CHAPTER 97-55

Committee Substitute for Senate Bill No. 794

An act relating to property insurance; amending s. 624.4071, F.S.; providing that policyholders of special purpose homeowner insurance companies are subject to emergency assessments; amending s. 626.752, F.S.; deleting the role of the market assistance plan in the removal of policies from the Residential Property and Casualty Joint Underwriting Association; amending s. 627.0628, F.S.; providing for a rebuttable presumption of correctness of certain findings and facts; amending s. 627.0629, F.S.; authorizing insurers to implement certain discounts or differentials under certain circumstances; establishing a program to be administered by the Florida Windstorm Underwriting Association for the purpose of providing grants to certain homeowners for certain purposes; requiring the Department of Community Affairs to establish certain standards for certain purposes; providing requirements; requiring the Florida Windstorm Underwriting Association to identify areas of the state for certain purposes; providing for calculation of catastrophe loads; amending s. 627.351, F.S.; providing standards for membership in the Florida Windstorm Underwriting Association; providing exclusions from membership; providing definitions; requiring retention of profits; providing for participation in regular assessments by member insurers; prohibiting credits, exemptions, limitations, deferment, or other relief from participation in emergency assessments collected from policyholders; conforming references; creating a limitation upon an assessment; providing for participation in emergency assessments; providing for the financing of bond or other indebtedness; providing for a market equalization surcharge; authorizing local governments to issue bonds and pay for fund reimbursement; authorizing limited apportionment for companies writing a specified percentage of the total countrywide property insurance premiums in this state; providing for rates of the association; limiting liability of association members under certain circumstances; requiring underwriting criteria; providing standards for eligibility of new and covered risks; providing for establishment of operational procedures; providing for a notice to be placed in the association policy; authorizing the establishment of a partnership, a trust, and a limited liability company; providing for certain powers; providing legislative intent; providing for the protection of creditors; providing for membership in the Residential Property and Casualty Joint Underwriting Association; providing definitions; providing for the payment of regular assessments; requiring participation in emergency assessments collected from policyholders without credit, limitation, deferment, or exemption; creating a limitation upon an assessment; providing technical corrections; providing for agent commissions; providing for a market equalization surcharge; providing for rates; authorizing local governments to issue bonds; limiting credits, limitations, exemptions,

or deferments from regular assessments to period of time; authorizing the sale of revenue bonds; amending s. 627.3511, F.S.; providing for the cancellation of policies; providing terms for the payment for the removal of policies; providing definitions; providing for exemptions and credits from regular assessments but not emergency assessments for a limited period of time; providing terms for replacement of policies; making technical corrections; providing for release of moneys from escrow accounts; expanding the condominium association take-out plan to all commercial residential policies; providing terms for the assumption of policies; providing for the calculation of regular and emergency assessments for certain insurers; amending s. 627.3512, F.S.; providing for recoupment of residual market deficit assessments under certain circumstances; creating s. 627.3513, F.S.; providing standards and procedures for underwriting associations to issue bonds; creating s. 627.3516, F.S.; providing for a residual property insurance market coordinating council; providing for duties and membership; amending s. 627.4025, F.S.; revising a definition of residential coverage; amending s. 627.701, F.S.; providing for certain offers up to a specified deductible; authorizing alternative deductibles for certain property; conforming cross references; providing an effective date.

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

Section 1. Subsection (2) of section 624.4071, Florida Statutes, 1996 Supplement, is amended to read:

624.4071 Special purpose homeowner insurance company.—

(2) A special purpose homeowner insurance company must have a parent company, and both companies must meet the requirements of this subsection in order for the subsidiary to qualify for and maintain a certificate of authority under this section.

(a) The parent company must be an admitted insurer in at least one state in the United States and must have over $50 million in capital and surplus.

(b) The parent company must have and maintain at least 51 percent of the equity and at least 51 percent of the control of the special purpose homeowner insurance company.

(c) An insurer not authorized to transact business in this state, but that otherwise meets the requirements of this section, may apply as a special purpose homeowner insurance company.

(d) The special purpose homeowner insurance company must:

1. Have and maintain at least $10 million in surplus and otherwise satisfy the requirements of s. 624.4095.

2. Be a member of the Florida Insurance Guaranty Association and the Florida Hurricane Catastrophe Fund, and be subject to any of their required assessments and premium charges. However, a special purpose homeowner

insurance company may not be a member of the Florida Windstorm Underwriting Association or the Florida Residential Property and Casualty Joint Underwriting Association, and neither the company nor its policyholders are subject to any assessments by these associations except for emergency assessments collected from policyholders pursuant to s. 627.351(2)(b)2.d.(III), and s. 627.351(6)(b)3.d. For the sole purpose of levying and collecting emergency assessments and determining the statewide written premium for property insurance, special purpose homeowner insurance companies shall be considered member insurers of the Florida Windstorm Underwriting Association and the Florida Residential Property and Casualty Joint Underwriting Association.

3. Offer coverage for all perils, including windstorm, in providing residential coverage as defined in s. 627.4025. A special purpose homeowner insurance company's rates must be filed with the department. After a period of 1 year from the date a company receives a certificate of authority, the company's rates are subject to department approval under s. 627.062.

Section 2. Subsection (5) of section 626.752, Florida Statutes, is amended to read:

626.752 Exchange of business.—

(5) Within 15 days after the last day of each month, any insurer accepting business under this section shall report to the department the name, address, telephone number, and social security number of each agent from which the insurer received more than 24 personal lines risks during the calendar year, except for risks being removed from the Residential Property and Casualty Joint Underwriting Association and placed with that insurer ~~through the market assistance plan~~ by a brokering agent. Once the insurer has reported pursuant to this subsection an agent's name to the department, additional reports on the same agent shall not be required. However, the fee set forth in s. 624.501 shall be paid for the agent by the insurer for each year until the insurer notifies the department that the insurer is no longer accepting business from the agent pursuant to this section. The insurer may require that the agent reimburse the insurer for the fee.

Section 3. Paragraph (c) of subsection (3) of section 627.0628, Florida Statutes, 1996 Supplement, is amended to read:

627.0628 Florida Commission on Hurricane Loss Projection Methodology.—

(3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.—

(c) With respect to a rate filing under s. 627.062, an insurer may employ actuarial methods, principles, standards, models, or output ranges found by the commission to be accurate or reliable to determine hurricane loss factors for use in a rate filing under s. 627.062, which findings and factors are admissible and relevant in consideration of a rate filing by the department or in any arbitration or administrative or judicial review.

Section 4. Subsections (8), (9), and (10) are added to section 627.0629, Florida Statutes, 1996 Supplement, to read:

627.0629 Residential property insurance; rate filings.—

(8) An insurer may implement appropriate discounts or other rate differentials of up to 10 percent of the annual premium to mobile home owners who provide to the insurer evidence of a current inspection of tie-downs for the mobile home, certifying that the tie-downs have been properly installed and are in good condition.

(9) EVALUATION OF RESIDENTIAL PROPERTY STRUCTURAL SOUNDNESS.—

(a) It is the intent of the Legislature to provide a program whereby homeowners may obtain an evaluation of the wind resistance of their homes with respect to preventing damage from hurricanes, together with a recommendation of reasonable steps that may be taken to upgrade their homes to better withstand hurricane force winds.

(b) To the extent that funds are provided for this purpose in the General Appropriations Act, the Legislature hereby authorizes the establishment of a program to be administered by the Florida Windstorm Underwriting Association.

(c) The program shall provide grants to homeowners, for the purpose of providing homeowner applicants with funds to conduct an evaluation of the integrity of their homes with respect to withstanding hurricane force winds, recommendations to retrofit the homes to better withstand damage from such winds, and the estimated cost to make the recommended retrofits.

(d) The Department of Community Affairs shall establish by rule standards to govern the quality of the evaluation, the quality of the recommendations for retrofitting, the eligibility of the persons conducting the evaluation, and the selection of applicants under the program. In establishing the rule, the department shall consult with the advisory committee to minimize the possibility of fraud or abuse in the evaluation and retrofitting process, and to ensure that funds spent by homeowners acting on the recommendations achieve positive results.

(e) The Florida Windstorm Underwriting Association shall identify areas of this state with the greatest wind risk to residential properties and recommend annually to the department priority target areas for such evaluations and inclusion with the associated residential construction mitigation program.

(10) A property insurance rate filing that includes any adjustments related to premiums paid to the Florida Hurricane Catastrophe Fund must include a complete calculation of the insurer's catastrophe load, and the information in the filing may not be limited solely to recovery of moneys paid to the fund.

Section 5. Subsections (2) and (6) of section 627.351, Florida Statutes, 1996 Supplement, are amended to read:

627.351 Insurance risk apportionment plans.—

(2) WINDSTORM INSURANCE RISK APPORTIONMENT.—

(a) Agreements may be made among property insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to, but are unable to procure, such insurance through ordinary methods; and such insurers may agree among themselves on the use of reasonable rate modifications for such insurance. Such agreements and rate modifications shall be subject to the applicable provisions of this chapter.

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

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

2.a.(I) All insurers required to be members of such association ~~plan~~ shall participate in its writings, expenses, ~~profits,~~ and losses. Surplus of the association shall be retained for the payment of claims and shall not be distributed to the member insurers. Such ~~gross~~ participation by member insurers shall be in the proportion that the net direct premiums of each member insurer written for ~~on~~ property insurance in this state during the preceding calendar year bear to the aggregate net direct premiums for property insurance of all member insurers, as reduced by any credits for voluntary writings, ~~members of the plan written on property~~ in this state during the preceding calendar year. For the purposes of this subsection, the term "net direct premiums" means direct written premiums for property insurance, reduced by premium for liability coverage and for the following if included in allied lines: rain and hail on growing crops; livestock; association direct premiums booked; National Flood Insurance Program direct premiums; and

similar deductions specifically authorized by the plan of operation and approved by the department. A member's participation shall begin on the first day of the calendar year following the year in which it is issued a certificate of authority to transact property insurance in the state and shall terminate 1 year after the end of the calendar year during which it no longer holds a certificate of authority to transact property insurance in the state. The commissioner, after review of annual statements, other reports, and any other statistics that the commissioner ~~which he~~ deems necessary, shall certify to the association ~~plan~~ the aggregate ~~net~~ direct premiums written for ~~on~~ property insurance in this state by all member insurers ~~members~~.

(II) The plan of operation shall provide for a board of directors consisting of the Insurance Consumer Advocate appointed under s. 627.0613, one consumer representative appointed by the Insurance Commissioner, one consumer representative appointed by the Governor, and 12 additional members appointed as specified in the plan of operation. One of the 12 additional members shall ~~that one additional domestic member of the board of directors~~ be elected by the domestic companies of this state on the basis of cumulative weighted voting based on the net direct ~~written~~ premiums of domestic companies in this state. Nothing in the 1997 amendments to this paragraph terminates the existing board or the terms of any members of the board.

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

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

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

(VI) The plan of operation may also provide for the award of credits, for a period not to exceed 3 years, from a regular assessment pursuant to sub-sub-subparagraph d.(I) or sub-sub-subparagraph d.(II) as an incentive for taking policies out of the Residential Property and Casualty Joint Underwriting Association. In order to qualify for the exemption under this sub-sub-subparagraph, the take-out plan must provide that at least 40 percent of the policies removed from the Residential Property and Casualty Joint Underwriting Association cover risks located in Dade, Broward, and Palm Beach Counties or at least 30 percent of the policies so removed cover risks located in Dade, Broward, and Palm Beach Counties and an additional 50 percent of the policies so removed cover risks located in other coastal counties, and must also provide that no more than 15 percent of the policies so removed may exclude windstorm coverage. With the approval of the department, the association may waive these geographic criteria for a take-out plan that removes at least the lesser of 100,000 Residential Property and Casualty Joint Underwriting Association policies or 15 percent of the total

number of Residential Property and Casualty Joint Underwriting Association policies, provided the governing board of the Residential Property and Casualty Joint Underwriting Association certifies that the take-out plan will materially reduce the Residential Property and Casualty Joint Underwriting Association's 100-year probable maximum loss from hurricanes. With the approval of the department, the board may extend such credits for an additional year if the insurer guarantees an additional year of renewability for all policies removed from the Residential Property and Casualty Joint Underwriting Association, or for 2 additional years if the insurer guarantees 2 additional years of renewability for all policies removed from the Residential Property and Casualty Joint Underwriting Association.

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

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

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

(II)~~(I)~~ When the deficit incurred in a particular calendar year exceeds 10 percent of the aggregate statewide direct written premium for property insurance for the prior calendar year ~~as defined in s. 624.404~~ for all member insurers ~~licensed to transact property insurance on a direct basis in this state~~, the association shall levy an assessment on member ~~such~~ insurers in an amount equal to the greater of 10 percent of the deficit or 10 percent of the aggregate statewide direct written premium for property insurance for the prior calendar year for member insurers. Any remaining deficit shall be recovered through emergency assessments under sub-sub-subparagraph (III)~~(II)~~.

(III)~~(II)~~ Upon a determination by the board of directors ~~governors~~ that a deficit exceeds the amount that will be recovered through regular assessments on member ~~of~~ insurers, pursuant to sub-sub-subparagraph (I) or sub-sub-subparagraph (II), the board shall levy, after verification by the department, emergency assessments to be collected by member insurers and by~~,~~ ~~including joint~~ underwriting associations created pursuant to this section which write property insurance, upon issuance or renewal of property insurance policies other than National Flood Insurance policies in the year or years following levy of the regular assessments. The amount of the emer-

gency assessment collected in a particular year shall be a uniform percentage of that year's direct written premium for property insurance for all member insurers and underwriting associations, excluding National Flood Insurance policy premiums ~~as defined in s. 624.404~~, as annually determined by the board and verified by the department. The department shall verify the arithmetic calculations involved in the board's determination within 30 days after receipt of the information on which the determination was based. Notwithstanding any other provision of law, each member insurer and each underwriting association created pursuant to this section shall collect emergency assessments from its policyholders without such obligation being affected by any credit, limitation, exemption, or deferment. The emergency assessments so collected shall be transferred directly to the association on a periodic basis as determined by the association. The aggregate amount of emergency assessments levied under this sub-sub-subparagraph ~~sub-subparagraph~~ in any calendar year may not exceed the greater of 10 percent of the amount needed to cover the original deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing of the original deficit, or 10 percent of the aggregate statewide direct written premium for property insurance written by member insurers and underwriting associations ~~subject lines of business~~ for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit. The board may pledge the proceeds of the emergency assessments under this sub-sub-subparagraph ~~sub-subparagraph~~ as the source of revenue for bonds, to retire any other debt incurred as a result of the deficit or events giving rise to the deficit, or in any other way that the board determines will efficiently recover the deficit. The emergency assessments under this sub-sub-subparagraph shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness pursuant to the document governing such bonds or other indebtedness. Emergency assessments collected under this sub-sub-subparagraph ~~subparagraph~~ are not part of an insurer's rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium.

(IV)~~(III)~~ Each member insurer's share of the total regular assessments ~~assessment~~ under sub-sub-subparagraph (I) or sub-sub-subparagraph (II) ~~this sub-subparagraph~~ shall be in the proportion that the insurer's net direct ~~written~~ premium for property insurance in this state, ~~as defined in s. 624.404~~ for the year preceding the assessment bears to the aggregate statewide net direct ~~written~~ premium for property insurance of all member insurers, as reduced by any credits for voluntary writings ~~as defined in s. 624.404~~ for that year.

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

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

e. The governing body of any unit of local government, any residents of which are insured under the plan, may issue bonds as defined in s. 125.013 or s. 166.101 ~~from time to time~~ to fund an assistance program, in conjunction with the association ~~plan~~, for the purpose of defraying deficits of the association ~~plan~~. In order to avoid needless and indiscriminate proliferation, duplication, and fragmentation of such assistance programs, any unit of local government, any residents of which are insured by the association, may provide for the payment of losses, regardless of whether or not the losses occurred within or outside of the territorial jurisdiction of the local government. Revenue bonds may not be issued until validated pursuant to chapter 75, unless a state of emergency is declared by executive order or proclamation of the Governor pursuant to s. 252.36 making such findings as are necessary to determine that it is in the best interests of, and necessary for, the protection of the public health, safety, and general welfare of residents of this state and the protection and preservation of the economic stability of insurers operating in this state, and declaring it an essential public purpose to permit certain municipalities or counties to issue bonds as will provide relief to claimants and policyholders of the association ~~plan~~ and insurers responsible for apportionment of plan losses. Any such ~~The~~ unit of local government may ~~shall~~ enter into such contracts with the association and with any other entity created pursuant to this subsection ~~plan~~ as are necessary to carry out this paragraph. Any bonds issued under this sub-subparagraph shall be payable from and secured by moneys received by the association ~~plan~~ from assessments under this subparagraph, and assigned and pledged to or on behalf of the unit of local government for the benefit of the holders of such bonds. The funds, credit, property, and taxing power of the state or of the unit of local government shall not be pledged for the payment of such bonds. If any of the bonds remain unsold 60 days after issuance, the department shall require all insurers subject to assessment to purchase the bonds, which shall be treated as admitted assets; each insurer shall be required to purchase that percentage of the unsold portion of the bond issue that equals the insurer's relative share of assessment liability under this subsection. An insurer shall not be required to purchase the bonds to the extent that the department determines that the purchase would endanger or impair the solvency of the insurer. The authority granted by this sub-subparagraph is additional to any bonding authority granted by subparagraph 6.

3. The plan shall also provide that any member with a surplus as to policyholders of $20 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the department, ~~within 90 days of the effective date of chapter 76-96, Laws of Florida, and thereafter~~ within the first 90 days of each calendar year, to qualify as a limited apportionment company. The apportionment of such a member company in any calendar year for which it is qualified shall not

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

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

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

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

c. The association ~~plan~~ shall provide for windstorm coverage on residential properties in limits up to $10 million for commercial lines residential risks and up to $1 million for personal lines residential risks. If coverage with the association is sought for a residential risk valued in excess of these limits, coverage shall be available to the risk up to the replacement cost or actual cash value of the property, at the option of the insured, if coverage for the risk cannot be located in the authorized market. The association must accept a commercial lines residential risk with limits above $10 million or a personal lines residential risk with limits above $1 million if coverage is not available in the authorized market. The association may write cover-

age above the limits specified in this subparagraph with or without facultative or other reinsurance coverage, as the association determines appropriate.

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

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

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

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

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

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

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

b. Any ~~The~~ entity created under this subsection ~~subparagraph~~, or any entity formed for the purposes of this subsection, may sue and be sued ~~subparagraph 2.~~, may borrow money; issue bonds, notes, or debt instruments; pledge or sell assessments, market equalization surcharges and

other surcharges, rights, premiums, contractual rights, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, and other assets as security for such bonds, notes, or debt instruments; enter into any contracts or agreements necessary or proper to accomplish such borrowings; and take other actions necessary to carry out the purposes of this subsection. The association may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (g)2., in the absence of a hurricane or other weather-related event, upon a determination by the association subject to approval by the department that such action would enable it to efficiently meet the financial obligations of the association and that such financings are reasonably necessary to effectuate the requirements of this subsection. Any such ~~The~~ entity may accumulate reserves and retain surpluses as of the end of any association year to provide for the payment of losses incurred by the association during that year or any future year. The association ~~plan~~ shall incorporate and continue the plan of operation and articles of agreement in effect on the effective date of chapter 76-96, Laws of Florida, to the extent that it is not inconsistent with chapter 76-96, and as subsequently modified consistent with chapter 76-96. The board of directors and officers currently serving shall continue to serve until their successors are duly qualified as provided under the plan. The assets and obligations of the plan in effect immediately prior to the effective date of chapter 76-96 shall be construed to be the assets and obligations of the successor plan created herein.

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

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

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

9. Notwithstanding any other provision of law:

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

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

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

d. As used in this subsection, the term “financing documents” means any agreement, instrument, or other document now existing or hereafter created evidencing any bonds or other indebtedness of the association or pursuant to which any such bonds or other indebtedness has been or may be issued and pursuant to which any rights, revenues, or other assets of the association are pledged or sold to secure the repayment of such bonds or indebtedness, together with the payment of interest on such bonds or such indebtedness, or the payment of any other obligation of the association related to such bonds or indebtedness.

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

f. There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member insurer or its agents or employees,

agents or employees of the association, members of the board of directors of the association, or the department or its representatives, for any action taken by them in the performance of their duties or responsibilities under this subsection. Such immunity does not apply to actions for breach of any contract or agreement pertaining to insurance, or any willful tort.

(c) The provisions of paragraph (b) are applicable only with respect to:

1. Those areas that were eligible for coverage under this subsection on April 9, 1993; or

2. Any county or area as to which the department, after public hearing, finds that the following criteria exist:

a. Due to the lack of windstorm insurance coverage in the county or area so affected, economic growth and development is being deterred or otherwise stifled in such county or area, mortgages are in default, and financial institutions are unable to make loans;

b. The county or area so affected has adopted and is enforcing the structural requirements of the State Minimum Building Codes, as defined in s. 553.73, for new construction and has included adequate minimum floor elevation requirements for structures in areas subject to inundation; and

c. Extending windstorm insurance coverage to such county or area is consistent with and will implement and further the policies and objectives set forth in applicable state laws, rules, and regulations governing coastal management, coastal construction, comprehensive planning, beach and shore preservation, barrier island preservation, coastal zone protection, and the Coastal Zone Protection Act of 1985.

Any time after the department has determined that the criteria referred to in this subparagraph do not exist with respect to any county or area of the state, it may, after a subsequent public hearing, declare that such county or area is no longer eligible for windstorm coverage through the plan.

(d) For the purpose of evaluating whether the criteria of paragraph (c) are met, such criteria shall be applied as the situation would exist if policies had not been written by the Florida Residential Property and Casualty Joint Underwriting Association and property insurance for such policyholders was not available.

(e) Notwithstanding the provisions of subparagraph (c)2. or paragraph (d), eligibility shall not be extended to any area that was not eligible on March 1, 1997, except that the department may act with respect to any petition on which a hearing was held prior to the effective date of this act. This paragraph is repealed on October 1, 1998.

(6) RESIDENTIAL PROPERTY AND CASUALTY JOINT UNDERWRITING ASSOCIATION.—

(a) There is created a joint underwriting association for equitable apportionment or sharing among insurers of property and casualty insurance

covering residential property, for applicants who are in good faith entitled, but are unable, to procure insurance through the voluntary market. The association shall operate pursuant to a plan of operation approved by order of the department. The plan is subject to continuous review by the department. The department may, by order, withdraw approval of all or part of a plan if the department determines that conditions have changed since approval was granted and that the purposes of the plan require changes in the plan. For the purposes of this subsection, residential coverage includes both personal lines residential coverage, which consists of the type of coverage provided by homeowner's, mobile home owner's, dwelling, tenant's, condominium unit owner's, and similar policies, and commercial lines residential coverage, which consists of the type of coverage provided by condominium association, apartment building, and similar policies.

(b)1. All insurers authorized to write subject lines of business ~~such insurance~~ in this state, other than underwriting associations or other entities created under this section, must participate in and be members of the Residential Property and Casualty Joint Underwriting Association. A member's participation shall begin on the first day of the calendar year following the year in which the member was issued a certificate of authority to transact insurance for subject lines of business in this state and shall terminate 1 year after the end of the first calendar year during which the member no longer holds a certificate of authority to transact insurance for subject lines of business in this state.

2. All revenues, assets, liabilities, losses, and expenses of the association shall be divided into two separate accounts, one of which is for personal lines residential coverages and the other of which is for commercial lines residential coverages. Revenues, assets, liabilities, losses, and expenses not attributable to particular coverages shall be prorated between the accounts.

3. With respect to a deficit in an account:

a. When the deficit incurred in a particular calendar year is not greater than 10 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year for all member insurers, the entire deficit shall be recovered through assessments of member insurers under paragraph (g).

b. When the deficit incurred in a particular calendar year exceeds 10 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year for all member insurers, the association shall levy an assessment on member insurers in an amount equal to the greater of 10 percent of the deficit or 10 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year for all member insurers. Any remaining deficit shall be recovered through emergency assessments under sub-subparagraph d.

c. Each member insurer's share of the total assessment under sub-subparagraph a. or sub-subparagraph b. shall be in the proportion that the member insurer's direct written premium for the subject lines of business for the year preceding the assessment bears to the aggregate statewide

direct written premium for the subject lines of business for that year for all member insurers.

d. Upon a determination by the board of governors that a deficit in an account exceeds the amount that will be recovered through regular assessments on member ~~of~~ insurers under sub-subparagraph a. or sub-subparagraph b., the board shall levy, after verification by the department, emergency assessments to be collected by member insurers and by~~, including joint~~ underwriting associations created under this section which write subject lines of business~~,~~ upon issuance or renewal of policies for subject lines of business, excluding National Flood Insurance policies, in the year or years following levy of the regular assessments. The amount of the emergency assessment collected in a particular year shall be a uniform percentage of that year's direct written premium for subject lines of business for all member insurers and underwriting associations, excluding National Flood Insurance Program policy premiums, as annually determined by the board and verified by the department. The department shall verify the arithmetic calculations involved in the board's determination within 30 days after receipt of the information on which the determination was based. Notwithstanding any other provision of law, each member insurer and each underwriting association created under this section which writes subject lines of business shall collect emergency assessments from its policyholders without such obligation being affected by any credit, limitation, exemption, or deferment. The emergency assessments so collected shall be transferred directly to the association on a periodic basis as determined by the association. The aggregate amount of emergency assessments levied under this sub-subparagraph in any calendar year may not exceed the greater of 10 percent of the amount needed to cover the original deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing of the original deficit, or 10 percent of the aggregate statewide direct written premium for subject lines of business written by member insurers and underwriting associations for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit.

e. The board may pledge the proceeds of assessments, projected recoveries ~~revenues~~ from the Florida Hurricane Catastrophe Fund, other insurance and reinsurance recoverables, market equalization surcharges and other surcharges, and other funds available to the association as the source of revenue for and to secure bonds issued under paragraph (g), bonds or other indebtedness issued under subparagraph (c)3., or lines of credit or ~~of~~ other financing mechanisms issued or created under this subsection ~~subparagraph (c)10.~~, or to retire any other debt incurred as a result of deficits ~~the deficit~~ or events giving rise to deficits ~~the deficit~~, or in any other way that the board determines will efficiently recover such deficits ~~the deficit~~. The purpose of the lines of credit or other financing mechanisms is to provide additional resources to assist the association in covering claims and expenses attributable to a catastrophe. As used in this subsection, the term "assessments" includes regular assessments under sub-subparagraph a., sub-subparagraph b., or subparagraph (g)1. and emergency assessments under ~~this~~ sub-subparagraph d. Emergency assessments collected under sub-subparagraph d. ~~this subparagraph~~ are not part of an insurer's rates,

are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium. The emergency assessments under sub-subparagraph d. shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness pursuant to the documents governing such bonds or other indebtedness.

f.~~e.~~ As used in this subsection ~~subparagraph~~, the term "subject lines of business" means, with respect to the personal lines account, any personal lines policy defined in s. 627.4025, and means, with respect to the commercial lines account, all commercial property and commercial fire insurance.

(c) The plan of operation of the association:

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

2. Must provide for adoption of residential property and casualty insurance policy forms, which forms must be approved by the department prior to use. The association shall adopt the following policy forms:

a. Standard personal lines policy forms including wind coverage, which are multiperil policies providing what is generally considered to be full coverage of a residential property similar to the coverage provided under an HO-2, HO-3, HO-4, or HO-6 policy.

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

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

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

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

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

3. May provide that the association may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The association shall have the power to borrow funds, by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary to effectuate the requirements of this subsection. The association may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (g)2., in the absence of a hurricane or other weather-related event, upon a determination by the association, subject to approval by the department, that such action would enable it to efficiently meet the financial obligations of the association and that such financings are reasonably necessary to effectuate the requirements of this subsection. The association is authorized to take all actions needed to facilitate tax-free status for any such bonds or indebtedness, including formation of trusts or other affiliated entities. The association shall have the authority to pledge assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, market equalization and other surcharges, and other funds available to the association as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

4. Must require that the association operate subject to the supervision and approval of a board of governors consisting of 13 individuals, including 1 who is elected as chairman. The board shall consist of:

a. The insurance consumer advocate appointed under s. 627.0613.

b. Five members designated by the insurance industry.

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

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

Any board member may be disapproved or removed and replaced by the commissioner at any time for cause. All board members, including the chairman, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan.

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

a. With respect to personal lines residential risks, ~~the procedures shall require that the authorized insurer that last provided coverage of the risk shall first be given an opportunity to insure the risk at its approved rate. Upon rejection by such insurer, the risk shall be submitted to the market assistance plan.~~ if the risk ~~market assistance plan~~ is offered coverage ~~able to obtain an offer~~ from an authorized insurer ~~to insure the risk~~ at the insurer's ~~its~~ approved rate under either a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the department, a basic policy including wind coverage, the risk is not eligible for any policy issued by the association ~~in the event that the risk accepts the offer of coverage, if the producing agent who submitted the application to the plan is not currently appointed by the insurer, the insurer shall either appoint the agent to service the risk or, if the insurer places the coverage through a new agent, require the new agent who then writes the policy to pay not less than 50 percent of his first year's commission to the producing agent who submitted the application to the plan, except that if the new agent is an employee or exclusive agent of the insurer, the new agent shall pay a policy fee of $50 to the producing agent in lieu of splitting the commission~~. If the risk accepts an offer of coverage through the market assistance plan or an offer of coverage through a mechanism established by the association before a policy is issued to the risk by the association or during the first 30 days of coverage by the association, and the producing agent who submitted the application to the plan or to the association is not currently appointed by the insurer, the insurer shall either appoint the agent to service the risk or, if the insurer places the coverage through a new agent, require the new agent who then writes the policy to pay not less than 50 percent of the first year's commission to the producing agent who submitted the application to the plan or the association, except that if the new agent is an employee or exclusive agent of the insurer, the new agent shall pay a policy fee of $50 to the producing agent in lieu of splitting the commission. If the risk ~~market assistance plan~~ is not able to obtain any such offer, the risk is eligible for either a standard policy including wind coverage or a basic policy including wind coverage issued by the association; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk shall be eligible for a basic policy including wind coverage unless rejected under subparagraph 8. The association shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices.

b. With respect to commercial lines residential risks, ~~the procedures shall require that the authorized insurer that last provided coverage of the risk shall first be given an opportunity to insure the risk at its approved rate. Upon rejection by such insurer, the risk shall be submitted to the market assistance plan.~~ if the risk ~~market assistance plan~~ is offered coverage ~~able to obtain an offer to insure the risk~~ under a policy including wind coverage from an authorized insurer at its approved rate ~~or from a surplus lines insurer at no more than 25 percent above the association rate~~, the risk is not eligible for any policy issued by the association. If the risk accepts an offer of coverage through the market assistance plan or an offer of coverage through a mechanism established by the association before a policy is issued to the risk by the association, and the producing agent who submitted the

application to the plan or the association is not currently appointed by the insurer, the insurer shall either appoint the agent to service the risk or, if the insurer places the coverage through a new agent, require the new agent who then writes the policy to pay not less than 50 percent of the first year's commission to the producing agent who submitted the application to the plan, except that if the new agent is an employee or exclusive agent of the insurer, the new agent shall pay a policy fee of $50 to the producing agent in lieu of splitting the commission.; ~~however, an offer from a surplus lines insurer does not disqualify a condominium association, cooperative, or homeowners' association from eligibility for coverage by the association in the event that the risk accepts the offer of coverage, if the producing agent who submitted the application to the plan is not currently appointed by the insurer, the insurer shall either appoint the agent to service the risk or, if the insurer places the coverage through a new agent, require the new agent who then writes the policy to pay not less than 50 percent of his first year's commission to the producing agent who submitted the application to the plan, except that if the new agent is an employee or exclusive agent of the insurer, the new agent shall pay a policy fee of $50 to the producing agent in lieu of splitting the commission.~~ If the risk ~~market assistance plan~~ is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the association. ~~After December 31, 1996, an offer from a surplus lines insurer does not disqualify an applicant from obtaining coverage from the association.~~

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

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

7. Must provide that if premium and investment income attributable to a particular plan year are in excess of projected losses and expenses of the plan attributable to that year, such excess shall be held in surplus. Such surplus shall be available to defray deficits as to future years and shall be used for that purpose prior to assessing member insurers as to any plan year.

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

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

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

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

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

10. Must provide that in the event of regular deficit assessments under sub-subparagraph (b)3.a. or sub-subparagraph (b)3.b., or by the Florida Windstorm Underwriting Association under sub-sub-subparagraph (2)(b)2.d.(I) or sub-sub-subparagraph (2)(b)2.d.(II), the association shall levy upon association policyholders in its next rate filing, or by a separate rate filing solely for this purpose, a market equalization surcharge in a percentage equal to the total amount of such regular assessments divided by the aggregate statewide direct written premium for subject lines of business for member insurers for the prior calendar year ~~equal to the percentage assessment attributable to such deficit. Such surcharges, together with projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, assessment proceeds, and any other funds available to the association, may be used to fund lines of credit and other financing mechanisms to the extent available from public or private sources. The purpose of the lines of credit or other financing mechanism is to provide additional resources to assist the association in covering claims and expenses attributable to a catastrophe~~. Market equalization surcharges under this subparagraph are not considered premium and are not subject to commissions, fees, or premium taxes; however, failure to pay a market equalization surcharge shall be treated as failure to pay premium.

11. The policies issued by the association must provide that ~~for personal lines residential risks~~, if the association or the market assistance plan obtains an offer from an authorized insurer to cover the risk at its approved rates under either a standard policy including wind coverage or a basic policy including wind coverage, the risk is no longer eligible for coverage through the association. However, if the risk is located in an area in which Florida Windstorm Underwriting Association coverage is available, such an offer of a standard or basic policy terminates eligibility regardless of whether or not the offer includes wind coverage. Upon termination of eligibility, the association shall provide written notice to the policyholder and agent of record stating that the association policy shall be canceled as of 60 ~~30~~ days after the date of the notice because of the offer of coverage from an authorized insurer. Other provisions of the insurance code relating to cancellation and notice of cancellation do not apply to actions under this subparagraph.

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

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

in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods would continue to have access to coverage from the association. When coverage is sought in connection with a real property transfer, such requirements and procedures shall not provide for an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

(d)1. It is the intent of the Legislature that the rates for coverage provided by the association be actuarially sound and not competitive with approved rates charged in the admitted voluntary market, so that the association functions as a residual market mechanism to provide insurance only when the insurance cannot be procured in the voluntary market. ~~Beginning with the rate filing taking effect January 1, 1998, to the extent that such data is available, the rates of the plan shall be based on the association's actual loss experience and expenses.~~ Rates shall include an appropriate catastrophe loading factor that reflects the actual catastrophic exposure of the association and recognizes that the association has little or no capital or surplus; and the association shall carefully review each rate filing to assure that provider compensation is not excessive. ~~As an interim measure, the association shall adopt rating plans that provide,~~

2. For each county, ~~that~~ the average rates of the association for each line of business for personal lines residential policies shall be no lower than ~~are the same as~~ the average rates charged by the insurer that had the highest average rate in that county among the 20 insurers with the greatest total direct written premium in the state for that line of business in the preceding year, except that with respect to mobile home coverages, the average rates of the association shall be no lower than ~~the same as~~ the average rates charged by the insurer that had the highest average rate in that county among the 5 ~~8~~ insurers with the greatest total written premium for mobile home owner's policies in the state in the preceding year. ~~It is the intent of the Legislature that such interim rating plans be phased in, with average rates reflecting at least half of the difference between the then-current association rate and the full interim rate taking effect with policies issued or renewed on or after January 1, 1996, and with the full interim rates taking effect with policies issued or renewed on or after January 1, 1997.~~

3. Rates for commercial residential coverage shall not be subject to the requirements of subparagraph 2., but shall be subject to all other requirements of this paragraph and s. 627.062. ~~Nothing in this subparagraph requires the association to reduce rates approved under s. 627.062 and in effect on December 31, 1995.~~

4. Nothing in this paragraph ~~subparagraph~~ shall require or allow the association to adopt a rate that is inadequate under s. 627.062 or to reduce rates approved under s. 627.062.

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

(e) Coverage through the association is hereby activated effective upon approval of the plan, and shall remain activated until coverage is deactivated pursuant to paragraph (f). Thereafter, coverage through the association shall be reactivated by order of the department only under one of the following circumstances:

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

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

(f) The activities of the association shall be reviewed at least annually by the board and, upon recommendation by the board or petition of any interested party, coverage shall be deactivated if the department finds that the conditions giving rise to its activation no longer exist.

(g)1. The board shall certify to the department its needs for annual assessments as to a particular calendar year, and any startup or interim assessments that it deems to be necessary to sustain operations as to a particular year pending the receipt of annual assessments. Upon verification, the department shall approve such certification, and the board shall levy such annual, startup, or interim assessments. Such assessments shall be prorated as provided in paragraph (b). The board shall take all reasonable and prudent steps necessary to collect the amount of assessment due from each participating member insurer, including, if prudent, filing suit to collect such assessment. If the board is unable to collect an assessment from any member insurer, the uncollected assessments shall be levied as an additional assessment against the participating member insurers and any participating member insurer required to pay an additional assessment as a result of such failure to pay shall have a cause of action against such nonpaying member insurer. Assessments shall be included as an appropriate factor in the making of rates.

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

government, any residents of which are insured by the association, may provide for the payment of losses, regardless of whether or not the losses occurred within or outside of the territorial jurisdiction of the local government. Revenue bonds may not be issued until validated pursuant to chapter 75, unless a state of emergency is declared by executive order or proclamation of the Governor pursuant to s. 252.36 making such findings as are necessary to determine that it is in the best interests of, and necessary for, the protection of the public health, safety, and general welfare of residents of this state and the protection and preservation of the economic stability of insurers operating in this state, and declaring it an essential public purpose to permit certain municipalities or counties to issue such bonds as will permit relief to claimants and policyholders of the joint underwriting association and insurers responsible for apportionment of association losses. Any such ~~The~~ unit of local government may ~~shall~~ enter into such contracts with the association and with any other entity created pursuant to this subsection as are necessary to carry out this paragraph. Any bonds issued under this subparagraph ~~sub-subparagraph~~ shall be payable from and secured by moneys received by the association from emergency assessments under sub-subparagraph (b)3.d., and assigned and pledged to or on behalf of the unit of local government for the benefit of the holders of such bonds. The funds, credit, property, and taxing power of the state or of the unit of local government shall not be pledged for the payment of such bonds. If any of the bonds remain unsold 60 days after issuance, the department shall require all insurers subject to assessment to purchase the bonds, which shall be treated as admitted assets; each insurer shall be required to purchase that percentage of the unsold portion of the bond issue that equals the insurer's relative share of assessment liability under this subsection. An insurer shall not be required to purchase the bonds to the extent that the department determines that the purchase would endanger or impair the solvency of the insurer.

3.a. In addition to any credits, bonuses, or exemptions provided under s. 627.3511, the board shall adopt a program for the reduction of both new and renewal writings in the association. The board may consider any prudent and not unfairly discriminatory approach to reducing association writings, but must adopt at least a credit against assessment liability or other liability that provides an incentive for insurers to take risks out of the association and to keep risks out of the association by maintaining or increasing voluntary writings in counties in which association risks are highly concentrated and a program to provide a formula under which an insurer voluntarily taking risks out of the association by maintaining or increasing voluntary writings will be relieved wholly or partially from assessments under sub-subparagraphs (b)3.a. and b. ~~subparagraph (b)3.~~

b. Any credit or exemption from regular assessments adopted under this subparagraph shall last no longer than the 3 years following the cancellation or expiration of the policy by the association. With the approval of the department, the board may extend such credits for an additional year if the insurer guarantees an additional year of renewability for all policies removed from the association, or for two additional years if the insurer guarantees two additional years of renewability for all policies so removed.

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

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

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

(i) There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member insurer or its agents or employees, the ~~Residential Property and Casualty Joint Underwriting~~ association or its agents or employees, members of the board of governors or their respective designees at a board meeting, association committee members, or the department or its representatives, for any action taken by them in the performance of their duties or responsibilities under this subsection. Such immunity does not apply to ~~actions for breach of any contract or agreement pertaining to insurance or to issuance of payment of debt, or any other willful tort~~:

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

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

3. The association with respect to issuance or payment of debt; or

4. Any member insurer with respect to any action to enforce a member insurer's obligations to the association under this subsection.

(j) The Residential Property and Casualty Joint Underwriting Association is not a state agency, board, or commission. However, for the purposes of s. 199.183(1), the Residential Property and Casualty Joint Underwriting Association shall be considered a political subdivision of the state and shall be exempt from the corporate income tax.

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

(l) All obligations, rights, assets, and liabilities of the Florida Property and Casualty Joint Underwriting Association created by subsection (5), which obligations, rights, assets, or liabilities relate to the provision of commercial lines residential property insurance coverage as described in this section are hereby transferred to the Residential Property and Casualty Joint Underwriting Association. The Residential Property and Casualty Joint Underwriting Association is not required to issue endorsements or certificates of assumption to insureds during the remaining term of in-force transferred policies.

(m) Notwithstanding any other provision of law:

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

2. No such proceeding shall relieve the association of its obligation, or otherwise affect its ability to perform its obligation, to continue to collect, or levy and collect, assessments ~~under sub-subparagraph (b)3.a., sub-subparagraph (b)3.b., or subparagraph (g)1., emergency assessments under sub-subparagraph (b)3.d.~~, market equalization or other ~~renewal~~ surcharges under subparagraph (c)10. ~~(g)10.~~, or any other rights, revenues, or other assets of the association pledged pursuant to any financing documents.

3. Each such pledge or sale of, lien upon, and security interest in, including the priority of such pledge, lien, or security interest, any such assessments, ~~emergency assessments,~~ market equalization or other ~~renewal~~ surcharges, or other rights, revenues, or other assets which are collected, or levied and collected, after the commencement of and during the pendency of, or after, any such proceeding shall continue unaffected by such proceeding. As used in this subsection ~~paragraph~~, the term "financing documents" means any agreement or agreements, instrument or instruments, or other document or documents now existing or hereafter created evidencing any bonds or other indebtedness of the association or pursuant to which any such bonds or other indebtedness has been or may be issued and pursuant to which any rights, revenues, or other assets of the association are pledged or sold to secure the repayment of such bonds or indebtedness, together with the payment of interest on such bonds or such indebtedness, or the payment of any other obligation of the association related to such bonds or indebtedness.

4. Any such pledge or sale of assessments, revenues, contract rights, or other rights or assets of the association shall constitute a lien and security interest, or sale, as the case may be, that is immediately effective and attaches to such assessments, revenues, or contract rights or other rights or assets, whether or not imposed or collected at the time the pledge or sale is made. Any such pledge or sale is effective, valid, binding, and enforceable

against the association or other entity making such pledge or sale, and valid and binding against and superior to any competing claims or obligations owed to any other person or entity, including policyholders in this state, asserting rights in any such assessments, revenues, or contract rights or other rights or assets to the extent set forth in and in accordance with the terms of the pledge or sale contained in the applicable financing documents, whether or not any such person or entity has notice of such pledge or sale and without the need for any physical delivery, recordation, filing, or other action.

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

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

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

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

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

e. Proprietary information licensed to the association under contract and the contract provides for the confidentiality of such proprietary information.

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

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

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

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

When an authorized insurer is considering underwriting a risk insured by the association, relevant underwriting files and confidential claims files may be released to the insurer provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. When a file is transferred to an insurer that file is no longer a public record because it is not held by an agency subject to the provisions of the public records law. Underwriting files and confidential claims files may also be released to staff of and the board of governors of the market assistance plan established pursuant to s. 627.3515, who must retain the confidentiality of such files, except such files may be released to authorized insurers that are considering assuming the risks to which the files apply, provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. Finally, the association or the board or staff of the market assistance plan may make the following information obtained from underwriting files and confidential claims files available to licensed general lines insurance agents: name, address, and telephone number of the residential property owner or insured; location of the risk; rating information; loss history; and policy type. The receiving licensed general lines insurance agent must retain the confidentiality of the information received.

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

Section 6. Section 627.3511, Florida Statutes, 1996 Supplement, is amended to read:

627.3511 Depopulation of Residential Property and Casualty Joint Underwriting Association.—

(1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds and declares that the Residential Property and Casualty Joint Underwriting Association has written an amount of policies beyond legislative expectations and has become, by virtue of its size, a significant impediment to the restoration of a stable and competitive residential property insurance market in this state; that the public policy of this state requires the maintenance

of a residual market for residential property insurance; and that extraordinary measures, beyond implementation of eligibility criteria and noncompetitive rates, are required to reduce the number of policies written by the Residential Property and Casualty Joint Underwriting Association to a reasonable level. It is the intent of the Legislature to provide a variety of financial incentives to encourage the replacement of the highest possible number of Residential Property and Casualty Joint Underwriting Association policies with policies written by admitted insurers at approved rates.

(2) TAKE-OUT BONUS.—The Residential Property and Casualty Joint Underwriting Association shall pay the sum of up to $100 to an insurer for each risk that the insurer removes from the association, either by issuance of a policy upon expiration or cancellation of the association policy or by assumption of the association's obligations with respect to an in-force policy. Such payment is subject to approval of the association board. In order to qualify for the bonus under this subsection, the take-out plan must include a minimum of 25,000 policies. Within 30 days after approval by the board, the department may reject the insurer's take-out plan and disqualify the insurer from the bonus, based on the following criteria:

(a) The capacity of the insurer to absorb the policies proposed to be taken out of the association and the concentration of risks of those policies.

(b) Whether the geographic and risk characteristics of policies in the proposed take-out plan serve to reduce the exposure of the association sufficient to justify the bonus.

(c) Whether coverage for risks to be taken out otherwise exists in the admitted voluntary market.

(d) The degree to which the take-out bonus is promoting new capital being allocated by the insurer to Florida residential property coverage.

(3) EXEMPTION FROM DEFICIT ASSESSMENTS.—

(a) The calculation of an insurer's assessment liability under s. 627.351(6)(b)3.a. or b. shall, for an insurer that in any calendar year removes 50,000 or more risks from the Residential Property and Casualty Joint Underwriting Association, either by issuance of a policy upon expiration or cancellation of the association policy or by assumption of the association's obligations with respect to in-force policies, exclude such removed policies for the succeeding 3 years, as follows:

1. In the first year following removal of the risks, the risks are excluded from the calculation to the extent of 100 percent.

2. In the second year following removal of the risks, the risks are excluded from the calculation to the extent of 75 percent.

3. In the third year following removal of the risks, the risks are excluded from the calculation to the extent of 50 percent.

If the removal of risks is accomplished through assumption of obligations with respect to in-force policies, the association shall pay to the assuming

insurer all unearned premium with respect to such policies less any policy acquisition costs agreed to by the association and assuming insurer. The term "policy acquisition costs" is defined as costs of issuance of the policy by the association which includes agent commissions, servicing company fees, and premium tax. This paragraph does not apply to an insurer that, at any time within 5 years before removing the risks, had a market share in excess of 0.1 percent of the statewide aggregate gross direct written premium for any line of property insurance, or to an affiliate of such an insurer. This paragraph does not apply unless either at least 40 percent of the risks removed from the association are located in Dade, Broward, and Palm Beach Counties, or at least 30 percent of the risks removed from the association are located in such counties and an additional 50 percent of the risks removed from the association are located in other coastal counties.

(b) An insurer that first wrote personal lines residential property coverage in this state on or after July 1, 1994, is exempt from regular deficit assessments imposed pursuant to s. 627.351(6)(b)3.a. and b., but not emergency assessments collected from policyholders pursuant to s. 627.351(6)(b)3.d., of the Residential Property and Casualty Joint Underwriting Association until the earlier of the following:

1. The end of the calendar year in which it first wrote 0.5 percent or more of the statewide aggregate direct written premium for any line of residential property coverage; or

2. December 31, 1997, or December 31 of the third year in which it wrote such coverage in this state, whichever is later.

(c) Other than an insurer that is exempt under paragraph (b), an insurer that in any calendar year increases its total structure exposure subject to wind coverage by 25 percent or more over its exposure for the preceding calendar year is, with respect to that year, exempt from deficit assessments imposed pursuant to s. 627.351(6)(b)3.a. and b., but not emergency assessments collected from policyholders pursuant to s. 627.351(6)(b)3.d., of the Residential Property and Casualty Joint Underwriting Association attributable to such increase in exposure.

(d) Any exemption or credit from regular assessments authorized by this section shall last no longer than 3 years following the cancellation or expiration of the policy by the association. With the approval of the department, the board may extend such credits for an additional year if the insurer guarantees an additional year of renewability for all policies removed from the association, or for 2 additional years if the insurer guarantees 2 additional years of renewability for all policies so removed.

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

(a) Pay to the producing agent of record of the association policy an amount equal to the insurer's usual and customary commission for the type

of policy written if the term of the association policy was in excess of 6 months, or one-half of such usual and customary commission if the term of the association policy was 6 months or less; or

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

The insurer need not take any further action if the offer is rejected. This subsection does not apply to any reciprocal interinsurance exchange, nonprofit federation, or any subsidiary or affiliate of such organization. This subsection does not apply if the agent is also the agent of record on the new coverage. The requirement of this subsection that the producing agent of record is entitled to retain the unearned commission on an association policy does not apply to a policy for which coverage has been provided in the association for 30 days or less or for which a cancellation notice has been issued pursuant to s. 627.351(6)(c)11. during the first 30 days of coverage.

(5) APPLICABILITY.—

(a) The take-out bonus provided by subsection (2) and the exemption from assessment provided by paragraph (3)(a) apply only if the ~~Residential Property and Casualty Joint Underwriting~~ association policy is replaced by either a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the department, a basic policy including wind coverage; however, with respect to risks located in areas where coverage through the Florida Windstorm Underwriting Association is available, the replacement policy need not provide wind coverage. The insurer must renew the replacement policy at approved rates on substantially similar terms for two additional 1-year terms, unless canceled by the insurer for a lawful reason other than reduction of hurricane exposure. If an insurer assumes the association's obligations for a policy, it must issue a replacement policy for a 1-year term upon expiration of the association policy and must renew the replacement policy at approved rates on substantially similar terms for two additional 1-year terms, unless canceled by the insurer for a lawful reason other than reduction of hurricane exposure. For each replacement policy canceled or nonrenewed by the insurer for any reason during the 3-year coverage period required by this paragraph, the insurer must remove from the association one additional policy covering a risk similar to the risk covered by the canceled or nonrenewed policy. In addition to these requirements, the association must place the bonus moneys in escrow for a period of 3 years; such moneys may be released from escrow only to pay claims. A take-out bonus provided by subsection (2) or subsection (6) shall not be considered premium income for purposes of taxes and assessments under the Florida Insurance Code and shall remain the property of the Residential Property and Casualty Joint Underwriting Association, subject to the prior security interest of the insurer under the escrow agreement until it is released from escrow, and after it is released from escrow it shall be considered an asset of the insurer and credited to the insurer's capital and surplus.

(b) An insurer or agent may not qualify for a bonus or exemption from assessment under this section after the number of risks covered by the Residential Property and Casualty Joint Underwriting Association is less than 250,000.

(c) It is the intent of the Legislature that an insurer eligible for the exemption under paragraph (3)(a) establish a preference in appointment of agents for those agents who lose a substantial amount of business as a result of risks being removed from the association.

(6) COMMERCIAL RESIDENTIAL ~~CONDOMINIUM ASSOCIATION~~ TAKE-OUT PLANS.—

(a) The Residential Property and Casualty Joint Underwriting Association shall pay a bonus to an insurer for each commercial residential ~~condominium association~~ policy that the insurer removes from the association pursuant to an approved take-out plan, either by issuance of a new policy upon expiration of the association policy or by assumption of the association's obligations with respect to an in-force policy. The association board shall determine the amount of the bonus based on such factors as the coverage provided, relative hurricane risk, the length of time that the property has been covered by the association, and the criteria specified in paragraphs (b) and (c). The amount of the bonus with respect to a particular policy may not exceed 25 percent of the association's 1-year premium for the policy. Such payment is subject to approval of the association board. In order to qualify for the bonus under this subsection, the take-out plan must include policies reflecting at least $100 million in structure exposure.

(b) In order for a plan to qualify for approval:

1. At least 40 percent of the policies removed from the association under the plan must be located in Dade, Broward, and Palm Beach Counties, or at least 30 percent of the policies removed from the association under the plan must be located in such counties and an additional 50 percent of the policies removed from the association must be located in other coastal counties.

2. The insurer must renew the replacement policy at approved rates on substantially similar terms for two additional 1-year terms, unless canceled or nonrenewed by the insurer for a lawful reason other than reduction of hurricane exposure. If an insurer assumes the association's obligations for a policy, it must issue a replacement policy for a 1-year term upon expiration of the association policy and must renew the replacement policy at approved rates on substantially similar terms for two additional 1-year terms, unless canceled by the insurer for a lawful reason other than reduction of hurricane exposure. For each replacement policy canceled or nonrenewed by the insurer for any reason during the 3-year coverage period required by this subparagraph, the insurer must remove from the association one additional policy covering a risk similar to the risk covered by the canceled or nonrenewed policy.

(c) A take-out plan is deemed approved unless the department, within 120 days after the board votes to recommend the plan, disapproves the plan based on:

1. The capacity of the insurer to absorb the policies proposed to be taken out of the association and the concentration of risks of those policies.

2. Whether the geographic and risk characteristics of policies in the proposed take-out plan serve to reduce the exposure of the association sufficiently to justify the bonus.

3. Whether coverage for risks to be taken out otherwise exists in the admitted voluntary market.

4. The degree to which the take-out bonus is promoting new capital being allocated by the insurer to residential property coverage in this state.

(d) The calculation of an insurer's regular assessment liability under s. 627.351(b)3.a. and b., but not emergency assessments collected from policyholders pursuant to s. 627.351(6)(b)3.d., ~~s. 627.351~~ shall, with respect to commercial residential ~~condominium association~~ policies removed from the association under an approved take-out plan, exclude such removed policies for the succeeding 3 years, as follows:

1. In the first year following removal of the policies, the policies are excluded from the calculation to the extent of 100 percent.

2. In the second year following removal of the policies, the policies are excluded from the calculation to the extent of 75 percent.

3. In the third year following removal of the policies, the policies are excluded from the calculation to the extent of 50 percent.

(e) An insurer that first wrote commercial residential ~~condominium association~~ property coverage in this state on or after June 1, 1996, is exempt from regular assessments under s. 627.351(6)(b)3.a. and b., but not emergency assessments collected from policyholders pursuant to s. 627.351(6)(b)3.d., ~~s. 627.351~~ with respect to commercial residential ~~condominium association~~ policies until the earlier of:

1. The end of the calendar year in which such insurer first wrote 0.5 percent or more of the statewide aggregate direct written premium for commercial residential ~~condominium association~~ property coverage; or

2. December 31 of the third year in which such insurer wrote commercial residential ~~condominium association~~ property coverage in this state.

(f) An insurer that is not otherwise exempt from regular assessments under s. 627.351(6)(b)3.a. and b. ~~s. 627.351~~ with respect to commercial residential ~~condominium association~~ policies is, for any calendar year in which such insurer increased its total commercial residential ~~condominium association~~ hurricane exposure by 25 percent or more over its exposure for the preceding calendar year, exempt from regular assessments under s. 627.351(6)(b)3.a. and b., but not emergency assessments collected from policyholders pursuant to s. 627.351(6)(b)3.d., ~~s. 627.351~~ attributable to such increased exposure.

(7) A minority business, which is at least 51 percent owned by minority persons as described in s. 288.703(3), desiring to operate or become licensed as a property and casualty insurer may exempt ~~apply~~ up to $50 of the escrow requirements of the take-out bonus, as described in this section~~, toward the minimum capital requirements as set forth in s. 624.407(1)(a)~~. Such minority business, which has applied for a certificate of authority to engage in business as a property and casualty insurer, may simultaneously file the business' proposed take-out plan, as described in this section, to the Residential Property and Casualty Joint Underwriting Association. ~~The Insurance Commissioner may request that the association approve such take-out plan subject to the granting of a certificate of authority by the department.~~

Section 7. Section 627.3512, Florida Statutes, is amended to read:

627.3512 Recoupment of residual market deficit assessments.—

(1) An insurer or insurer group ~~A rate filing under s. 627.062, s. 627.0651, or s. 627.072~~ may ~~include amounts sufficient to~~ recoup any assessments that have been paid during or after 1995 by the insurer or insurer group to defray deficits of an insurance risk apportionment plan ~~a joint underwriting association~~ or assigned risk plan under ss. 627.311 and 627.351, net of any earnings returned to the insurer or insurer group by the association or plan for any year after 1993. The recoupment shall be made by applying a separate assessment factor on policies of the same line or type as were considered by the residual markets in determining the assessment liability of the insurer or insurer group. An insurer or insurer group shall calculate a separate assessment factor for personal lines and commercial lines. The ~~rate filing shall include a~~ separate assessment factor shall provide ~~which provides~~ for full recoupment of the assessments over a period of 1 year, unless the insurer or insurer group, at its option, elects to recoup the assessments over a longer period. The assessment factor ~~in the filing~~ expires upon collection of the full amount allowed to be recouped. Amounts recouped under this section are not subject to premium taxes, fees, or commissions.

(2) The assessment factor must not be more than 3 percentage points above the ratio of the deficit assessment to the Florida direct written premium for policies for the lines or types of business as to which the assessment was calculated, as written in the year the deficit assessment was paid. If an insurer or insurer group fails to collect the full amount of the deficit assessment, the insurer or insurer group must carry forward the amount of the deficit and adjust the deficit assessment to be recouped in a subsequent year by that amount.

(3) The insurer or insurer group shall file with the department a statement setting forth the amount of the assessment factor and an explanation of how the factor will be applied, at least 15 days prior to the factor being applied to any policies. The statement shall include documentation of the assessment paid by the insurer or insurer group and the arithmetic calculations supporting the assessment factor. The department shall complete its review within 15 days after receipt of the filing and shall limit its review to verification of the arithmetic calculations. The insurer or insurer group may use the assessment factor at any time after the expiration of the 15-day

period unless the department has notified the insurer or insurer group in writing that the arithmetic calculations are incorrect.

(4) The department may adopt rules to implement this section.

Section 8. Section 627.3513, Florida Statutes, is created to read:

627.3513 Standards for sale of bonds by underwriting associations.—

(1)(a) The purpose of this section is to provide standards for the sale of bonds pursuant to s. 627.351(2) and (6).

(b) "Association" or "associations," for purposes of this section, means the Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association as established pursuant to s. 627.351(2) and (6), and any corporation or other entity established pursuant to those subsections.

(2) The plan of operation of each association shall provide for the selection of financial services providers and underwriters. Such provisions shall include the method for publicizing or otherwise providing reasonable notice to potential financial services providers, underwriters, and other interested parties, which may include expedited procedures and methods for emergency situations. The associations shall not engage the services of any person or firm as a securities broker or bond underwriter that is not eligible to be engaged by the state under the provisions of s. 215.684. The associations shall make all selections of financial service providers and managing underwriters at a noticed public meeting.

(3) The plan of operation of each association shall provide for any managing underwriter or financial advisor to provide to the association a disclosure statement containing at least the following information:

(a) An itemized list setting forth the nature and estimated amounts of expenses to be incurred by the managing underwriter in connection with the issuance of such bonds. Notwithstanding the foregoing, any such list may include an item for miscellaneous expenses, provided such item includes only minor items of expense which cannot be easily categorized elsewhere in the statement.

(b) The names, addresses, and estimated amounts of compensation of any finders connected with the issuance of the bonds.

(c) The amount of underwriting spread expected to be realized and the amount of fees and expenses expected to be paid to the financial adviser.

(d) Any management fee charged by the managing underwriter.

(e) Any other fee, bonus, or compensation estimated to be paid by the managing underwriter in connection with the bond issue to any person not regularly employed or retained by it.

(f) The name and address of each financial advisor or managing underwriter, if any, connected with the bond issue.

(g) Any other disclosure which the association may require.

(4)(a) No underwriter, commercial bank, investment banker, or financial consultant or adviser shall pay any finder any bonus, fee, or gratuity in connection with the sale of bonds issued by the association unless full disclosure is made in writing to the association prior to or concurrently with the submission of a purchase proposal for bonds by the underwriter, commercial bank, investment banker, or financial consultant or adviser, providing the name and address of any finder and the amount of bonus, fee, or gratuity paid to such finder. A violation of this subsection shall not affect the validity of the bond issue.

(b) As used in this subsection, the term "finder" means a person who is neither regularly employed by, nor a partner or officer of, an underwriter, bank, banker, or financial consultant or adviser and who enters into an understanding with either the issuer or the managing underwriter, or both, for any paid or promised compensation or valuable consideration, directly or indirectly, expressed or implied, to act solely as an intermediary between such issuer and managing underwriter for the purpose of influencing any transaction in the purpose of such bonds.

(5) This section is not intended to restrict or prohibit the employment of professional services relating to bonds issued under s. 627.351(2) or (6) or the issuance of bonds by the associations.

(6) The failure of the association to comply with one or more provisions of this section shall not affect the validity of the bond issue, however, the failure of either association to comply in good faith both with this section and with the plan as amended shall be a violation of its plan of operation and a violation of the Insurance Code.

Section 9. Section 627.3516, Florida Statutes, is created to read:

627.3516 Residential property insurance market coordinating council.—The Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association shall create a residual property insurance market coordinating council to assure that each association is informed of the activities and plans of the other. The coordinating council shall consist of the Insurance Consumer Advocate, who shall chair the council, the executive director of each of the associations, and the chair of the governing board of each of the associations. The coordinating council may, from time to time, recommend to the presiding officers of the Legislature proposals to improve coordination between the associations or eliminate unnecessary duplication of efforts; however, any such recommendation must also include an analysis of the impact of the recommendation on the financial arrangements of each association and on the state's efforts to restore the voluntary property insurance market. The coordinating council shall, on March 1 of each year, provide a report of its activities during the preceding year to the presiding officers of the Legislature.

Section 10. Subsection (1) of section 627.4025, Florida Statutes, 1996 Supplement, is amended to read:

627.4025 Residential coverage and hurricane coverage defined.—

(1) Residential coverage includes both personal lines residential coverage, which consists of the type of coverage provided by homeowner's, mobile home owner's, dwelling, tenant's, condominium unit owner's, cooperative unit owner's, and similar policies, and commercial lines residential coverage, which consists of the type of coverage provided by condominium association, cooperative association, apartment building, and similar policies, including policies covering the common elements of a homeowners' association. Residential coverage for personal lines and commercial lines as set forth in this section includes policies that provide coverage for particular perils such as windstorm and hurricane or coverage for insurer insolvency or deductibles.

Section 11. Subsections (3) and (7) of section 627.701, Florida Statutes, 1996 Supplement, are amended, and subsection (8) is added to said section, to read:

627.701 Liability of insureds; coinsurance; deductibles.—

(3)(a) A policy of residential property insurance shall include a deductible amount applicable to hurricane or wind losses no lower than $500 and no higher than 2 percent of the policy dwelling limits with respect to personal lines residential risks, and no higher than 3 percent of the policy limits with respect to commercial lines residential risks; however, if a risk was covered on August 24, 1992, under a policy having a higher deductible than the deductibles allowed by this paragraph, a policy covering such risk may include a deductible no higher than the deductible in effect on August 24, 1992. Notwithstanding the other provisions of this paragraph, a personal lines residential policy covering a risk valued at $50,000 or less may include a deductible amount attributable to hurricane or wind losses no lower than $250, and a personal lines residential policy covering a risk valued at $100,000 or more may include a deductible amount attributable to hurricane or wind losses no higher than 5 percent of the policy limits unless subject to a higher deductible on August 24, 1992; however, no maximum deductible is required with respect to a personal lines residential policy covering a risk valued at more than $500,000. An insurer may require a higher deductible, provided such deductible is the same as or similar to a deductible program lawfully in effect on June 14, 1995. In addition to the deductible amounts authorized by this paragraph, an insurer may also offer policies with a copayment provision under which, after exhaustion of the deductible, the policyholder is responsible for 10 percent of the next $10,000 of insured hurricane or wind losses.

(b)1. Except as otherwise provided in this paragraph, prior to issuing a personal lines residential property insurance policy on or after April 1, 1996, or prior to the first renewal of a residential property insurance policy on or after April 1, 1996, the insurer must offer alternative deductible amounts applicable to hurricane or wind losses equal to $500 and 2 percent of the policy dwelling limits, unless the 2 percent deductible is less than $500. The written notice of the offer shall specify the hurricane or wind deductible to be applied in the event that the applicant or policyholder fails to affirma-

tively choose a hurricane deductible. The insurer must provide such policyholder with notice of the availability of the deductible amounts specified in this paragraph in a form specified by the department in conjunction with each renewal of the policy. The failure to provide such notice constitutes a violation of this code but does not affect the coverage provided under the policy.

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

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

4. With respect to a policy covering a risk with dwelling limits of $250,000 or more, the insurer need not offer the $500 hurricane or wind deductible as required by subparagraph 1., but must, except as otherwise provided in this subsection, offer the 2 percent hurricane or wind deductible as required by subparagraph 1.

(c) In order to provide for the transition from wind deductibles to hurricane deductibles as required by this subsection, an insurer is required to provide wind deductibles meeting the requirements of this subsection until the effective date of the insurer's first rate filing made after January 1, 1997, and is thereafter required to provide hurricane deductibles meeting the requirements of this subsection.

(7)(a) The Legislature finds that property insurance coverage has become unaffordable for a significant number of mobile home owners, as evidenced by reports that up to 100,000 mobile home owners have terminated their insurance coverage because they cannot afford to pay approved rates charged in the voluntary or residual markets. The Legislature further finds that additional flexibility in available coverages will enable mobile home owners to obtain affordable insurance and increase capacity.

(b) Notwithstanding the provisions of subsection (3), with respect to mobile home policies:

1. The deductible for hurricane coverage may not exceed 10 percent of the property value if the property is not subject to any liens and may not exceed 5 percent of the property value if the property is subject to any liens.

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

(8) Notwithstanding the other provisions of this section or of other law, but only as to hurricane coverage as defined in s. 627.4025 for commercial lines residential coverages, an insurer may offer a deductible in an amount

not exceeding 5 percent of the insured value with respect to a condominium association or cooperative association policy, or in an amount not exceeding 10 percent of the insured value with respect to any other commercial lines residential policy, if, at the time of such offer and at each renewal, the insurer also offers to the policyholder a deductible in the amount of 3 percent of the insured value. Nothing in this subsection prohibits any deductible otherwise authorized by this section. All forms by which the offers authorized in this subsection are made or required to be made shall be on forms that are adopted or approved by the department.

Section 12. This act shall take effect upon becoming a law.

Approved by the Governor May 9, 1997.

Filed in Office Secretary of State May 9, 1997.