

By Senator Campbell

33-1392-99

1 A bill to be entitled
 2 An act relating to the Florida Windstorm
 3 Underwriting Association; amending s. 627.351,
 4 F.S.; requiring the State Board of
 5 Administration to adopt a plan for agreements
 6 to be made among property insurers for the
 7 equitable apportionment among them of windstorm
 8 insurance; deleting certain requirements
 9 relating to the plan of operation and
 10 apportionment of assessments; deleting
 11 provisions relating to arbitration of rate
 12 filings; prescribing standards for rates of the
 13 association; providing legislative intent that
 14 the association function as a residual market;
 15 deleting certain conditions relating to
 16 eligibility for coverage through the
 17 association; deleting qualifying provisions
 18 relating to the applicability of the mandate
 19 that all property insurers provide windstorm
 20 insurance; providing an effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Subsection (2) of section 627.351, Florida
 25 Statutes, 1998 Supplement, is amended to read:

26 627.351 Insurance risk apportionment plans.--

27 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

28 (a) The State Board of Administration shall adopt by
 29 rule a plan for agreements to ~~may~~ be made among property
 30 insurers with respect to the equitable apportionment among
 31 property insurers ~~them~~ of insurance that ~~which~~ may be afforded

1 applicants who are in good faith entitled to, but are unable
2 to procure, such insurance through ordinary methods, ~~and such~~
3 ~~insurers may agree among themselves on the use of reasonable~~
4 ~~rate modifications for such insurance. Such agreements and~~
5 ~~rate modifications shall be subject to the applicable~~
6 ~~provisions of this chapter.~~

7 (b) The department shall require all insurers holding
8 a certificate of authority to transact property insurance on a
9 direct basis in this state, other than joint underwriting
10 associations and other entities formed pursuant to this
11 section, to provide windstorm coverage to applicants from
12 areas determined to be eligible pursuant to paragraph (c) who
13 in good faith are entitled to, but are unable to procure, such
14 coverage through ordinary means; or it shall adopt a
15 reasonable plan or plans for the equitable apportionment or
16 sharing among such insurers of windstorm coverage, which may
17 include formation of an association for this purpose. As used
18 in this subsection, the term "property insurance" means
19 insurance on real or personal property, as defined in s.
20 624.604, including insurance for fire, industrial fire, allied
21 lines, farmowners multiperil, homeowners' multiperil,
22 commercial multiperil, and mobile homes, and including
23 liability coverages on all such insurance, but excluding
24 inland marine as defined in s. 624.607(3) and excluding
25 vehicle insurance as defined in s. 624.605(1)(a) other than
26 insurance on mobile homes used as permanent dwellings. The
27 department shall adopt rules that provide a formula for the
28 recovery and repayment of any deferred assessments.

29 1. For the purpose of this section, properties
30 eligible for such windstorm coverage are defined as dwellings,
31 buildings, and other structures, including mobile homes which

1 are used as dwellings and which are tied down in compliance
2 with mobile home tie-down requirements prescribed by the
3 Department of Highway Safety and Motor Vehicles pursuant to s.
4 320.8325, and the contents of all such properties. An
5 applicant or policyholder is eligible for coverage only if an
6 offer of coverage cannot be obtained by or for the applicant
7 or policyholder from an admitted insurer at approved rates.

8 2.a.(I) All insurers required to be members of such
9 association shall participate in its writings, expenses, and
10 losses. Surplus of the association shall be retained for the
11 payment of claims and shall not be distributed to the member
12 insurers. Such participation by member insurers shall be in
13 the proportion that the net direct premiums of each member
14 insurer written for property insurance in this state during
15 the preceding calendar year bear to the aggregate net direct
16 premiums for property insurance of all member insurers, as
17 reduced by any credits for voluntary writings, in this state
18 during the preceding calendar year. For the purposes of this
19 subsection, the term "net direct premiums" means direct
20 written premiums for property insurance, reduced by premium
21 for liability coverage and for the following if included in
22 allied lines: rain and hail on growing crops; livestock;
23 association direct premiums booked; National Flood Insurance
24 Program direct premiums; and similar deductions specifically
25 authorized by the plan of operation and approved by the
26 department. A member's participation shall begin on the first
27 day of the calendar year following the year in which it is
28 issued a certificate of authority to transact property
29 insurance in the state and shall terminate 1 year after the
30 end of the calendar year during which it no longer holds a
31 certificate of authority to transact property insurance in the

1 state. The commissioner, after review of annual statements,
2 other reports, and any other statistics that the commissioner
3 deems necessary, shall certify to the association the
4 aggregate direct premiums written for property insurance in
5 this state by all member insurers.

6 ~~(II) The plan of operation shall provide for a board~~
7 ~~of directors consisting of the Insurance Consumer Advocate~~
8 ~~appointed under s. 627.0613, 1 consumer representative~~
9 ~~appointed by the Insurance Commissioner, 1 consumer~~
10 ~~representative appointed by the Governor, and 12 additional~~
11 ~~members appointed as specified in the plan of operation. One~~
12 ~~of the 12 additional members shall be elected by the domestic~~
13 ~~companies of this state on the basis of cumulative weighted~~
14 ~~voting based on the net direct premiums of domestic companies~~
15 ~~in this state. Nothing in the 1997 amendments to this~~
16 ~~paragraph terminates the existing board or the terms of any~~
17 ~~members of the board.~~

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

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

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

31

1 (II)~~(VI)~~ The plan of operation may also provide for
2 the award of credits, for a period not to exceed 3 years, from
3 a regular assessment pursuant to sub-sub-subparagraph d.(I) or
4 sub-sub-subparagraph d.(II) as an incentive for taking
5 policies out of the Residential Property and Casualty Joint
6 Underwriting Association. In order to qualify for the
7 exemption under this sub-sub-subparagraph, the take-out plan
8 must provide that at least 40 percent of the policies removed
9 from the Residential Property and Casualty Joint Underwriting
10 Association cover risks located in Dade, Broward, and Palm
11 Beach Counties or at least 30 percent of the policies so
12 removed cover risks located in Dade, Broward, and Palm Beach
13 Counties and an additional 50 percent of the policies so
14 removed cover risks located in other coastal counties, and
15 must also provide that no more than 15 percent of the policies
16 so removed may exclude windstorm coverage. With the approval
17 of the department, the association may waive these geographic
18 criteria for a take-out plan that removes at least the lesser
19 of 100,000 Residential Property and Casualty Joint
20 Underwriting Association policies or 15 percent of the total
21 number of Residential Property and Casualty Joint Underwriting
22 Association policies, provided the governing board of the
23 Residential Property and Casualty Joint Underwriting
24 Association certifies that the take-out plan will materially
25 reduce the Residential Property and Casualty Joint
26 Underwriting Association's 100-year probable maximum loss from
27 hurricanes. With the approval of the department, the board
28 may extend such credits for an additional year if the insurer
29 guarantees an additional year of renewability for all policies
30 removed from the Residential Property and Casualty Joint
31 Underwriting Association, or for 2 additional years if the

1 insurer guarantees 2 additional years of renewability for all
2 policies removed from the Residential Property and Casualty
3 Joint Underwriting Association.

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

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

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

24 (II) When the deficit incurred in a particular
25 calendar year exceeds 10 percent of the aggregate statewide
26 direct written premium for property insurance for the prior
27 calendar year for all member insurers, the association shall
28 levy an assessment on member insurers in an amount equal to
29 the greater of 10 percent of the deficit or 10 percent of the
30 aggregate statewide direct written premium for property
31 insurance for the prior calendar year for member insurers. Any

1 remaining deficit shall be recovered through emergency
2 assessments under sub-sub-subparagraph (III).

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

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

26 (IV) Each member insurer's share of the total regular
27 assessments under sub-sub-subparagraph (I) or
28 sub-sub-subparagraph (II) shall be in the proportion that the
29 insurer's net direct premium for property insurance in this
30 state, for the year preceding the assessment bears to the
31 aggregate statewide net direct premium for property insurance

1 of all member insurers, as reduced by any credits for
2 voluntary writings for that year.

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

19 e. The governing body of any unit of local government,
20 any residents of which are insured under the plan, may issue
21 bonds as defined in s. 125.013 or s. 166.101 to fund an
22 assistance program, in conjunction with the association, for
23 the purpose of defraying deficits of the association. In order
24 to avoid needless and indiscriminate proliferation,
25 duplication, and fragmentation of such assistance programs,
26 any unit of local government, any residents of which are
27 insured by the association, may provide for the payment of
28 losses, regardless of whether or not the losses occurred
29 within or outside of the territorial jurisdiction of the local
30 government. Revenue bonds may not be issued until validated
31 pursuant to chapter 75, unless a state of emergency is

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

1 granted by this sub-subparagraph is additional to any bonding
2 authority granted by subparagraph 6.

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

26 4. The plan shall provide for the deferment, in whole
27 or in part, of a regular assessment of a member insurer under
28 sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II),
29 but not for an emergency assessment collected from
30 policyholders under sub-sub-subparagraph 2.d.(III), if, in the
31 opinion of the commissioner, payment of such regular

1 assessment would endanger or impair the solvency of the member
2 insurer. In the event a regular assessment against a member
3 insurer is deferred in whole or in part, the amount by which
4 such assessment is deferred may be assessed against the other
5 member insurers in a manner consistent with the basis for
6 assessments set forth in sub-sub-subparagraph 2.d.(I) or
7 sub-sub-subparagraph 2.d.(II).

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

12 b. Rates of the association must be adequate to
13 provide for both expected annual average costs and a component
14 for the cost of financing losses which are not covered by
15 accumulated premium and must be based on a hurricane
16 simulation model or models found acceptable by the State Board
17 of Administration for use in establishing rates of the Florida
18 Hurricane Catastrophe Fund; however, the effect of this
19 standard must be limited so that it does not result in
20 increases in windstorm premiums exceeding 40 percent in any 1
21 calendar year for any single insured.~~The association may~~
22 ~~require arbitration of a rate filing under s. 627.062(6). It~~
23 ~~is the intent of the Legislature that the rates for coverage~~
24 ~~provided by the association be actuarially sound and not~~
25 ~~competitive with approved rates charged in the admitted~~
26 ~~voluntary market such that the association functions as a~~
27 ~~residual market mechanism to provide insurance only when the~~
28 ~~insurance cannot be procured in the voluntary market. The~~
29 ~~plan of operation shall provide a mechanism to assure that,~~
30 ~~beginning no later than January 1, 1999, the rates charged by~~
31 ~~the association for each line of business are reflective of~~

1 ~~approved rates in the voluntary market for hurricane coverage~~
2 ~~for each line of business in the various areas eligible for~~
3 ~~association coverage.~~

4 c. The association shall provide for windstorm
5 coverage on residential properties in limits up to \$10 million
6 for commercial lines residential risks and up to \$1 million
7 for personal lines residential risks. If coverage with the
8 association is sought for a residential risk valued in excess
9 of these limits, coverage shall be available to the risk up to
10 the replacement cost or actual cash value of the property, at
11 the option of the insured, if coverage for the risk cannot be
12 located in the authorized market. The association must accept
13 a commercial lines residential risk with limits above \$10
14 million or a personal lines residential risk with limits above
15 \$1 million if coverage is not available in the authorized
16 market. The association may write coverage above the limits
17 specified in this subparagraph with or without facultative or
18 other reinsurance coverage, as the association determines
19 appropriate.

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

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

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

1
2 The acceptance or rejection of a risk by the association
3 pursuant to such criteria and procedures must be construed as
4 the private placement of insurance, and the provisions of
5 chapter 120 do not apply.

6 e. It is the intent of the Legislature that the
7 association function as a residual market to ensure
8 availability of coverage to those unable to obtain adequate
9 coverage at competitive rates, but not to supplant or compete
10 with the voluntary market when there would otherwise be
11 competition and availability sufficient to assure reasonable
12 levels of coverage at reasonable rates. The plan must provide
13 that no applicant is available for coverage and no insured
14 remains eligible for a renewal if the association is notified
15 by an admitted insurer that such insurer has offered coverage
16 in the form of a package policy that includes windstorm
17 coverage and coverage for other perils which is substantially
18 equivalent to the coverage that would be replaced, and that
19 the rates to be charged are not higher than those which would
20 otherwise apply upon issuance of renewal of the policy.~~The~~
21 ~~policies issued by the association must provide that if the~~
22 ~~association obtains an offer from an authorized insurer to~~
23 ~~cover the risk at its approved rates under either a standard~~
24 ~~policy including wind coverage or, if consistent with the~~
25 ~~insurer's underwriting rules as filed with the department, a~~
26 ~~basic policy including wind coverage, the risk is no longer~~
27 ~~eligible for coverage through the association. Upon~~
28 ~~termination of eligibility, the association shall provide~~
29 ~~written notice to the policyholder and agent of record stating~~
30 ~~that the association policy must be canceled as of 60 days~~
31 ~~after the date of the notice because of the offer of coverage~~

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

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

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

22 b. Any entity created under this subsection, or any
23 entity formed for the purposes of this subsection, may sue and
24 be sued, may borrow money; issue bonds, notes, or debt
25 instruments; pledge or sell assessments, market equalization
26 surcharges and other surcharges, rights, premiums, contractual
27 rights, projected recoveries from the Florida Hurricane
28 Catastrophe Fund, other reinsurance recoverables, and other
29 assets as security for such bonds, notes, or debt instruments;
30 enter into any contracts or agreements necessary or proper to
31 accomplish such borrowings; and take other actions necessary

1 to carry out the purposes of this subsection. The association
2 may issue bonds or incur other indebtedness, or have bonds
3 issued on its behalf by a unit of local government pursuant to
4 subparagraph (g)2., in the absence of a hurricane or other
5 weather-related event, upon a determination by the association
6 subject to approval by the department that such action would
7 enable it to efficiently meet the financial obligations of the
8 association and that such financings are reasonably necessary
9 to effectuate the requirements of this subsection. Any such
10 entity may accumulate reserves and retain surpluses as of the
11 end of any association year to provide for the payment of
12 losses incurred by the association during that year or any
13 future year. The association shall incorporate and continue
14 the plan of operation and articles of agreement in effect on
15 the effective date of chapter 76-96, Laws of Florida, to the
16 extent that it is not inconsistent with chapter 76-96, and as
17 subsequently modified consistent with chapter 76-96. The board
18 of directors and officers currently serving shall continue to
19 serve until their successors are duly qualified as provided
20 under the plan. The assets and obligations of the plan in
21 effect immediately prior to the effective date of chapter
22 76-96 shall be construed to be the assets and obligations of
23 the successor plan created herein.

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

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

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

23 9. Notwithstanding any other provision of law:

24 a. The pledge or sale of, the lien upon, and the
25 security interest in any rights, revenues, or other assets of
26 the association created or purported to be created pursuant to
27 any financing documents to secure any bonds or other
28 indebtedness of the association shall be and remain valid and
29 enforceable, notwithstanding the commencement of and during
30 the continuation of, and after, any rehabilitation,
31 insolvency, liquidation, bankruptcy, receivership,

1 conservatorship, reorganization, or similar proceeding against
2 the association under the laws of this state or any other
3 applicable laws.

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

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

21 d. As used in this subsection, the term "financing
22 documents" means any agreement, instrument, or other document
23 now existing or hereafter created evidencing any bonds or
24 other indebtedness of the association or pursuant to which any
25 such bonds or other indebtedness has been or may be issued and
26 pursuant to which any rights, revenues, or other assets of the
27 association are pledged or sold to secure the repayment of
28 such bonds or indebtedness, together with the payment of
29 interest on such bonds or such indebtedness, or the payment of
30 any other obligation of the association related to such bonds
31 or indebtedness.

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

19 f. There shall be no liability on the part of, and no
20 cause of action of any nature shall arise against, any member
21 insurer or its agents or employees, agents or employees of the
22 association, members of the board of directors of the
23 association, or the department or its representatives, for any
24 action taken by them in the performance of their duties or
25 responsibilities under this subsection. Such immunity does not
26 apply to actions for breach of any contract or agreement
27 pertaining to insurance, or any willful tort.

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

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

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

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

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

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

21
22 ~~Any time after the department has determined that the criteria~~
23 ~~referred to in this subparagraph do not exist with respect to~~
24 ~~any county or area of the state, it may, after a subsequent~~
25 ~~public hearing, declare that such county or area is no longer~~
26 ~~eligible for windstorm coverage through the plan.~~

27 ~~(d) For the purpose of evaluating whether the criteria~~
28 ~~of paragraph (c) are met, such criteria shall be applied as~~
29 ~~the situation would exist if policies had not been written by~~
30 ~~the Florida Residential Property and Casualty Joint~~

31

1 ~~Underwriting Association and property insurance for such~~
2 ~~policyholders was not available.~~
3 ~~(e) Notwithstanding the provisions of subparagraph~~
4 ~~(c)2. or paragraph (d), eligibility shall not be extended to~~
5 ~~any area that was not eligible on March 1, 1997, except that~~
6 ~~the department may act with respect to any petition on which a~~
7 ~~hearing was held prior to May 9, 1997.~~

8 Section 2. This act shall take effect upon becoming a
9 law.

10
11 *****

12 SENATE SUMMARY

13 Amends various provisions relating to the Florida
14 Windstorm Underwriting Association. Requires the State
15 Board of Administration to adopt a plan for agreements to
16 be made among property insurers for the equitable
17 apportionment among them of windstorm insurance. Deletes
18 certain requirements relating to the plan of operation
19 and apportionment of assessments. Deletes provisions
20 relating to arbitration of rate filings. Prescribes
21 standards for rates of the association. Provides
22 legislative intent that the association function as a
23 residual market. Deletes certain conditions relating to
24 eligibility for coverage through the association. Deletes
25 qualifying provisions relating to the applicability of
26 the mandate that all property insurers provide windstorm
27 insurance.
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29
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31