

By Senator Campbell

33-1398-99

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A bill to be entitled
An act relating to the Florida Windstorm
Underwriting Association; amending s. 627.351,
F.S.; deleting a requirement that certain
insureds lose their eligibility for the Florida
Windstorm Underwriting Association under
certain circumstances; providing an effective
date.

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

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

627.351 Insurance risk apportionment plans.--

(2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

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

(b) The department shall require all insurers holding
a certificate of authority 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

1 reasonable plan or plans for the equitable apportionment or
2 sharing among such insurers of windstorm coverage, which may
3 include formation of an association for this purpose. As used
4 in this subsection, the term "property insurance" means
5 insurance on real or personal property, as defined in s.
6 624.604, including insurance for fire, industrial fire, allied
7 lines, farmowners multiperil, homeowners' multiperil,
8 commercial multiperil, and mobile homes, and including
9 liability coverages on all such insurance, but excluding
10 inland marine as defined in s. 624.607(3) and excluding
11 vehicle insurance as defined in s. 624.605(1)(a) other than
12 insurance on mobile homes used as permanent dwellings. The
13 department shall adopt rules that provide a formula for the
14 recovery and repayment of any deferred assessments.

15 1. For the purpose of this section, properties
16 eligible for such windstorm coverage are defined as dwellings,
17 buildings, and other structures, including mobile homes which
18 are used as dwellings and which are tied down in compliance
19 with mobile home tie-down requirements prescribed by the
20 Department of Highway Safety and Motor Vehicles pursuant to s.
21 320.8325, and the contents of all such properties. An
22 applicant or policyholder is eligible for coverage only if an
23 offer of coverage cannot be obtained by or for the applicant
24 or policyholder from an admitted insurer at approved rates.

25 2.a.(I) All insurers required to be members of such
26 association shall participate in its writings, expenses, and
27 losses. Surplus of the association shall be retained for the
28 payment of claims and shall not be distributed to the member
29 insurers. Such participation by member insurers shall be in
30 the proportion that the net direct premiums of each member
31 insurer written for property insurance in this state during

1 the preceding calendar year bear to the aggregate net direct
2 premiums for property insurance of all member insurers, as
3 reduced by any credits for voluntary writings, in this state
4 during the preceding calendar year. For the purposes of this
5 subsection, the term "net direct premiums" means direct
6 written premiums for property insurance, reduced by premium
7 for liability coverage and for the following if included in
8 allied lines: rain and hail on growing crops; livestock;
9 association direct premiums booked; National Flood Insurance
10 Program direct premiums; and similar deductions specifically
11 authorized by the plan of operation and approved by the
12 department. A member's participation shall begin on the first
13 day of the calendar year following the year in which it is
14 issued a certificate of authority to transact property
15 insurance in the state and shall terminate 1 year after the
16 end of the calendar year during which it no longer holds a
17 certificate of authority to transact property insurance in the
18 state. The commissioner, after review of annual statements,
19 other reports, and any other statistics that the commissioner
20 deems necessary, shall certify to the association the
21 aggregate direct premiums written for property insurance in
22 this state by all member insurers.

23 (II) The plan of operation shall provide for a board
24 of directors consisting of the Insurance Consumer Advocate
25 appointed under s. 627.0613, 1 consumer representative
26 appointed by the Insurance Commissioner, 1 consumer
27 representative appointed by the Governor, and 12 additional
28 members appointed as specified in the plan of operation. One
29 of the 12 additional members shall be elected by the domestic
30 companies of this state on the basis of cumulative weighted
31 voting based on the net direct premiums of domestic companies

1 in this state. Nothing in the 1997 amendments to this
2 paragraph terminates the existing board or the terms of any
3 members of the board.

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

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

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

17 (VI) The plan of operation may also provide for the
18 award of credits, for a period not to exceed 3 years, from a
19 regular assessment pursuant to sub-sub-subparagraph d.(I) or
20 sub-sub-subparagraph d.(II) as an incentive for taking
21 policies out of the Residential Property and Casualty Joint
22 Underwriting Association. In order to qualify for the
23 exemption under this sub-sub-subparagraph, the take-out plan
24 must provide that at least 40 percent of the policies removed
25 from the Residential Property and Casualty Joint Underwriting
26 Association cover risks located in Dade, Broward, and Palm
27 Beach Counties or at least 30 percent of the policies so
28 removed cover risks located in Dade, Broward, and Palm Beach
29 Counties and an additional 50 percent of the policies so
30 removed cover risks located in other coastal counties, and
31 must also provide that no more than 15 percent of the policies

1 so removed may exclude windstorm coverage. With the approval
2 of the department, the association may waive these geographic
3 criteria for a take-out plan that removes at least the lesser
4 of 100,000 Residential Property and Casualty Joint
5 Underwriting Association policies or 15 percent of the total
6 number of Residential Property and Casualty Joint Underwriting
7 Association policies, provided the governing board of the
8 Residential Property and Casualty Joint Underwriting
9 Association certifies that the take-out plan will materially
10 reduce the Residential Property and Casualty Joint
11 Underwriting Association's 100-year probable maximum loss from
12 hurricanes. With the approval of the department, the board
13 may extend such credits for an additional year if the insurer
14 guarantees an additional year of renewability for all policies
15 removed from the Residential Property and Casualty Joint
16 Underwriting Association, or for 2 additional years if the
17 insurer guarantees 2 additional years of renewability for all
18 policies removed from the Residential Property and Casualty
19 Joint Underwriting Association.

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

23 c. The Legislature finds that the potential for
24 unlimited deficit assessments under this subparagraph may
25 induce insurers to attempt to reduce their writings in the
26 voluntary market, and that such actions would worsen the
27 availability problems that the association was created to
28 remedy. It is the intent of the Legislature that insurers
29 remain fully responsible for paying regular assessments and
30 collecting emergency assessments for any deficits of the
31 association; however, it is also the intent of the Legislature

1 to provide a means by which assessment liabilities may be
2 amortized over a period of years.

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

9 (II) When the deficit incurred in a particular
10 calendar year exceeds 10 percent of the aggregate statewide
11 direct written premium for property insurance for the prior
12 calendar year for all member insurers, the association shall
13 levy an assessment on member insurers in an amount equal to
14 the greater of 10 percent of the deficit or 10 percent of the
15 aggregate statewide direct written premium for property
16 insurance for the prior calendar year for member insurers. Any
17 remaining deficit shall be recovered through emergency
18 assessments under sub-sub-subparagraph (III).

19 (III) Upon a determination by the board of directors
20 that a deficit exceeds the amount that will be recovered
21 through regular assessments on member insurers, pursuant to
22 sub-sub-subparagraph (I) or sub-sub-subparagraph (II), the
23 board shall levy, after verification by the department,
24 emergency assessments to be collected by member insurers and
25 by underwriting associations created pursuant to this section
26 which write property insurance, upon issuance or renewal of
27 property insurance policies other than National Flood
28 Insurance policies in the year or years following levy of the
29 regular assessments. The amount of the emergency assessment
30 collected in a particular year shall be a uniform percentage
31 of that year's direct written premium for property insurance

1 for all member insurers and underwriting associations,
2 excluding National Flood Insurance policy premiums, as
3 annually determined by the board and verified by the
4 department. The department shall verify the arithmetic
5 calculations involved in the board's determination within 30
6 days after receipt of the information on which the
7 determination was based. Notwithstanding any other provision
8 of law, each member insurer and each underwriting association
9 created pursuant to this section shall collect emergency
10 assessments from its policyholders without such obligation
11 being affected by any credit, limitation, exemption, or
12 deferment. The emergency assessments so collected shall be
13 transferred directly to the association on a periodic basis as
14 determined by the association. The aggregate amount of
15 emergency assessments levied under this sub-sub-subparagraph
16 in any calendar year may not exceed the greater of 10 percent
17 of the amount needed to cover the original deficit, plus
18 interest, fees, commissions, required reserves, and other
19 costs associated with financing of the original deficit, or 10
20 percent of the aggregate statewide direct written premium for
21 property insurance written by member insurers and underwriting
22 associations for the prior year, plus interest, fees,
23 commissions, required reserves, and other costs associated
24 with financing the original deficit. The board may pledge the
25 proceeds of the emergency assessments under this
26 sub-sub-subparagraph as the source of revenue for bonds, to
27 retire any other debt incurred as a result of the deficit or
28 events giving rise to the deficit, or in any other way that
29 the board determines will efficiently recover the deficit. The
30 emergency assessments under this sub-sub-subparagraph shall
31 continue as long as any bonds issued or other indebtedness

1 incurred with respect to a deficit for which the assessment
2 was imposed remain outstanding, unless adequate provision has
3 been made for the payment of such bonds or other indebtedness
4 pursuant to the document governing such bonds or other
5 indebtedness. Emergency assessments collected under this
6 sub-sub-subparagraph are not part of an insurer's rates, are
7 not premium, and are not subject to premium tax, fees, or
8 commissions; however, failure to pay the emergency assessment
9 shall be treated as failure to pay premium.

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

18 (V) If regular deficit assessments are made under
19 sub-sub-subparagraph (I) or sub-sub-subparagraph (II), or by
20 the Residential Property and Casualty Joint Underwriting
21 Association under sub-subparagraph (6)(b)3.a. or
22 sub-subparagraph (6)(b)3.b., the association shall levy upon
23 the association's policyholders, as part of its next rate
24 filing, or by a separate rate filing solely for this purpose,
25 a market equalization surcharge in a percentage equal to the
26 total amount of such regular assessments divided by the
27 aggregate statewide direct written premium for property
28 insurance for member insurers for the prior calendar year.
29 Market equalization surcharges under this sub-sub-subparagraph
30 are not considered premium and are not subject to commissions,
31 fees, or premium taxes; however, failure to pay a market

1 equalization surcharge shall be treated as failure to pay
2 premium.

3 e. The governing body of any unit of local government,
4 any residents of which are insured under the plan, may issue
5 bonds as defined in s. 125.013 or s. 166.101 to fund an
6 assistance program, in conjunction with the association, for
7 the purpose of defraying deficits of the association. In order
8 to avoid needless and indiscriminate proliferation,
9 duplication, and fragmentation of such assistance programs,
10 any unit of local government, any residents of which are
11 insured by the association, may provide for the payment of
12 losses, regardless of whether or not the losses occurred
13 within or outside of the territorial jurisdiction of the local
14 government. Revenue bonds may not be issued until validated
15 pursuant to chapter 75, unless a state of emergency is
16 declared by executive order or proclamation of the Governor
17 pursuant to s. 252.36 making such findings as are necessary to
18 determine that it is in the best interests of, and necessary
19 for, the protection of the public health, safety, and general
20 welfare of residents of this state and the protection and
21 preservation of the economic stability of insurers operating
22 in this state, and declaring it an essential public purpose to
23 permit certain municipalities or counties to issue bonds as
24 will provide relief to claimants and policyholders of the
25 association and insurers responsible for apportionment of plan
26 losses. Any such unit of local government may enter into such
27 contracts with the association and with any other entity
28 created pursuant to this subsection as are necessary to carry
29 out this paragraph. Any bonds issued under this
30 sub-subparagraph shall be payable from and secured by moneys
31 received by the association from assessments under this

1 subparagraph, and assigned and pledged to or on behalf of the
2 unit of local government for the benefit of the holders of
3 such bonds. The funds, credit, property, and taxing power of
4 the state or of the unit of local government shall not be
5 pledged for the payment of such bonds. If any of the bonds
6 remain unsold 60 days after issuance, the department shall
7 require all insurers subject to assessment to purchase the
8 bonds, which shall be treated as admitted assets; each insurer
9 shall be required to purchase that percentage of the unsold
10 portion of the bond issue that equals the insurer's relative
11 share of assessment liability under this subsection. An
12 insurer shall not be required to purchase the bonds to the
13 extent that the department determines that the purchase would
14 endanger or impair the solvency of the insurer. The authority
15 granted by this sub-subparagraph is additional to any bonding
16 authority granted by subparagraph 6.

17 3. The plan shall also provide that any member with a
18 surplus as to policyholders of \$20 million or less writing 25
19 percent or more of its total countrywide property insurance
20 premiums in this state may petition the department, within the
21 first 90 days of each calendar year, to qualify as a limited
22 apportionment company. The apportionment of such a member
23 company in any calendar year for which it is qualified shall
24 not exceed its gross participation, which shall not be
25 affected by the formula for voluntary writings. In no event
26 shall a limited apportionment company be required to
27 participate in any apportionment of losses pursuant to
28 sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II)
29 in the aggregate which exceeds \$50 million after payment of
30 available plan funds in any calendar year. However, a limited
31 apportionment company shall collect from its policyholders any

1 emergency assessment imposed under sub-sub-subparagraph
2 2.d.(III). The plan shall provide that, if the department
3 determines that any regular assessment will result in an
4 impairment of the surplus of a limited apportionment company,
5 the department may direct that all or part of such assessment
6 be deferred. However, there shall be no limitation or
7 deferment of an emergency assessment to be collected from
8 policyholders under sub-sub-subparagraph 2.d.(III).

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

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

26 b. The association may require arbitration of a rate
27 filing under s. 627.062(6). It is the intent of the
28 Legislature that the rates for coverage provided by the
29 association be actuarially sound and not competitive with
30 approved rates charged in the admitted voluntary market such
31 that the association functions as a residual market mechanism

1 to provide insurance only when the insurance cannot be
2 procured in the voluntary market. The plan of operation shall
3 provide a mechanism to assure that, beginning no later than
4 January 1, 1999, the rates charged by the association for each
5 line of business are reflective of approved rates in the
6 voluntary market for hurricane coverage for each line of
7 business in the various areas eligible for association
8 coverage.

9 c. The association shall provide for windstorm
10 coverage on residential properties in limits up to \$10 million
11 for commercial lines residential risks and up to \$1 million
12 for personal lines residential risks. If coverage with the
13 association is sought for a residential risk valued in excess
14 of these limits, coverage shall be available to the risk up to
15 the replacement cost or actual cash value of the property, at
16 the option of the insured, if coverage for the risk cannot be
17 located in the authorized market. The association must accept
18 a commercial lines residential risk with limits above \$10
19 million or a personal lines residential risk with limits above
20 \$1 million if coverage is not available in the authorized
21 market. The association may write coverage above the limits
22 specified in this subparagraph with or without facultative or
23 other reinsurance coverage, as the association determines
24 appropriate.

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

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

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

7
8 The acceptance or rejection of a risk by the association
9 pursuant to such criteria and procedures must be construed as
10 the private placement of insurance, and the provisions of
11 chapter 120 do not apply.

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

26 ~~f. Association policies and applications must include~~
27 ~~a notice that the association policy could, under this~~
28 ~~section, be replaced with a policy issued by an authorized~~
29 ~~insurer that does not provide coverage identical to the~~
30 ~~coverage provided by the association. The notice shall also~~
31 ~~specify that acceptance of association coverage creates a~~

1 ~~conclusive presumption that the applicant or policyholder is~~
2 ~~aware of this potential.~~

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

13 b. Any entity created under this subsection, or any
14 entity formed for the purposes of this subsection, may sue and
15 be sued, may borrow money; issue bonds, notes, or debt
16 instruments; pledge or sell assessments, market equalization
17 surcharges and other surcharges, rights, premiums, contractual
18 rights, projected recoveries from the Florida Hurricane
19 Catastrophe Fund, other reinsurance recoverables, and other
20 assets as security for such bonds, notes, or debt instruments;
21 enter into any contracts or agreements necessary or proper to
22 accomplish such borrowings; and take other actions necessary
23 to carry out the purposes of this subsection. The association
24 may issue bonds or incur other indebtedness, or have bonds
25 issued on its behalf by a unit of local government pursuant to
26 subparagraph (g)2., in the absence of a hurricane or other
27 weather-related event, upon a determination by the association
28 subject to approval by the department that such action would
29 enable it to efficiently meet the financial obligations of the
30 association and that such financings are reasonably necessary
31 to effectuate the requirements of this subsection. Any such

1 entity may accumulate reserves and retain surpluses as of the
2 end of any association year to provide for the payment of
3 losses incurred by the association during that year or any
4 future year. The association shall incorporate and continue
5 the plan of operation and articles of agreement in effect on
6 the effective date of chapter 76-96, Laws of Florida, to the
7 extent that it is not inconsistent with chapter 76-96, and as
8 subsequently modified consistent with chapter 76-96. The board
9 of directors and officers currently serving shall continue to
10 serve until their successors are duly qualified as provided
11 under the plan. The assets and obligations of the plan in
12 effect immediately prior to the effective date of chapter
13 76-96 shall be construed to be the assets and obligations of
14 the successor plan created herein.

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

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

29 8. Subject to approval by the department, the
30 association may establish different eligibility requirements
31 and operational procedures for any line or type of coverage

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

14 9. Notwithstanding any other provision of law:

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

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

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

13 d. As used in this subsection, the term "financing
14 documents" means any agreement, instrument, or other document
15 now existing or hereafter created evidencing any bonds or
16 other indebtedness of the association or pursuant to which any
17 such bonds or other indebtedness has been or may be issued and
18 pursuant to which any rights, revenues, or other assets of the
19 association are pledged or sold to secure the repayment of
20 such bonds or indebtedness, together with the payment of
21 interest on such bonds or such indebtedness, or the payment of
22 any other obligation of the association related to such bonds
23 or indebtedness.

24 e. Any such pledge or sale of assessments, revenues,
25 contract rights or other rights or assets of the association
26 shall constitute a lien and security interest, or sale, as the
27 case may be, that is immediately effective and attaches to
28 such assessments, revenues, contract, or other rights or
29 assets, whether or not imposed or collected at the time the
30 pledge or sale is made. Any such pledge or sale is effective,
31 valid, binding, and enforceable against the association or

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

11 f. There shall be no liability on the part of, and no
12 cause of action of any nature shall arise against, any member
13 insurer or its agents or employees, agents or employees of the
14 association, members of the board of directors of the
15 association, or the department or its representatives, for any
16 action taken by them in the performance of their duties or
17 responsibilities under this subsection. Such immunity does not
18 apply to actions for breach of any contract or agreement
19 pertaining to insurance, or any willful tort.

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

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

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

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

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

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

14
15 Any time after the department has determined that the criteria
16 referred to in this subparagraph do not exist with respect to
17 any county or area of the state, it may, after a subsequent
18 public hearing, declare that such county or area is no longer
19 eligible for windstorm coverage through the plan.

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

26 (e) Notwithstanding the provisions of subparagraph
27 (c)2. or paragraph (d), eligibility shall not be extended to
28 any area that was not eligible on March 1, 1997, except that
29 the department may act with respect to any petition on which a
30 hearing was held prior to May 9, 1997.

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

SENATE SUMMARY

Deletes the provision that policies of the Florida Windstorm Underwriting 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 of Insurance, a basic policy including wind coverage, the risk is no longer eligible for coverage through the association. Deletes the provision that the association's policies and applications must include a notice that the association policy could be replaced with a policy issued by an authorized insurer that does not provide coverage identical to the coverage provided by the association.