

By Senator Atwater

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1 A bill to be entitled

2 An act relating to insurance rate standards; amending s.
3 627.062, F.S.; requiring that an insurer seeking a rate
4 that is greater than the rate most recently approved by
5 the Office of Insurance Regulation make a "file and use"
6 filing for all such rate filings made after a specified
7 date; repealing s. 627.062(6), F.S., which provides for
8 the submission of a disputed rate filing, other than a
9 rate filing for medical malpractice insurance, to an
10 arbitration panel in lieu of an administrative hearing if
11 the rate is filed before a specified date; amending ss.
12 627.0613 and 627.0628, F.S.; deleting cross-references to
13 conform to changes made by the act; amending s. 627.351,
14 F.S.; deleting a provision allowing the Residential
15 Property and Casualty Joint Underwriting Association to
16 require the arbitration of a rate filing under state law;
17 providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Paragraph (a) of subsection (2) of section
22 627.062, Florida Statutes, is amended to read:

23 627.062 Rate standards.--

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

25 (a) Insurers or rating organizations shall establish and
26 use rates, rating schedules, or rating manuals to allow the
27 insurer a reasonable rate of return on such classes of insurance
28 written in this state. A copy of rates, rating schedules, rating
29 manuals, premium credits or discount schedules, and surcharge

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30 | schedules, and changes thereto, shall be filed with the office
31 | under one of the following procedures except as provided in
32 | subparagraph 3.:

33 | 1. If the filing is made at least 90 days before the
34 | proposed effective date and the filing is not implemented during
35 | the office's review of the filing and any proceeding and judicial
36 | review, then such filing shall be considered a "file and use"
37 | filing. In such case, the office shall finalize its review by
38 | issuance of a notice of intent to approve or a notice of intent
39 | to disapprove within 90 days after receipt of the filing. The
40 | notice of intent to approve and the notice of intent to
41 | disapprove constitute agency action for purposes of the
42 | Administrative Procedure Act. Requests for supporting
43 | information, requests for mathematical or mechanical corrections,
44 | or notification to the insurer by the office of its preliminary
45 | findings shall not toll the 90-day period during any such
46 | proceedings and subsequent judicial review. The rate shall be
47 | deemed approved if the office does not issue a notice of intent
48 | to approve or a notice of intent to disapprove within 90 days
49 | after receipt of the filing.

50 | 2. If the filing is not made in accordance with the
51 | provisions of subparagraph 1., such filing shall be made as soon
52 | as practicable, but no later than 30 days after the effective
53 | date, and shall be considered a "use and file" filing. An insurer
54 | making a "use and file" filing is potentially subject to an order
55 | by the office to return to policyholders portions of rates found
56 | to be excessive, as provided in paragraph (h).

57 | 3. For all filings made or submitted after January 25,
58 | 2007, ~~but before December 31, 2008,~~ an insurer seeking a rate

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59 | that is greater than the rate most recently approved by the
60 | office shall make a "file and use" filing. This subparagraph
61 | applies to property insurance only. For purposes of this
62 | subparagraph, motor vehicle collision and comprehensive coverages
63 | are not considered to be property coverages.

64

65 | The provisions of this subsection shall not apply to workers'
66 | compensation and employer's liability insurance and to motor
67 | vehicle insurance.

68 | Section 2. Subsection (6) of section 627.062, Florida
69 | Statutes, is repealed.

70 | Section 3. Subsection (1) of section 627.0613, Florida
71 | Statutes, is amended to read:

72 | 627.0613 Consumer advocate.--The Chief Financial Officer
73 | must appoint a consumer advocate who must represent the general
74 | public of the state before the department and the office. The
75 | consumer advocate must report directly to the Chief Financial
76 | Officer, but is not otherwise under the authority of the
77 | department or of any employee of the department. The consumer
78 | advocate has such powers as are necessary to carry out the duties
79 | of the office of consumer advocate, including, but not limited
80 | to, the powers to:

81 | (1) Recommend to the department or office, by petition, the
82 | commencement of any proceeding or action; appear in any
83 | proceeding or action before the department or office; or appear
84 | in any proceeding before the Division of Administrative Hearings
85 | ~~or arbitration panel specified in s. 627.062(6)~~ relating to
86 | subject matter under the jurisdiction of the department or
87 | office.

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88 Section 4. Paragraph (c) of subsection (3) of section
89 627.0628, Florida Statutes, is amended to read:

90 627.0628 Florida Commission on Hurricane Loss Projection
91 Methodology; public records exemption; public meetings
92 exemption.--

93 (3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.--

94 (c) With respect to a rate filing under s. 627.062, an
95 insurer may employ actuarial methods, principles, standards,
96 models, or output ranges found by the commission to be accurate
97 or reliable to determine hurricane loss factors for use in a rate
98 filing under s. 627.062. Such findings and factors are admissible
99 and relevant in consideration of a rate filing by the office or
100 in any arbitration or administrative or judicial review only if
101 the office and the consumer advocate appointed pursuant to s.
102 627.0613 have access to all of the assumptions and factors that
103 were used in developing the actuarial methods, principles,
104 standards, models, or output ranges, and are not precluded from
105 disclosing such information in a rate proceeding. In any rate
106 hearing under s. 120.57 ~~or in any arbitration proceeding under s.~~
107 ~~627.062(6)~~, the hearing officer or, judge, ~~or arbitration panel~~
108 may determine whether the office and the consumer advocate were
109 provided with access to all of the assumptions and factors that
110 were used in developing the actuarial methods, principles,
111 standards, models, or output ranges and to determine their
112 admissibility.

113 Section 5. Paragraph (b) of subsection (2) of section
114 627.351, Florida Statutes, is amended to read:

115 627.351 Insurance risk apportionment plans.--

116 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

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117 (b) The department shall require all insurers holding a
118 certificate of authority to transact property insurance on a
119 direct basis in this state, other than joint underwriting
120 associations and other entities formed pursuant to this section,
121 to provide windstorm coverage to applicants from areas determined
122 to be eligible pursuant to paragraph (c) who in good faith are
123 entitled to, but are unable to procure, such coverage through
124 ordinary means; or it shall adopt a reasonable plan or plans for
125 the equitable apportionment or sharing among such insurers of
126 windstorm coverage, which may include formation of an association
127 for this purpose. As used in this subsection, the term "property
128 insurance" means insurance on real or personal property, as
129 defined in s. 624.604, including insurance for fire, industrial
130 fire, allied lines, farmowners multiperil, homeowners'
131 multiperil, commercial multiperil, and mobile homes, and
132 including liability coverages on all such insurance, but
133 excluding inland marine as defined in s. 624.607(3) and excluding
134 vehicle insurance as defined in s. 624.605(1)(a) other than
135 insurance on mobile homes used as permanent dwellings. The
136 department shall adopt rules that provide a formula for the
137 recovery and repayment of any deferred assessments.

138 1. For the purpose of this section, properties eligible for
139 such windstorm coverage are defined as dwellings, buildings, and
140 other structures, including mobile homes which are used as
141 dwellings and which are tied down in compliance with mobile home
142 tie-down requirements prescribed by the Department of Highway
143 Safety and Motor Vehicles pursuant to s. 320.8325, and the
144 contents of all such properties. An applicant or policyholder is
145 eligible for coverage only if an offer of coverage cannot be

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146 obtained by or for the applicant or policyholder from an admitted
147 insurer at approved rates.

148 2.a.(I) All insurers required to be members of such
149 association shall participate in its writings, expenses, and
150 losses. Surplus of the association shall be retained for the
151 payment of claims and shall not be distributed to the member
152 insurers. Such participation by member insurers shall be in the
153 proportion that the net direct premiums of each member insurer
154 written for property insurance in this state during the preceding
155 calendar year bear to the aggregate net direct premiums for
156 property insurance of all member insurers, as reduced by any
157 credits for voluntary writings, in this state during the
158 preceding calendar year. For the purposes of this subsection, the
159 term "net direct premiums" means direct written premiums for
160 property insurance, reduced by premium for liability coverage and
161 for the following if included in allied lines: rain and hail on
162 growing crops; livestock; association direct premiums booked;
163 National Flood Insurance Program direct premiums; and similar
164 deductions specifically authorized by the plan of operation and
165 approved by the department. A member's participation shall begin
166 on the first day of the calendar year following the year in which
167 it is issued a certificate of authority to transact property
168 insurance in the state and shall terminate 1 year after the end
169 of the calendar year during which it no longer holds a
170 certificate of authority to transact property insurance in the
171 state. The commissioner, after review of annual statements, other
172 reports, and any other statistics that the commissioner deems
173 necessary, shall certify to the association the aggregate direct

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174 premiums written for property insurance in this state by all
175 member insurers.

176 (II) Effective July 1, 2002, the association shall operate
177 subject to the supervision and approval of a board of governors
178 who are the same individuals that have been appointed by the
179 Treasurer to serve on the board of governors of the Citizens
180 Property Insurance Corporation.

181 (III) The plan of operation shall provide a formula whereby
182 a company voluntarily providing windstorm coverage in affected
183 areas will be relieved wholly or partially from apportionment of
184 a regular assessment pursuant to sub-sub-subparagraph d.(I) or
185 sub-sub-subparagraph d.(II).

186 (IV) A company which is a member of a group of companies
187 under common management may elect to have its credits applied on
188 a group basis, and any company or group may elect to have its
189 credits applied to any other company or group.

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

193 (VI) The plan of operation may also provide for the award
194 of credits, for a period not to exceed 3 years, from a regular
195 assessment pursuant to sub-sub-subparagraph d.(I) or sub-sub-
196 subparagraph d.(II) as an incentive for taking policies out of
197 the Residential Property and Casualty Joint Underwriting
198 Association. In order to qualify for the exemption under this
199 sub-sub-subparagraph, the take-out plan must provide that at
200 least 40 percent of the policies removed from the Residential
201 Property and Casualty Joint Underwriting Association cover risks
202 located in Dade, Broward, and Palm Beach Counties or at least 30

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203 percent of the policies so removed cover risks located in Dade,
204 Broward, and Palm Beach Counties and an additional 50 percent of
205 the policies so removed cover risks located in other coastal
206 counties, and must also provide that no more than 15 percent of
207 the policies so removed may exclude windstorm coverage. With the
208 approval of the department, the association may waive these
209 geographic criteria for a take-out plan that removes at least the
210 lesser of 100,000 Residential Property and Casualty Joint
211 Underwriting Association policies or 15 percent of the total
212 number of Residential Property and Casualty Joint Underwriting
213 Association policies, provided the governing board of the
214 Residential Property and Casualty Joint Underwriting Association
215 certifies that the take-out plan will materially reduce the
216 Residential Property and Casualty Joint Underwriting
217 Association's 100-year probable maximum loss from hurricanes.
218 With the approval of the department, the board may extend such
219 credits for an additional year if the insurer guarantees an
220 additional year of renewability for all policies removed from the
221 Residential Property and Casualty Joint Underwriting Association,
222 or for 2 additional years if the insurer guarantees 2 additional
223 years of renewability for all policies removed from the
224 Residential Property and Casualty Joint Underwriting Association.

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

228 c. The Legislature finds that the potential for unlimited
229 deficit assessments under this subparagraph may induce insurers
230 to attempt to reduce their writings in the voluntary market, and
231 that such actions would worsen the availability problems that the

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232 association was created to remedy. It is the intent of the
233 Legislature that insurers remain fully responsible for paying
234 regular assessments and collecting emergency assessments for any
235 deficits of the association; however, it is also the intent of
236 the Legislature to provide a means by which assessment
237 liabilities may be amortized over a period of years.

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

243 (II) When the deficit incurred in a particular calendar
244 year exceeds 10 percent of the aggregate statewide direct written
245 premium for property insurance for the prior calendar year for
246 all member insurers, the association shall levy an assessment on
247 member insurers in an amount equal to the greater of 10 percent
248 of the deficit or 10 percent of the aggregate statewide direct
249 written premium for property insurance for the prior calendar
250 year for member insurers. Any remaining deficit shall be
251 recovered through emergency assessments under sub-sub-
252 subparagraph (III).

253 (III) Upon a determination by the board of directors that a
254 deficit exceeds the amount that will be recovered through regular
255 assessments on member insurers, pursuant to sub-sub-subparagraph
256 (I) or sub-sub-subparagraph (II), the board shall levy, after
257 verification by the department, emergency assessments to be
258 collected by member insurers and by underwriting associations
259 created pursuant to this section which write property insurance,
260 upon issuance or renewal of property insurance policies other

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261 | than National Flood Insurance policies in the year or years
262 | following levy of the regular assessments. The amount of the
263 | emergency assessment collected in a particular year shall be a
264 | uniform percentage of that year's direct written premium for
265 | property insurance for all member insurers and underwriting
266 | associations, excluding National Flood Insurance policy premiums,
267 | as annually determined by the board and verified by the
268 | department. The department shall verify the arithmetic
269 | calculations involved in the board's determination within 30 days
270 | after receipt of the information on which the determination was
271 | based. Notwithstanding any other provision of law, each member
272 | insurer and each underwriting association created pursuant to
273 | this section shall collect emergency assessments from its
274 | policyholders without such obligation being affected by any
275 | credit, limitation, exemption, or deferment. The emergency
276 | assessments so collected shall be transferred directly to the
277 | association on a periodic basis as determined by the association.
278 | The aggregate amount of emergency assessments levied under this
279 | sub-sub-subparagraph in any calendar year may not exceed the
280 | greater of 10 percent of the amount needed to cover the original
281 | deficit, plus interest, fees, commissions, required reserves, and
282 | other costs associated with financing of the original deficit, or
283 | 10 percent of the aggregate statewide direct written premium for
284 | property insurance written by member insurers and underwriting
285 | associations for the prior year, plus interest, fees,
286 | commissions, required reserves, and other costs associated with
287 | financing the original deficit. The board may pledge the proceeds
288 | of the emergency assessments under this sub-sub-subparagraph as
289 | the source of revenue for bonds, to retire any other debt

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290 incurred as a result of the deficit or events giving rise to the
291 deficit, or in any other way that the board determines will
292 efficiently recover the deficit. The emergency assessments under
293 this sub-sub-subparagraph shall continue as long as any bonds
294 issued or other indebtedness incurred with respect to a deficit
295 for which the assessment was imposed remain outstanding, unless
296 adequate provision has been made for the payment of such bonds or
297 other indebtedness pursuant to the document governing such bonds
298 or other indebtedness. Emergency assessments collected under this
299 sub-sub-subparagraph are not part of an insurer's rates, are not
300 premium, and are not subject to premium tax, fees, or
301 commissions; however, failure to pay the emergency assessment
302 shall be treated as failure to pay premium.

303 (IV) Each member insurer's share of the total regular
304 assessments under sub-sub-subparagraph (I) or sub-sub-
305 subparagraph (II) shall be in the proportion that the insurer's
306 net direct premium for property insurance in this state, for the
307 year preceding the assessment bears to the aggregate statewide
308 net direct premium for property insurance of all member insurers,
309 as reduced by any credits for voluntary writings for that year.

310 (V) If regular deficit assessments are made under sub-sub-
311 subparagraph (I) or sub-sub-subparagraph (II), or by the
312 Residential Property and Casualty Joint Underwriting Association
313 under sub-subparagraph (6) (b) 3.a. or sub-subparagraph (6) (b) 3.b.,
314 the association shall levy upon the association's policyholders,
315 as part of its next rate filing, or by a separate rate filing
316 solely for this purpose, a market equalization surcharge in a
317 percentage equal to the total amount of such regular assessments
318 divided by the aggregate statewide direct written premium for

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319 | property insurance for member insurers for the prior calendar
320 | year. Market equalization surcharges under this sub-sub-
321 | subparagraph are not considered premium and are not subject to
322 | commissions, fees, or premium taxes; however, failure to pay a
323 | market equalization surcharge shall be treated as failure to pay
324 | premium.

325 | e. The governing body of any unit of local government, any
326 | residents of which are insured under the plan, may issue bonds as
327 | defined in s. 125.013 or s. 166.101 to fund an assistance
328 | program, in conjunction with the association, for the purpose of
329 | defraying deficits of the association. In order to avoid needless
330 | and indiscriminate proliferation, duplication, and fragmentation
331 | of such assistance programs, any unit of local government, any
332 | residents of which are insured by the association, may provide
333 | for the payment of losses, regardless of whether or not the
334 | losses occurred within or outside of the territorial jurisdiction
335 | of the local government. Revenue bonds may not be issued until
336 | validated pursuant to chapter 75, unless a state of emergency is
337 | declared by executive order or proclamation of the Governor
338 | pursuant to s. 252.36 making such findings as are necessary to
339 | determine that it is in the best interests of, and necessary for,
340 | the protection of the public health, safety, and general welfare
341 | of residents of this state and the protection and preservation of
342 | the economic stability of insurers operating in this state, and
343 | declaring it an essential public purpose to permit certain
344 | municipalities or counties to issue bonds as will provide relief
345 | to claimants and policyholders of the association and insurers
346 | responsible for apportionment of plan losses. Any such unit of
347 | local government may enter into such contracts with the

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348 association and with any other entity created pursuant to this
349 subsection as are necessary to carry out this paragraph. Any
350 bonds issued under this sub-subparagraph shall be payable from
351 and secured by moneys received by the association from
352 assessments under this subparagraph, and assigned and pledged to
353 or on behalf of the unit of local government for the benefit of
354 the holders of such bonds. The funds, credit, property, and
355 taxing power of the state or of the unit of local government
356 shall not be pledged for the payment of such bonds. If any of the
357 bonds remain unsold 60 days after issuance, the department shall
358 require all insurers subject to assessment to purchase the bonds,
359 which shall be treated as admitted assets; each insurer shall be
360 required to purchase that percentage of the unsold portion of the
361 bond issue that equals the insurer's relative share of assessment
362 liability under this subsection. An insurer shall not be required
363 to purchase the bonds to the extent that the department
364 determines that the purchase would endanger or impair the
365 solvency of the insurer. The authority granted by this sub-
366 subparagraph is additional to any bonding authority granted by
367 subparagraph 6.

368 3. The plan shall also provide that any member with a
369 surplus as to policyholders of \$20 million or less writing 25
370 percent or more of its total countrywide property insurance
371 premiums in this state may petition the department, within the
372 first 90 days of each calendar year, to qualify as a limited
373 apportionment company. The apportionment of such a member company
374 in any calendar year for which it is qualified shall not exceed
375 its gross participation, which shall not be affected by the
376 formula for voluntary writings. In no event shall a limited

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377 | apportionment company be required to participate in any
378 | apportionment of losses pursuant to sub-sub-subparagraph 2.d.(I)
379 | or sub-sub-subparagraph 2.d.(II) in the aggregate which exceeds
380 | \$50 million after payment of available plan funds in any calendar
381 | year. However, a limited apportionment company shall collect from
382 | its policyholders any emergency assessment imposed under sub-sub-
383 | subparagraph 2.d.(III). The plan shall provide that, if the
384 | department determines that any regular assessment will result in
385 | an impairment of the surplus of a limited apportionment company,
386 | the department may direct that all or part of such assessment be
387 | deferred. However, there shall be no limitation or deferment of
388 | an emergency assessment to be collected from policyholders under
389 | sub-sub-subparagraph 2.d.(III).

390 | 4. The plan shall provide for the deferment, in whole or in
391 | part, of a regular assessment of a member insurer under sub-sub-
392 | subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II), but not
393 | for an emergency assessment collected from policyholders under
394 | sub-sub-subparagraph 2.d.(III), if, in the opinion of the
395 | commissioner, payment of such regular assessment would endanger
396 | or impair the solvency of the member insurer. In the event a
397 | regular assessment against a member insurer is deferred in whole
398 | or in part, the amount by which such assessment is deferred may
399 | be assessed against the other member insurers in a manner
400 | consistent with the basis for assessments set forth in sub-sub-
401 | subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II).

402 | 5.a. The plan of operation may include deductibles and
403 | rules for classification of risks and rate modifications
404 | consistent with the objective of providing and maintaining funds
405 | sufficient to pay catastrophe losses.

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406 b. ~~The association may require arbitration of a rate filing~~
407 ~~under s. 627.062(6).~~ It is the intent of the Legislature that the
408 rates for coverage provided by the association be actuarially
409 sound and not competitive with approved rates charged in the
410 admitted voluntary market such that the association functions as
411 a residual market mechanism to provide insurance only when the
412 insurance cannot be procured in the voluntary market. The plan of
413 operation shall provide a mechanism to assure that, beginning no
414 later than January 1, 1999, the rates charged by the association
415 for each line of business are reflective of approved rates in the
416 voluntary market for hurricane coverage for each line of business
417 in the various areas eligible for association coverage.

418 c. The association shall provide for windstorm coverage on
419 residential properties in limits up to \$10 million for commercial
420 lines residential risks and up to \$1 million for personal lines
421 residential risks. If coverage with the association is sought for
422 a residential risk valued in excess of these limits, coverage
423 shall be available to the risk up to the replacement cost or
424 actual cash value of the property, at the option of the insured,
425 if coverage for the risk cannot be located in the authorized
426 market. The association must accept a commercial lines
427 residential risk with limits above \$10 million or a personal
428 lines residential risk with limits above \$1 million if coverage
429 is not available in the authorized market. The association may
430 write coverage above the limits specified in this subparagraph
431 with or without facultative or other reinsurance coverage, as the
432 association determines appropriate.

433 d. The plan of operation must provide objective criteria
434 and procedures, approved by the department, to be uniformly

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435 applied for all applicants in determining whether an individual
436 risk is so hazardous as to be uninsurable. In making this
437 determination and in establishing the criteria and procedures,
438 the following shall be considered:

439 (I) Whether the likelihood of a loss for the individual
440 risk is substantially higher than for other risks of the same
441 class; and

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

444

445 The acceptance or rejection of a risk by the association pursuant
446 to such criteria and procedures must be construed as the private
447 placement of insurance, and the provisions of chapter 120 do not
448 apply.

449 e. If the risk accepts an offer of coverage through the
450 market assistance program or through a mechanism established by
451 the association, either before the policy is issued by the
452 association or during the first 30 days of coverage by the
453 association, and the producing agent who submitted the
454 application to the association is not currently appointed by the
455 insurer, the insurer shall:

456 (I) Pay to the producing agent of record of the policy, for
457 the first year, an amount that is the greater of the insurer's
458 usual and customary commission for the type of policy written or
459 a fee equal to the usual and customary commission of the
460 association; or

461 (II) Offer to allow the producing agent of record of the
462 policy to continue servicing the policy for a period of not less
463 than 1 year and offer to pay the agent the greater of the

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464 insurer's or the association's usual and customary commission for
465 the type of policy written.

466

467 If the producing agent is unwilling or unable to accept
468 appointment, the new insurer shall pay the agent in accordance
469 with sub-sub-subparagraph (I). Subject to the provisions of s.
470 627.3517, the policies issued by the association must provide
471 that if the association obtains an offer from an authorized
472 insurer to cover the risk at its approved rates under either a
473 standard policy including wind coverage or, if consistent with
474 the insurer's underwriting rules as filed with the department, a
475 basic policy including wind coverage, the risk is no longer
476 eligible for coverage through the association. Upon termination
477 of eligibility, the association shall provide written notice to
478 the policyholder and agent of record stating that the association
479 policy must be canceled as of 60 days after the date of the
480 notice because of the offer of coverage from an authorized
481 insurer. Other provisions of the insurance code relating to
482 cancellation and notice of cancellation do not apply to actions
483 under this sub-subparagraph.

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

488 (I) Pay to the producing agent of record of the association
489 policy, for the first year, an amount that is the greater of the
490 insurer's usual and customary commission for the type of policy
491 written or a fee equal to the usual and customary commission of
492 the association; or

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493 (II) Offer to allow the producing agent of record of the
494 association policy to continue servicing the policy for a period
495 of not less than 1 year and offer to pay the agent the greater of
496 the insurer's or the association's usual and customary commission
497 for the type of policy written.

498
499 If the producing agent is unwilling or unable to accept
500 appointment, the new insurer shall pay the agent in accordance
501 with sub-sub-subparagraph (I).

502 6.a. The plan of operation may authorize the formation of a
503 private nonprofit corporation, a private nonprofit unincorporated
504 association, a partnership, a trust, a limited liability company,
505 or a nonprofit mutual company which may be empowered, among other
506 things, to borrow money by issuing bonds or by incurring other
507 indebtedness and to accumulate reserves or funds to be used for
508 the payment of insured catastrophe losses. The plan may authorize
509 all actions necessary to facilitate the issuance of bonds,
510 including the pledging of assessments or other revenues.

511 b. Any entity created under this subsection, or any entity
512 formed for the purposes of this subsection, may sue and be sued,
513 may borrow money; issue bonds, notes, or debt instruments; pledge
514 or sell assessments, market equalization surcharges and other
515 surcharges, rights, premiums, contractual rights, projected
516 recoveries from the Florida Hurricane Catastrophe Fund, other
517 reinsurance recoverables, and other assets as security for such
518 bonds, notes, or debt instruments; enter into any contracts or
519 agreements necessary or proper to accomplish such borrowings; and
520 take other actions necessary to carry out the purposes of this
521 subsection. The association may issue bonds or incur other

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522 indebtedness, or have bonds issued on its behalf by a unit of
523 local government pursuant to subparagraph (6)(p)2., in the
524 absence of a hurricane or other weather-related event, upon a
525 determination by the association subject to approval by the
526 department that such action would enable it to efficiently meet
527 the financial obligations of the association and that such
528 financings are reasonably necessary to effectuate the
529 requirements of this subsection. Any such entity may accumulate
530 reserves and retain surpluses as of the end of any association
531 year to provide for the payment of losses incurred by the
532 association during that year or any future year. The association
533 shall incorporate and continue the plan of operation and articles
534 of agreement in effect on the effective date of chapter 76-96,
535 Laws of Florida, to the extent that it is not inconsistent with
536 chapter 76-96, and as subsequently modified consistent with
537 chapter 76-96. The board of directors and officers currently
538 serving shall continue to serve until their successors are duly
539 qualified as provided under the plan. The assets and obligations
540 of the plan in effect immediately prior to the effective date of
541 chapter 76-96 shall be construed to be the assets and obligations
542 of the successor plan created herein.

543 c. In recognition of s. 10, Art. I of the State
544 Constitution, prohibiting the impairment of obligations of
545 contracts, it is the intent of the Legislature that no action be
546 taken whose purpose is to impair any bond indenture or financing
547 agreement or any revenue source committed by contract to such
548 bond or other indebtedness issued or incurred by the association
549 or any other entity created under this subsection.

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550 7. On such coverage, an agent's remuneration shall be that
551 amount of money payable to the agent by the terms of his or her
552 contract with the company with which the business is placed.
553 However, no commission will be paid on that portion of the
554 premium which is in excess of the standard premium of that
555 company.

556 8. Subject to approval by the department, the association
557 may establish different eligibility requirements and operational
558 procedures for any line or type of coverage for any specified
559 eligible area or portion of an eligible area if the board
560 determines that such changes to the eligibility requirements and
561 operational procedures are justified due to the voluntary market
562 being sufficiently stable and competitive in such area or for
563 such line or type of coverage and that consumers who, in good
564 faith, are unable to obtain insurance through the voluntary
565 market through ordinary methods would continue to have access to
566 coverage from the association. When coverage is sought in
567 connection with a real property transfer, such requirements and
568 procedures shall not provide for an effective date of coverage
569 later than the date of the closing of the transfer as established
570 by the transferor, the transferee, and, if applicable, the
571 lender.

572 9. Notwithstanding any other provision of law:

573 a. The pledge or sale of, the lien upon, and the security
574 interest in any rights, revenues, or other assets of the
575 association created or purported to be created pursuant to any
576 financing documents to secure any bonds or other indebtedness of
577 the association shall be and remain valid and enforceable,
578 notwithstanding the commencement of and during the continuation

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579 of, and after, any rehabilitation, insolvency, liquidation,
580 bankruptcy, receivership, conservatorship, reorganization, or
581 similar proceeding against the association under the laws of this
582 state or any other applicable laws.

583 b. No such proceeding shall relieve the association of its
584 obligation, or otherwise affect its ability to perform its
585 obligation, to continue to collect, or levy and collect,
586 assessments, market equalization or other surcharges, projected
587 recoveries from the Florida Hurricane Catastrophe Fund,
588 reinsurance recoverables, or any other rights, revenues, or other
589 assets of the association pledged.

590 c. Each such pledge or sale of, lien upon, and security
591 interest in, including the priority of such pledge, lien, or
592 security interest, any such assessments, emergency assessments,
593 market equalization or renewal surcharges, projected recoveries
594 from the Florida Hurricane Catastrophe Fund, reinsurance
595 recoverables, or other rights, revenues, or other assets which
596 are collected, or levied and collected, after the commencement of
597 and during the pendency of or after any such proceeding shall
598 continue unaffected by such proceeding.

599 d. As used in this subsection, the term "financing
600 documents" means any agreement, instrument, or other document now
601 existing or hereafter created evidencing any bonds or other
602 indebtedness of the association or pursuant to which any such
603 bonds or other indebtedness has been or may be issued and
604 pursuant to which any rights, revenues, or other assets of the
605 association are pledged or sold to secure the repayment of such
606 bonds or indebtedness, together with the payment of interest on
607 such bonds or such indebtedness, or the payment of any other

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608 obligation of the association related to such bonds or
609 indebtedness.

610 e. Any such pledge or sale of assessments, revenues,
611 contract rights or other rights or assets of the association
612 shall constitute a lien and security interest, or sale, as the
613 case may be, that is immediately effective and attaches to such
614 assessments, revenues, contract, or other rights or assets,
615 whether or not imposed or collected at the time the pledge or
616 sale is made. Any such pledge or sale is effective, valid,
617 binding, and enforceable against the association or other entity
618 making such pledge or sale, and valid and binding against and
619 superior to any competing claims or obligations owed to any other
620 person or entity, including policyholders in this state,
621 asserting rights in any such assessments, revenues, contract, or
622 other rights or assets to the extent set forth in and in
623 accordance with the terms of the pledge or sale contained in the
624 applicable financing documents, whether or not any such person or
625 entity has notice of such pledge or sale and without the need for
626 any physical delivery, recordation, filing, or other action.

627 f. There shall be no liability on the part of, and no cause
628 of action of any nature shall arise against, any member insurer
629 or its agents or employees, agents or employees of the
630 association, members of the board of directors of the
631 association, or the department or its representatives, for any
632 action taken by them in the performance of their duties or
633 responsibilities under this subsection. Such immunity does not
634 apply to actions for breach of any contract or agreement
635 pertaining to insurance, or any willful tort.

636 Section 6. This act shall take effect upon becoming a law.