken whose purpose is to impair any bond indenture or financing
878 agreement or any revenue source committed by contract to such
879 bond or other indebtedness issued or incurred by the association
880 or any other entity created under this subsection.

881 7. On such coverage, an agent's remuneration shall be that
882 amount of money payable to the agent by the terms of his or her
883 contract with the company with which the business is placed.
884 However, no commission will be paid on that portion of the
885 premium which is in excess of the standard premium of that
886 company.

887 8. Subject to approval by the department, the association
888 may establish different eligibility requirements and operational
889 procedures for any line or type of coverage for any specified
890 eligible area or portion of an eligible area if the board
891 determines that such changes to the eligibility requirements and
892 operational procedures are justified due to the voluntary market
893 being sufficiently stable and competitive in such area or for
894 such line or type of coverage and that consumers who, in good
895 faith, are unable to obtain insurance through the voluntary
896 market through ordinary methods would continue to have access to

897 coverage from the association. When coverage is sought in
 898 connection with a real property transfer, such requirements and
 899 procedures shall not provide for an effective date of coverage
 900 later than the date of the closing of the transfer as
 901 established by the transferor, the transferee, and, if
 902 applicable, the lender.

903 9. Notwithstanding any other provision of law:

904 a. The pledge or sale of, the lien upon, and the security
 905 interest in any rights, revenues, or other assets of the
 906 association created or purported to be created pursuant to any
 907 financing documents to secure any bonds or other indebtedness of
 908 the association shall be and remain valid and enforceable,
 909 notwithstanding the commencement of and during the continuation
 910 of, and after, any rehabilitation, insolvency, liquidation,
 911 bankruptcy, receivership, conservatorship, reorganization, or
 912 similar proceeding against the association under the laws of
 913 this state or any other applicable laws.

914 b. No such proceeding shall relieve the association of its
 915 obligation, or otherwise affect its ability to perform its
 916 obligation, to continue to collect, or levy and collect,
 917 assessments, market equalization or other surcharges, projected
 918 recoveries from the Florida Hurricane Catastrophe Fund,
 919 reinsurance recoverables, or any other rights, revenues, or
 920 other assets of the association pledged.

921 c. Each such pledge or sale of, lien upon, and security
 922 interest in, including the priority of such pledge, lien, or
 923 security interest, any such assessments, emergency assessments,
 924 market equalization or renewal surcharges, projected recoveries

925 from the Florida Hurricane Catastrophe Fund, reinsurance
926 recoverables, or other rights, revenues, or other assets which
927 are collected, or levied and collected, after the commencement
928 of and during the pendency of or after any such proceeding shall
929 continue unaffected by such proceeding.

930 d. As used in this subsection, the term "financing
931 documents" means any agreement, instrument, or other document
932 now existing or hereafter created evidencing any bonds or other
933 indebtedness of the association or pursuant to which any such
934 bonds or other indebtedness has been or may be issued and
935 pursuant to which any rights, revenues, or other assets of the
936 association are pledged or sold to secure the repayment of such
937 bonds or indebtedness, together with the payment of interest on
938 such bonds or such indebtedness, or the payment of any other
939 obligation of the association related to such bonds or
940 indebtedness.

941 e. Any such pledge or sale of assessments, revenues,
942 contract rights or other rights or assets of the association
943 shall constitute a lien and security interest, or sale, as the
944 case may be, that is immediately effective and attaches to such
945 assessments, revenues, contract, or other rights or assets,
946 whether or not imposed or collected at the time the pledge or
947 sale is made. Any such pledge or sale is effective, valid,
948 binding, and enforceable against the association or other entity
949 making such pledge or sale, and valid and binding against and
950 superior to any competing claims or obligations owed to any
951 other person or entity, including policyholders in this state,
952 asserting rights in any such assessments, revenues, contract, or

953 other rights or assets to the extent set forth in and in
 954 accordance with the terms of the pledge or sale contained in the
 955 applicable financing documents, whether or not any such person
 956 or entity has notice of such pledge or sale and without the need
 957 for any physical delivery, recordation, filing, or other action.

958 f. There shall be no liability on the part of, and no
 959 cause of action of any nature shall arise against, any member
 960 insurer or its agents or employees, agents or employees of the
 961 association, members of the board of directors of the
 962 association, or the department or its representatives, for any
 963 action taken by them in the performance of their duties or
 964 responsibilities under this subsection. Such immunity does not
 965 apply to actions for breach of any contract or agreement
 966 pertaining to insurance, or any willful tort.

967 Section 14. Effective upon this act becoming a law,
 968 subsection (7) is added to section 627.4133, Florida Statutes,
 969 to read:

970 627.4133 Notice of cancellation, nonrenewal, or renewal
 971 premium.--

972 (7) An insurer may not cancel or nonrenew a residential
 973 property insurance policy, based on only one claim under the
 974 policy, or for any other reason other than a lawful underwriting
 975 reason as filed with the office, for a policyholder who has been
 976 continuously insured with that insurer or with an insurer within
 977 the same insurance group for 10 years or longer.

978 Section 15. Subsection (1) of section 627.4145, Florida
 979 Statutes, is amended to read:

980 627.4145 Readable language in insurance policies.--

981 (1) Every policy shall be readable as required by this
 982 section. For the purposes of this section, the term "policy"
 983 means a policy form or endorsement. A policy is deemed readable
 984 if:

985 (a) The text achieves a minimum score of 50 ~~45~~ on the
 986 Flesch reading ease test as computed in subsection (5) or an
 987 equivalent score on any other test comparable in result and
 988 approved by the office. +

989 (b) It uses layout and spacing which separate the
 990 paragraphs from each other and from the border of the paper. +

991 (c) It has section titles that are captioned in boldfaced
 992 type or that otherwise stand out significantly from the text. +

993 (d) It avoids the use of unnecessarily long, complicated,
 994 or obscure words, sentences, paragraphs, or constructions. +

995 (e) The style, arrangement, and overall appearance of the
 996 policy give no undue prominence to any portion of the text of
 997 the policy or to any endorsements or riders. + ~~and~~

998 (f) It contains a table of contents or an index of the
 999 principal sections of the policy, if the policy has more than
 1000 3,000 words or more than three pages.

1001 Section 16. Section 627.41494, Florida Statutes, is
 1002 created to read:

1003 627.41494 Consumer participation in rate review.--

1004 (1) Upon the filing of a proposed rate change for
 1005 residential property insurance by an insurer under s. 627.062,
 1006 which filing would, pursuant to standards determined by the
 1007 office, result in an average statewide increase of 10 percent or
 1008 more as compared to the rates in effect at that time or the

1009 rates in effect 12 months prior to the proposed effective date,
 1010 the insurer shall mail notice of such filing to each of its
 1011 policyholders or members.

1012 (2) The rate filing shall be available for public
 1013 inspection. If any policyholder or member requests the office
 1014 within 30 days after the mailing of such notification pursuant
 1015 to subsection (1) to hold a hearing, the office shall hold a
 1016 hearing within 30 days after such request. Any consumer advocacy
 1017 group or the Public Counsel under chapter 11 may participate in
 1018 such hearing, and the commission may adopt rules governing such
 1019 participation.

1020 (3) For purposes of this section, the term "consumer
 1021 advocacy group" means an organization with a membership of at
 1022 least 1,000 individuals, the purpose of which is to represent
 1023 the best interests of the public in matters relating, but not
 1024 limited, to insurance rate filings before the office. The
 1025 consumer advocacy group may:

1026 (a) Appear in any proceeding or action before the
 1027 department or office or appear in any proceeding before the
 1028 Division of Administrative Hearings relating to rate filings
 1029 subject to subsection (1).

1030 (b) Have access to and use of all files, records, and data
 1031 of the office relating to such rate filings.

1032 (c) Examine such rate and form filings submitted to the
 1033 office.

1034 (d) Recommend to the office any position deemed by the
 1035 group to be in the best interest of the public in matters
 1036 relating to such rate filings.

1037
 1038 This subsection does not limit the rights of a consumer advocacy
 1039 group to have access to records of the office as otherwise
 1040 available pursuant to law.

1041 (4) The office shall order the insurer to pay the
 1042 reasonable costs of the consumer advocacy group if the office
 1043 determines that the consumer advocacy group made a relevant and
 1044 substantial contribution to the final order on the rate filing.
 1045 In determining the reasonable costs the insurer shall pay the
 1046 consumer advocacy group, the office shall consider, among other
 1047 things, the time, labor, fees, and expenses incurred by the
 1048 advocacy group.

1049 Section 17. Effective upon this act becoming a law,
 1050 subsection (3) and paragraph (b) of subsection (7) of section
 1051 627.701, Florida Statutes, are amended to read:

1052 627.701 Liability of insureds; coinsurance; deductibles.--

1053 (3)(a) A policy of residential property insurance shall
 1054 include a deductible amount applicable to hurricane ~~or wind~~
 1055 losses no lower than \$500 and no higher than 5 ~~2~~ percent of the
 1056 policy dwelling limits with respect to personal lines
 1057 residential risks, and no higher than 3 percent of the policy
 1058 limits with respect to commercial lines residential risks;
 1059 however, if a risk was covered on August 24, 1992, under a
 1060 policy having a higher deductible than the deductibles allowed
 1061 by this paragraph, a policy covering such risk may include a
 1062 deductible no higher than the deductible in effect on August 24,
 1063 1992. Notwithstanding the other provisions of this paragraph, a
 1064 personal lines residential policy covering a risk valued at

1065 \$50,000 or less may include a deductible amount attributable to
 1066 hurricane ~~or wind~~ losses no lower than \$250, and a personal
 1067 lines residential policy covering a risk valued at \$100,000 or
 1068 more may include a deductible amount attributable to hurricane
 1069 ~~or wind~~ losses no higher than 5 percent of the policy limits
 1070 unless subject to a higher deductible on August 24, 1992;
 1071 however, no maximum deductible is required with respect to a
 1072 personal lines residential policy covering a risk valued at more
 1073 than \$500,000. An insurer may require a higher deductible,
 1074 provided such deductible is the same as or similar to a
 1075 deductible program lawfully in effect on June 14, 1995. In
 1076 addition to the deductible amounts authorized by this paragraph,
 1077 an insurer may also offer policies with a copayment provision
 1078 under which, after exhaustion of the deductible, the
 1079 policyholder is responsible for 10 percent of the next \$10,000
 1080 of insured hurricane ~~or wind~~ losses.

1081 (b)1. Except as otherwise provided in this paragraph,
 1082 prior to issuing a personal lines residential property insurance
 1083 policy on or after March 1, 2005 ~~April 1, 1996~~, or prior to the
 1084 first renewal of a residential property insurance policy on or
 1085 after March 1, 2005 ~~April 1, 1996~~, the insurer must offer
 1086 alternative deductible amounts applicable to hurricane ~~or wind~~
 1087 losses equal to \$500, 1 percent, and 2 percent, and 5 percent of
 1088 the policy dwelling limits, but it need not offer a deductible
 1089 expressed as a percentage when that percentage ~~unless the 2~~
 1090 ~~percent deductible~~ is less than \$500. The written notice of the
 1091 offer shall specify the hurricane ~~or wind~~ deductible to be
 1092 applied in the event that the applicant or policyholder fails to

HB 0507

2005

1093 affirmatively choose a hurricane deductible. The insurer must
1094 provide such policyholder with notice of the availability of the
1095 deductible amounts specified in this paragraph in a form
1096 approved by the office in conjunction with each renewal of the
1097 policy. The failure to provide such notice constitutes a
1098 violation of this code but does not affect the coverage provided
1099 under the policy.

1100 2. This paragraph does not apply with respect to a
1101 deductible program lawfully in effect on June 14, 1995, or to
1102 any similar deductible program, if the deductible program
1103 requires a minimum deductible amount of no less than 1 ~~2~~ percent
1104 of the policy limits.

1105 ~~3. With respect to a policy covering a risk with dwelling~~
1106 ~~limits of at least \$100,000, but less than \$250,000, the insurer~~
1107 ~~may, in lieu of offering a policy with a \$500 hurricane or wind~~
1108 ~~deductible as required by subparagraph 1., offer a policy that~~
1109 ~~the insurer guarantees it will not nonrenew for reasons of~~
1110 ~~reducing hurricane loss for one renewal period and that contains~~
1111 ~~up to a 2 percent hurricane or wind deductible as required by~~
1112 ~~subparagraph 1.~~

1113 ~~3.4.~~ With respect to a policy covering a risk with
1114 dwelling limits of \$250,000 or more, the insurer need not offer
1115 the \$500 hurricane ~~or wind~~ deductible as required by
1116 subparagraph 1., but must, except as otherwise provided in this
1117 subsection, offer the 1 percent, 2 percent, and 5 percent
1118 hurricane deductibles ~~or wind deductible~~ as required by
1119 subparagraph 1.

1120 ~~(c) In order to provide for the transition from wind~~

1121 ~~deductibles to hurricane deductibles as required by this~~
 1122 ~~subsection, an insurer is required to provide wind deductibles~~
 1123 ~~meeting the requirements of this subsection until the effective~~
 1124 ~~date of the insurer's first rate filing made after January 1,~~
 1125 ~~1997, and is thereafter required to provide hurricane~~
 1126 ~~deductibles meeting the requirements of this subsection.~~

1127 (7)

1128 (b) Notwithstanding the provisions of subsection (3), with
 1129 respect to mobile home policies, ~~+~~

1130 ~~1.~~ the deductible for hurricane coverage may not exceed 10
 1131 percent of the property value if the property is not subject to
 1132 any liens and may not exceed 5 percent of the property value if
 1133 the property is subject to any liens.

1134 ~~2. The insurer need not make the offers required by~~
 1135 ~~paragraph (3)(b).~~

1136 Section 18. The sum of \$50 million is appropriated for
 1137 fiscal year 2005-2006 on a nonrecurring basis from the General
 1138 Revenue Fund to the Department of Community Affairs in the
 1139 special appropriation category "Residential Hurricane Mitigation
 1140 Low-Interest Loan Program" for low-interest loans to qualified
 1141 owners of residences and qualified owners of mobile homes to
 1142 finance efforts to improve the wind resistance of residences to
 1143 prevent or reduce losses or reduce the cost of rebuilding after
 1144 a disaster with a requirement of repayment by the owner, as
 1145 provided in section 7. These funds shall be subject to the
 1146 release provisions of chapter 216, Florida Statutes. Up to 0.5
 1147 percent of this appropriation may be used by the department for
 1148 administration of the loan program.

HB 0507

2005

1149 Section 19. Except as otherwise expressly provided in this
1150 act, this act shall take effect July 1, 2005.