

Committee Substitute for Senate Bill No. 1418

An act relating to insurance; amending s. 215.555, F.S.; revising a definition; providing for certain additional coverages under the Florida Hurricane Catastrophe Fund; increasing the cap on fund liability; imposing an additional liquidity enhancement factor to reimbursement premiums; amending s. 627.351, F.S.; providing for waiver of required flood insurance under certain circumstances; specifying policyholder burden of proof under certain circumstances; authorizing an association to deny certain coverage under certain circumstances; renaming the Residential Property and Casualty Joint Underwriting Association as the Citizens Property Insurance Corporation to provide residential and commercial property insurance; requiring insurers writing property insurance to participate in the corporation; providing for dividing the revenues, assets, liabilities, losses, and expenses of the corporation into three accounts; authorizing the Department of Insurance to remove certain territories from certain eligible areas under certain circumstances; providing for emergency assessments for policyholders of participating insurers; providing a plan of operation; defining the terms "quota share primary insurance" and "eligible risks"; authorizing the corporation to enter into quota share primary insurance agreements; providing for a board of governors appointed by the Treasurer, subject to confirmation by the Cabinet; providing rate limitations and requirements; requiring the Department of Insurance to provide the corporation with certain rate information for certain purposes; requiring the corporation to certify certain rates to the department; authorizing the department to adopt rules; requiring the corporation to impose and collect an additional amount to augment the corporation's financial resources; requiring the corporation to file quarterly statements of financial condition and submit other reports to the Department of Insurance; providing that the corporation is not required to obtain a certificate of authority from the Department of Insurance; providing that the corporation is not required to be a member of the Florida Insurance Guaranty Association; requiring the corporation to pay assessments pledged by the association to secure bonds to pay covered claims arising from insurer insolvencies caused by hurricane losses; providing for transfer of policies of the association and the Florida Windstorm Underwriting Association to the corporation; providing for a transfer of assets and liabilities; requiring the associations to take actions necessary to further the transfers; providing for the redesignation of certain coverage as the high-risk account of the corporation; providing that such account be treated as if it were a separate participating insurer for certain purposes; providing that the personal lines and commercial lines accounts be treated as a single participating insurer for certain purposes; providing that the department may postpone the July 1, 2002, effective date of transfer under the act; providing legislative intent; requiring the board to report to the Legislature on certain loss activities; requiring the board to reduce certain eligibility

boundaries under certain circumstances; providing legislative intent not to interfere with the rights of creditors, to preserve the obligation of the association, and to assure that outstanding financing agreements pass unchanged to the corporation; amending s. 627.3511, F.S.; revising certain agent commission payment policy servicing procedures and requirements; creating s. 627.3517, F.S.; preserving the right of a residual-market policyholder to select and maintain an agent of his or her own choice; providing an effective date.

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

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

215.555 Florida Hurricane Catastrophe Fund.—

(2) DEFINITIONS.—As used in this section:

(d) “Losses” means direct incurred losses under covered policies, which shall include losses for additional living expenses not to exceed 20 percent of the insured value of mobile homes or personal residential structures and 40 percent of the insured value of contents covered under a tenant’s policy or a condominium unit owners policy and shall exclude ~~excluding~~ losses attributable to additional living expense coverages and excluding loss adjustment expenses. “Losses” does not include losses for fair rental value associated with personal and commercial residential exposures or business interruption losses associated with commercial residential exposures.

(5) REIMBURSEMENT PREMIUMS.—

(b) The State Board of Administration shall select an independent consultant to develop a formula for determining the actuarially indicated premium to be paid to the fund. The formula shall specify, for each zip code or other limited geographical area, the amount of premium to be paid by an insurer for each \$1,000 of insured value under covered policies in that zip code or other area. In establishing premiums, the board shall consider the coverage elected under paragraph (4)(b) and any factors that tend to enhance the actuarial sophistication of ratemaking for the fund, including deductibles, type of construction, type of coverage provided, relative concentration of risks, a factor providing for more rapid cash buildup in the fund until the fund capacity for a single hurricane season is fully funded, and other such factors deemed by the board to be appropriate. The formula may provide for a procedure to determine the premiums to be paid by new insurers that begin writing covered policies after the beginning of a contract year, taking into consideration when the insurer starts writing covered policies, the potential exposure of the insurer, the potential exposure of the fund, the administrative costs to the insurer and to the fund, and any other factors deemed appropriate by the board. The formula must be approved by unanimous vote of the board. The board may, at any time, revise the formula pursuant to the procedure provided in this paragraph.

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

627.351 Insurance risk apportionment plans.—

(2) WINDSTORM INSURANCE RISK APPORTIONMENT.—

(b) The department shall require all insurers holding a certificate of authority 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 multiperil, homeowners’ multiperil, commercial multiperil, 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 shall adopt rules that 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 shall participate in its writings, expenses, and losses. Surplus of the association shall be retained for the payment of claims and shall not be distributed to the member insurers. Such participation by member insurers shall be in the proportion that the net direct premiums of each member insurer written for 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, 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 deems necessary, shall certify to the association the aggregate direct premiums written for property insurance in this state by all member insurers.

(II) Effective July 1, 2002, the association shall operate subject to the supervision and approval of The plan of operation shall provide for a board of governors who are the same individuals that have been appointed by the Treasurer to serve on the board of governors of the Citizens Property Insurance Corporation directors consisting of the Insurance Consumer Advocate appointed under s. 627.0613, 1 consumer representative appointed by the Insurance Commissioner, 1 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 be elected by the domestic companies of this state on the basis of cumulative weighted voting based on the net direct 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 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 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 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 any deficits of the association; 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) 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 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 property insurance for the prior calendar year for member insurers. Any remaining deficit shall be recovered through emergency assessments under sub-sub-subparagraph (III).

(III) Upon a determination by the board of directors that a deficit exceeds the amount that will be recovered through regular assessments on member 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 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 emergency 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 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 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 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 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 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) Each member insurer's share of the total regular assessments under sub-sub-subparagraph (I) or sub-sub-subparagraph (II) shall be in the proportion that the insurer's net direct premium for property insurance in this state, for the year preceding the assessment bears to the aggregate statewide net direct premium for property insurance of all member insurers, as reduced by any credits for voluntary writings for that year.

(V) 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 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 bonds as will provide relief to claimants and policyholders of the association and insurers responsible for apportionment of plan losses. Any such unit of local government may 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 sub-subparagraph shall be payable from and secured by moneys received by the association 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 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 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 assessment would endanger or impair the solvency of the member insurer. In the event a regular 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).

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 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 coverage 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 non-profit 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 entity created under this subsection, or any entity formed for the purposes of this subsection, may sue and be sued, 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 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 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 the agent by the terms of his or her 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.

~~(6) CITIZENS RESIDENTIAL PROPERTY INSURANCE CORPORATION AND CASUALTY JOINT UNDERWRITING ASSOCIATION.—~~

(a)1. The Legislature finds that actual and threatened catastrophic losses to property in this state from hurricanes have caused insurers to be unwilling or unable to provide property insurance coverage to the extent sought and needed. It is in the public interest and a public purpose to assist in assuring that property in the state is insured so as to facilitate the remediation, reconstruction, and replacement of damaged or destroyed property in order to reduce or avoid the negative effects otherwise resulting

to the public health, safety, and welfare; to the economy of the state; and to the revenues of the state and local governments needed to provide for the public welfare. It is necessary, therefore, to provide property insurance to applicants who are in good faith entitled to procure insurance through the voluntary market but are unable to do so. The Legislature intends by this subsection that property insurance be provided and that it continues, as long as necessary, through an entity organized to achieve efficiencies and economies, all toward the achievement of the foregoing public purposes. Because it is essential for the corporation to have the maximum financial resources to pay claims following a catastrophic hurricane, it is the intent of the Legislature that the income of the corporation be exempt from federal income taxation and that interest on the debt obligations issued by the corporation be exempt from federal income taxation.

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

~~(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 corporation 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 one or more subject lines of business in this state are subject to assessment by the corporation and, for the purposes of this subsection, are referred to collectively as "assessable insurers." Insurers writing one or more subject lines of business in this state pursuant to part VIII of chapter 626 are not assessable insurers, but insureds who procure one or more subject lines of business in this state pursuant to part VIII of chapter 626 are subject to assessment by the corporation and are referred to collectively as "assessable insureds." An authorized insurer's assessment liability, 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 insurer 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 insurer member no longer holds a certificate of authority to transact insurance for subject lines of business in this state.

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

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

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

(III) A high-risk account for personal residential policies and commercial residential and commercial non-residential property policies issued by the corporation or transferred to the corporation that provide coverage for the peril of wind on risks that are located in areas eligible for coverage in the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002. The high-risk account must also include quota share primary insurance under subparagraph (c)2. The area eligible for coverage under the high-risk account also includes the area within Port Canaveral, which is bordered on the south by the City of Cape Canaveral, bordered on the west by the Banana River, and bordered on the north by Federal Government property. The department may remove territory from the area eligible for wind-only and quota share coverage if, after a public hearing, the department finds that authorized insurers in the voluntary market are willing and able to write sufficient amounts of personal and commercial residential coverage for all perils in the territory, including coverage for the peril of wind, such that risks covered by wind-only policies in the removed territory could be issued a policy by the corporation in either the personal lines or commercial lines account without a significant increase in the corporation's probable maximum loss in such account. Removal of territory from the area eligible for wind-only or quota share coverage does not alter the assignment of wind coverage written in such areas to the high-risk account.

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

c. Creditors of the Residential Property and Casualty Joint Underwriting Association shall have a claim against, and recourse to, the accounts referred to in sub-sub-subparagraphs a.(I) and (II) and shall have no claim against, or recourse to, the account referred to in sub-sub-subparagraph a.(III). Creditors of the Florida Windstorm Underwriting Association shall have a claim against, and recourse to, the account referred to in sub-sub-subparagraph a.(III) and shall have no claim against, or recourse to, the accounts referred to in sub-sub-subparagraphs a.(I) and (II).

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

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

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

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 regular assessments of assessable member insurers under paragraph (g) and assessable insureds.

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 ~~corporation association~~ shall levy regular assessments an assessment on assessable member insurers under paragraph (g) and on assessable insureds 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 assessable member insurer's share of the amount being assessed total assessment under sub-subparagraph a. or sub-subparagraph b. shall be in the proportion that the assessable 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. The assessment percentage applicable to each assessable insured is the ratio of the amount being assessed under sub-subparagraph a. or sub-subparagraph b. to the aggregate statewide direct written premium for the subject lines of business for the prior year. Assessments levied by the corporation on assessable insurers under sub-subparagraphs a. and b. shall be paid as required by the corporation's plan of operation and paragraph (g). Assessments levied by the corporation on assessable insureds under sub-subparagraphs a. and b. shall be collected by the surplus lines agent at the time the surplus lines agent

collects the surplus lines tax required by s. 626.932 and shall be paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to the Florida Surplus Lines Service Office. Upon receipt of regular assessments from surplus lines agents, the Florida Surplus Lines Service Office shall transfer the assessments directly to the corporation as determined by the corporation.

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 insurers under sub-subparagraph a. or sub-subparagraph b.,~~ the board shall levy, after verification by the department, emergency assessments, for as many years as necessary to cover the deficits, to be collected by assessable member insurers and the corporation and collected from assessable insureds by 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 and all accounts of the corporation 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, the corporation and each assessable member insurer ~~that 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. Emergency assessments levied by the corporation on assessable insureds shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932 and shall be paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to the Florida Surplus Lines Service Office. The emergency assessments so collected shall be transferred directly to the ~~corporation~~ association on a periodic basis as determined by the ~~corporation~~ and shall be held by the corporation solely in the applicable account ~~association.~~ The aggregate amount of emergency assessments levied for an account 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 and for all accounts of the corporation 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 ~~corporation~~ board may pledge the proceeds of assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other insurance and reinsurance recoverables, market equalization surcharges and other surcharges, and other funds available to the ~~corporation~~ 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 other financing mechanisms issued or created under this subsection, or to retire any other debt incurred as a result of deficits or events giving rise to deficits, or in any other way that the board determines will efficiently recover such deficits. The purpose of the lines of credit or other financing mechanisms is to provide additional resources to assist the corporation 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 sub-subparagraph d. Emergency assessments collected under sub-subparagraph d. 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. As used in this subsection, the term “subject lines of business” means insurance written by assessable insurers or procured by assessable insureds on real or personal property, as defined in s. 624.604, including insurance for fire, industrial fire, allied lines, farmowners multiperil, homeowners multiperil, commercial multiperil, and mobile homes, and including liability coverage 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) other than insurance on mobile homes used as permanent dwellings.

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

h. The Florida Surplus Lines Service Office shall verify the proper application by surplus lines agents of assessment percentages for regular assessments and emergency assessments levied under this subparagraph on assessable insureds and shall assist the corporation in ensuring the accurate, timely collection and payment of assessments by surplus lines agents as required by the corporation, 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 corporation 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.

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

a. Standard personal lines policy forms ~~that including wind coverage, which are comprehensive multiperil policies providing what is generally considered to be full coverage of a residential property equivalent similar to the coverage provided in the private insurance market 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.~~

~~b.e. Basic personal lines policy forms that 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 e. except that they do not include wind coverage.~~

~~c.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.~~

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

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

2.a. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota share primary insurance agreements for hurricane coverage, as defined in s. 627.4025(2)(a), for eligible risks, and adopt property insurance forms for eligible risks which cover the peril of wind only. As used in this subsection, the term:

(I) "Quota share primary insurance" means an arrangement in which the primary hurricane coverage of an eligible risk is provided in specified per-

centages by the corporation and an authorized insurer. The corporation and authorized insurer are each solely responsible for a specified percentage of hurricane coverage of an eligible risk as set forth in a quota share primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The responsibility of the corporation or authorized insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the quota share primary insurance agreement, may not be altered by the inability of the other party to the agreement to pay its specified percentage of hurricane losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement, clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and conspicuously and clearly state that neither the authorized insurer nor the corporation may be held responsible beyond its specified percentage of coverage of hurricane losses.

(II) “Eligible risks” means personal lines residential and commercial lines residential risks that meet the underwriting criteria of the corporation and are located in areas that were eligible for coverage by the Florida Windstorm Underwriting Association on January 1, 2002.

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

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

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

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

f. For all eligible risks covered under quota share primary insurance agreements, the exposure and coverage levels for both the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under quota share primary insurance agreements, the corporation and the authorized insurer shall maintain complete and accurate records for the purpose of exposure and loss reimbursement audits as required by Florida Hurricane Catastrophe Fund rules. The corporation and the authorized insurer shall

each maintain duplicate copies of policy declaration pages and supporting claims documents.

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

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

~~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 corporation 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 corporation 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 corporation may, but is not required to, seek judicial validation of its bonds or other indebtedness under chapter 75. The corporation 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 corporation association, subject to approval by the department, that such action would enable it to efficiently meet the financial obligations of the corporation association and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation 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 corporation 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 corporation 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.a. ~~Must require that the corporation association operate subject to the supervision and approval of a board of governors consisting of 7-13 individuals who are residents of this state, from different geographical areas of this state, appointed by the Treasurer. The Treasurer shall designate one of the appointees as chair. All board members serve at the pleasure of the Treasurer, including 1 who is elected as chair. The board shall consist of:~~

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

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

e. ~~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 chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. Any board vacancy shall be filled for the unexpired term by the Treasurer. The Treasurer shall appoint a technical advisory group to provide information and advice to the board of governors in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the Treasurer and serve at the pleasure of the Treasurer. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the Office of the Treasurer.~~

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

(i) ~~Due to emergency conditions;~~

(ii) To ensure the effective and efficient implementation of the corporation's operations; or

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

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

a. With respect to personal lines residential risks, if the risk is offered full coverage from an authorized insurer at the insurer's 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 corporation 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 corporation association before a policy is issued to the risk by the corporation association or during the first 30 days of coverage by the corporation association, and the producing agent who submitted the application to the plan or to the corporation association is not currently appointed by the insurer, the insurer shall either:

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

(II) Offer to allow the producing agent of record of the 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. If the producing agent is unwilling or unable to accept appointment by the new insurer, the new insurer shall pay the agent in accordance with sub-sub-subparagraph (I). 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 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 corporation 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 corporation 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, if the risk is offered coverage under a policy ~~including wind coverage~~ from an authorized insurer at its approved rate, the risk is not eligible for any policy issued by the ~~corporation~~ 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 ~~corporation~~ association before a policy is issued to the risk by the ~~corporation~~ association, and the producing agent who submitted the application to the plan or the ~~corporation~~ association is not currently appointed by the insurer, the insurer shall either:

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

(II) Offer to allow the producing agent of record of the 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. If the producing agent is unwilling or unable to accept appointment by the new insurer, the new insurer shall pay the agent in accordance with sub-sub-paragraph (I). 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.

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

~~e. 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 for an account attributable to a particular calendar plan year are in excess of projected losses and expenses ~~for the account of the plan~~ attributable to that year, such excess shall be held in surplus in the account. Such surplus shall be available to defray deficits in that account as to future years and shall be used for that purpose prior to assessing assessable member insurers and assessable insureds as to any calendar 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 corporation association shall be construed as the private placement of insurance, and the provisions of chapter 120 shall not apply.

9. Must provide that the corporation 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., in the personal lines account, the commercial lines residential account, or the high-risk account or by the Florida Windstorm Underwriting Association under sub-subparagraph (2)(b)2.d.(I) or sub-sub-subparagraph (2)(b)2.d.(II), the corporation association shall levy upon corporation association policyholders in its next rate filing, or by a separate rate filing solely for this purpose, a market equalization surcharge arising from a regular assessment in such account 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. 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 corporation association must provide that, if the corporation 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 renewal coverage through the corporation 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 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. Corporation Association policies and applications must include a notice that the corporation association policy could, under this section or s. 627.3511, be replaced with a policy issued by an authorized admitted insurer that does not provide coverage identical to the coverage provided by the corporation association. The notice shall also specify that acceptance of corporation 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 cover-

age 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 ~~corporation 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.

14. Must provide that, with respect to the high-risk account, any assessable insurer with a surplus as to policyholders of \$25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the department, within the first 90 days of each calendar year, to qualify as a limited apportionment company. In no event shall a limited apportionment company be required to participate in the portion of any assessment, within the high-risk account, pursuant to sub-subparagraph (b)3.a. or sub-subparagraph (b)3.b. in the aggregate which exceeds \$50 million after payment of available high-risk account funds in any calendar year. However, a limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)3.d. 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 as provided in subparagraph (g)4. However, there shall be no limitation or deferment of an emergency assessment to be collected from policyholders under sub-subparagraph (b)3.d.

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

(d)1. It is the intent of the Legislature that the rates for coverage provided by the ~~corporation association~~ be actuarially sound and not competitive with approved rates charged in the admitted voluntary market, so that the ~~corporation association~~ functions as a residual market mechanism to provide insurance only when the insurance cannot be procured in the voluntary market. Rates shall include an appropriate catastrophe loading factor that reflects the actual catastrophic exposure of the ~~corporation 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.

2. For each county, the average rates of the ~~corporation association~~ for each line of business for personal lines residential policies excluding rates for wind-only policies shall be no lower than 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 corporation association shall be no lower than the average rates charged by the insurer that had the highest average rate in that county among the 5 insurers with the greatest total written premium for mobile home owner's policies in the state in the preceding year.

3. Rates for personal lines residential wind-only policies must be actuarially sound and not competitive with approved rates charged by authorized insurers. However, for personal lines residential wind-only policies issued or renewed between July 1, 2002, and June 30, 2003, the maximum premium increase must be no greater than 10 percent of the Florida Windstorm Underwriting Association premium for that policy in effect on June 30, 2002, as adjusted for coverage changes and seasonal occupancy surcharges. The personal lines residential wind-only rates for the corporation effective July 1, 2003, must be based on a rate filing by the corporation which establishes rates which are actuarially sound and not competitive with approved rates charged by authorized insurers. Corporation rate manuals shall include a rate surcharge for seasonal occupancy. To ensure that personal lines residential wind-only rates effective on or after July 1, 2003, are not competitive with approved rates charged by authorized insurers, the department, by March 1 of each year, shall provide the corporation, for each county in which there are geographical areas in which personal lines residential wind-only policies may be issued, the average rates charged by the insurer that had the highest average rate in that county for wind coverage in that insurer's rating territories which most closely approximate the geographical area in that county in which personal lines residential wind-only policies may be written by the corporation. The average rates provided must be from an insurer among the 20 insurers with the greatest total direct written premium in the state for personal lines residential property insurance for the preceding year. With respect to mobile homes, the five insurers with the greatest total written premium for that line of business in the preceding year shall be used. The corporation shall certify to the department that its average personal lines residential wind-only rates are no lower in each county than the average rates provided by the department. The department is authorized to adopt rules to establish reporting requirements to obtain the necessary wind-only rate information from insurers to implement this provision.

4.3. Rates for commercial lines 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.

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

6.5. ~~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 corporation associ-~~

ation shall make a rate filing at least once a year, but no more often than quarterly.

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

(e) If coverage in an account 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 corporation 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 corporation 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)1. The corporation shall file with the department quarterly statements of financial condition, an annual statement of financial condition, and audited financial statements in the manner prescribed by law. In addition, the corporation shall report to the department monthly on the types, premium, exposure, and distribution by county of its policies in force, and shall submit other reports as the department requires to carry out its oversight of the corporation.

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

(g)1. The corporation board shall certify to the department its needs for annual assessments as to a particular calendar year, and for 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 corporation board shall levy such annual, startup, or interim assessments. Such assessments shall be prorated as provided in paragraph (b). The corporation board

shall take all reasonable and prudent steps necessary to collect the amount of assessment due from each ~~assessable participating member~~ insurer, including, if prudent, filing suit to collect such assessment. If the corporation board is unable to collect an assessment from any assessable member insurer, the uncollected assessments shall be levied as an additional assessment against the ~~assessable participating member~~ insurers and any ~~assessable 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 ~~assessable member~~ insurer. Assessments shall be included as an appropriate factor in the making of rates. The failure of a surplus lines agent to collect and remit any regular or emergency assessment levied by the corporation is considered to be a violation of s. 626.936 and subjects the surplus lines agent to the penalties provided in that section.

2. The governing body of any unit of local government, any residents of which are insured by the corporation 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 corporation association, for the purpose of defraying deficits of the corporation 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 corporation 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 under this subparagraph 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 corporation joint underwriting association and insurers responsible for apportionment of association losses.~~ Any such unit of local government may enter into such contracts with the corporation 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 shall be payable from and secured by moneys received by the corporation association from emergency assessments under 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 corporation board shall adopt one or more programs a program subject to approval by the department for the reduction of both new and renewal writings in the corporation association. The corporation board may consider any prudent and not unfairly discriminatory approach to reducing corporation association writings, and may 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 corporation association and to keep risks out of the corporation association by maintaining or increasing voluntary writings in counties or areas in which corporation association risks are highly concentrated and a program to provide a formula under which an insurer voluntarily taking risks out of the corporation association by maintaining or increasing voluntary writings will be relieved wholly or partially from assessments under sub-subparagraphs (b)3.a. and b. When the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on such policy, and the insurer shall either:~~

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

(II) Offer to allow the producing agent of record of the 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. If the producing agent is unwilling or unable to accept appointment by the new insurer, the new insurer shall pay the agent in accordance with sub-sub-subparagraph (I).

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 ~~corporation 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 ~~corporation association~~, or for 2 additional years if the insurer guarantees 2 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 an assessable a member 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 an assessable a member insurer is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other assessable 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 assessable member insurer or its agents or employees, the corporation association or its agents or employees, members of the board of governors or their respective designees at a board meeting, corporation 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:

1. Any of the foregoing persons or entities for any willful tort;
2. The corporation association or its ~~servicing or~~ producing agents for breach of any contract or agreement pertaining to insurance coverage;
3. The corporation association with respect to issuance or payment of debt; or
4. Any assessable member insurer with respect to any action to enforce an assessable a member insurer's obligations to the corporation 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 corporation 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. The premiums, assessments, investment income, and other revenue of the corporation are funds received for providing property insurance coverage as required by this subsection, paying claims for Florida citizens insured by the corporation, securing and repaying debt obligations issued by the corporation, and conducting all other activities of the corporation, and shall not be considered taxes, fees, licenses, or charges for services imposed by the Legislature on individuals, businesses, or agencies outside state government. Bonds and other debt obligations issued by or on behalf of the corporation are not to be considered "State bonds" within the meaning of s. 215.58(10). The corporation is not subject to the procurement provisions of chapter 287, and policies and decisions of the corporation relating to incurring debt, levying of assessments and the sale, issuance, continuation, terms and claims under corporation policies, and all services relating thereto, are not subject to the provisions of chapter 120. The corporation is not required to obtain or to hold a certificate of authority issued by the department, nor is it required to participate as a member insurer of the Florida Insurance Guaranty Association. However, the corporation is required to pay, in the same manner as an authorized insurer, assessments pledged by the Florida Insurance Guaranty Association to secure bonds issued or other indebtedness incurred to pay covered claims arising from insurer insolvencies caused by, or proximately related to, hurricane losses. It is the intent of the Legislature that the tax exemptions provided in this paragraph will augment the financial resources of the corporation to better enable the corporation to fulfill its public purposes. Any bonds issued by the corporation, their transfer, and the income~~

therefrom, including any profit made on the sale thereof, shall at all times be free from taxation of every kind by the state and any political subdivision or local unit or other instrumentality thereof; however, this exemption does not apply to any tax imposed by chapter 200 on interest, income, or profits on debt obligations owned by corporations other than the corporation.

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

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

2. Effective July 1, 2002, policies of the Florida Windstorm Underwriting Association are transferred to the corporation and shall become policies of the corporation. All obligations, rights, assets, and liabilities of the Florida Windstorm Underwriting Association, including bonds, note, and debt obligations, and the financing documents pertaining to them are transferred to and assumed by the corporation on July 1, 2002. The corporation is not required to issue endorsement or certificates of assumption to insureds during the remaining term of in-force transferred policies.

3. The Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association shall take all actions as may be proper to further evidence the transfers and shall provide the documents and instruments of further assurance as may reasonably be requested by the corporation for that purpose. The corporation shall execute assumptions and instruments as the trustees or other parties to the financing documents of the Florida Windstorm Underwriting Association or the Residential Property and Casualty Joint Underwriting Association may reasonably request to further evidence the transfers and assumptions, which transfers and assumptions, however, are effective on the date provided under this paragraph whether or not, and regardless of the date on which, the assumptions or instruments are executed by the corporation. Subject to the relevant financing documents pertaining to their outstanding bonds, notes, indebtedness, or other financing obligations, the moneys, investments, receivables, choses in action, and other intangibles of the Florida Windstorm Underwriting Association shall be credited to the high-risk account of the corporation, and those of the personal lines residential coverage account and the commercial lines residential coverage account of the Resi-

dential Property and Casualty Joint Underwriting Association shall be credited to the personal lines account and the commercial lines account, respectively, of the corporation.

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

5. The transfer of all policies, obligations, rights, assets, and liabilities from the Florida Windstorm Underwriting Association to the corporation and the renaming of the Residential Property and Casualty Joint Underwriting Association as the corporation shall in no way affect the coverage with respect to covered policies as defined in s. 215.555(2)(c) provided to these entities by the Florida Hurricane Catastrophe Fund. The coverage provided by the Florida Hurricane Catastrophe Fund to the Florida Windstorm Underwriting Association based on its exposures as of June 30, 2002, and each June 30 thereafter shall be redesignated as coverage for the high-risk account of the corporation. Notwithstanding any other provision of law, the coverage provided by the Florida Hurricane Catastrophe Fund to the Residential Property and Casualty Joint Underwriting Association based on its exposures as of June 30, 2002, and each June 30 thereafter shall be transferred to the personal lines account and the commercial lines account of the corporation. Notwithstanding any other provision of law, the high-risk account shall be treated, for all Florida Hurricane Catastrophe Fund purposes, as if it were a separate participating insurer with its own exposures, reimbursement premium, and loss reimbursement. Likewise, the personal lines and commercial lines accounts shall be viewed together, for all Florida Hurricane Catastrophe Fund purposes, as if the two accounts were one and represent a single, separate participating insurer with its own exposures, reimbursement premium, and loss reimbursement. The coverage provided by the Florida Hurricane Catastrophe Fund to the corporation shall constitute and operate as a full transfer of coverage from the Florida Windstorm Underwriting Association and Residential Property and Casualty Joint Underwriting to the corporation. 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 corporation association created or purported to be created pursuant to any financing documents to secure any bonds or other indebtedness of the corporation association shall be and remain valid and enforceable, notwithstanding the commencement of and during the continuation of, and after, any rehabilitation, insolvency, liquida-

tion, bankruptcy, receivership, conservatorship, reorganization, or similar proceeding against the ~~corporation association~~ under the laws of this state.

2. No such proceeding shall relieve the ~~corporation 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 under subparagraph (c)10., or any other rights, revenues, or other assets of the ~~corporation 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, market equalization or other 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, 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 ~~corporation 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 ~~corporation 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 or financial product, as defined in the plan of operation of the ~~corporation 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 ~~corporation 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 ~~corporation 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, recording, filing, or other action.

(n)1. The following records of the ~~corporation 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 corporation ~~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 a corporation ~~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 corporation ~~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 corporation ~~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 ~~corporation~~ 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 ~~corporation~~ 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 ~~corporation~~ 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 the claim.

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

1. The board shall, on or before February 1 of each year, provide a report to the President of the Senate and the Speaker of the House of Representatives showing the reduction or increase in the 100-year probable maximum loss attributable to wind-only coverages and the quota share program under this subsection combined, as compared to the benchmark 100-year probable maximum loss of the Florida Windstorm Underwriting Association. For purposes of this paragraph, the benchmark 100-year probable maximum loss of the Florida Windstorm Underwriting Association shall be the calculation dated February 2001 and based on November 30, 2000, exposures. In order to ensure comparability of data, the board shall use the same methods for calculating its probable maximum loss as were used to calculate the benchmark probable maximum loss.

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

3. Beginning February 1, 2012, if the report under subparagraph 1. for any year indicates that the 100-year probable maximum loss attributable to

wind-only coverages and the quota share program combined does not reflect a reduction of at least 50 percent from the benchmark, the boundaries of the high-risk area eligible for wind-only coverages under this subsection shall be reduced by the elimination of any area that is not seaward of a line 1,000 feet inland from the Intracoastal Waterway.

(p) In enacting the provisions of this section, the Legislature recognizes that both the Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association have entered into financing arrangements that obligate each entity to service its debts and maintain the capacity to repay funds secured under these financing arrangements. It is the intent of the Legislature that nothing in this section be construed to compromise, diminish, or interfere with the rights of creditors under such financing arrangements. It is further the intent of the Legislature to preserve the obligations of the Florida Windstorm Underwriting Association and Residential Property and Casualty Joint Underwriting Association with regard to outstanding financing arrangements, with such obligations passing entirely and unchanged to the corporation and, specifically, to the applicable account of the corporation. So long as any bonds, notes, indebtedness, or other financing obligations of the Florida Windstorm Underwriting Association or the Residential Property and Casualty Joint Underwriting Association are outstanding, under the terms of the financing documents pertaining to them, the governing board of the corporation shall have and shall exercise the authority to levy, charge, collect, and receive all premiums, assessments, surcharges, charges, revenues and receipts that the associations had authority to levy, charge, collect, or receive under the provisions of subsection (2) and subsection (6), respectively, as they existed on January 1, 2002, to the extent necessary to provide moneys, together with other available moneys of the corporation in the applicable account without exercise of the authority provided by this paragraph, in at least the amounts, and by the times, as would be provided under those former provisions of subsection (2) or subsection (6), respectively, so that the value, amount, and collectability of any assets, revenues, or revenue source pledged or committed to, or any lien thereon securing such outstanding bonds, notes, indebtedness, or other financing obligations will not be diminished, impaired, or adversely affected by the amendments made by this act and to permit compliance with all provisions of financing documents pertaining to such bonds, notes, indebtedness, or other financing obligations, or the security or credit enhancement for them, and any reference in this subsection to bonds, notes, indebtedness, financing obligations, or similar obligations, of the corporation shall include like instruments or contracts of the Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association to the extent not inconsistent with the provisions of the financing documents pertaining to them.

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

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

Section 3. Subsection (4) of section 627.3511, Florida Statutes, is amended to read:

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

(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, for the first year, an amount that is the greater of equal to the insurer's usual and customary commission for the type of policy written of a fee equal to the 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 greater of the insurer's or the association's usual and customary commission for the type of policy written.

~~If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with paragraph (a). 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.~~

Section 4. Section 627.3517, Florida Statutes, is created to read:

627.3517 Consumer choice.—No provision of s. 627.351, s. 627.3511, or s. 627.3515 shall be construed to impair the right of any insurance risk

apportionment plan policyholder, upon receipt of any keepout or takeout offer, to retain his or her current agent so long as that agent is duly licensed and appointed by the insurance risk apportionment plan or otherwise authorized to place business with the insurance risk apportionment plan. This right shall not be cancelled, suspended, impeded, abridged, or otherwise compromised by any rule, plan of operation, or depopulation plan, whether through keepout, takeout, midterm assumption, or any other means, or any insurance risk apportionment plan or depopulation plan, including, but not limited to, those described in s. 627.351, s. 627.3511, or s. 627.3515. The department shall adopt any rules necessary to cause any insurance risk apportionment plan or market assistance plan under such sections to demonstrate that the operations of the plan do not interfere with, promote, or allow interference with the rights created under this section. If the policyholder's current agent is unable or unwilling to be appointed with the insurer making the takeout or keepout offer, the policyholder shall not be disqualified from participation in the appropriate insurance risk apportionment plan because of an offer of coverage in the voluntary market. An offer of full property insurance coverage by the insurer currently insuring either the ex-wind or wind-only coverage on the policy to which the offer applies shall not be considered a takeout or keepout offer. Any rule, plan of operation, or plan of depopulation, through keepout, takeout, midterm assumption, or any other means, of any property insurance risk apportionment plan under s. 627.351(2) or s. 627.351(6) is subject to ss. 627.351(2)(b) and (6)(c) and 627.3511(4).

Section 5. This act shall take effect upon becoming a law.

Approved by the Governor May 10, 2002.

Filed in Office Secretary of State May 10, 2002.