

By Representatives Garcia, Lacasa and Rayson

1                                   A bill to be entitled  
2           An act relating to windstorm property insurance  
3           coverage; amending s. 627.0628, F.S.; limiting  
4           an insurer's use of certain methods of  
5           determining hurricane loss factors under  
6           certain circumstances; amending s. 627.351,  
7           F.S.; revising membership of the board of  
8           directors of the windstorm insurance risk  
9           apportionment association's plan of operation;  
10          deleting authorization for the association to  
11          require arbitration of certain rate filings;  
12          prohibiting the association from accepting  
13          applications for coverage for certain risks in  
14          certain deauthorized areas; providing for  
15          assignments to insurers by the association of  
16          personal lines residential policies in such  
17          deauthorized areas; providing procedures,  
18          requirements, limitations, and penalties;  
19          providing application; providing criteria;  
20          authorizing insurers to petition the Department  
21          of Insurance for a variance under certain  
22          circumstances; requiring the department to  
23          adopt rules; authorizing the department to  
24          require the association to revise or amend the  
25          association's plan of operation or bylaws for  
26          certain purposes; authorizing the department to  
27          require the revision or amendment of the market  
28          assistance plan's plan of operation or bylaws  
29          for certain purposes; repealing s. 627.062(6),  
30          F.S., relating to arbitration of certain rate  
31          filings; providing an effective date.

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

2

3 Section 1. Paragraph (c) of subsection (3) of section  
4 627.0628, Florida Statutes, is amended to read:

5 627.0628 Florida Commission on Hurricane Loss  
6 Projection Methodology.--

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

8 (c) With respect to a rate filing under s. 627.062, an  
9 insurer may employ actuarial methods, principles, standards,  
10 models, or output ranges found by the commission to be  
11 accurate or reliable to determine hurricane loss factors for  
12 use in a rate filing under s. 627.062, which findings and  
13 factors are admissible and relevant in consideration of a rate  
14 filing by the department or in any arbitration or  
15 administrative or judicial review. Notwithstanding the  
16 provisions of subsection (1), an insurer may not use the  
17 provisions of this paragraph until such time as the commission  
18 finds that a publicly owned model developed by the State  
19 University System is accurate and reliable to determine  
20 hurricane loss factors for use in a rate filing under s.  
21 627.062.

22 Section 2. Paragraph (b) of subsection (2) and  
23 paragraph (d) of subsection (6) of section 627.351, Florida  
24 Statutes, are amended, and paragraph (f) is added to said  
25 subsection (2), to read:

26 627.351 Insurance risk apportionment plans.--

27 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

28 (b) The department shall require all insurers holding  
29 a certificate of authority to transact property insurance on a  
30 direct basis in this state, other than joint underwriting  
31 associations and other entities formed pursuant to this

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

19         1. For the purpose of this section, properties  
20 eligible for such windstorm coverage are defined as dwellings,  
21 buildings, and other structures, including mobile homes which  
22 are used as dwellings and which are tied down in compliance  
23 with mobile home tie-down requirements prescribed by the  
24 Department of Highway Safety and Motor Vehicles pursuant to s.  
25 320.8325, and the contents of all such properties. An  
26 applicant or policyholder is eligible for coverage only if an  
27 offer of coverage cannot be obtained by or for the applicant  
28 or policyholder from an admitted insurer at approved rates.

29         2.a.(I) All insurers required to be members of such  
30 association shall participate in its writings, expenses, and  
31 losses. Surplus of the association shall be retained for the

1 payment of claims and shall not be distributed to the member  
2 insurers. Such participation by member insurers shall be in  
3 the proportion that the net direct premiums of each member  
4 insurer written for property insurance in this state during  
5 the preceding calendar year bear to the aggregate net direct  
6 premiums for property insurance of all member insurers, as  
7 reduced by any credits for voluntary writings, in this state  
8 during the preceding calendar year. For the purposes of this  
9 subsection, the term "net direct premiums" means direct  
10 written premiums for property insurance, reduced by premium  
11 for liability coverage and for the following if included in  
12 allied lines: rain and hail on growing crops; livestock;  
13 association direct premiums booked; National Flood Insurance  
14 Program direct premiums; and similar deductions specifically  
15 authorized by the plan of operation and approved by the  
16 department. A member's participation shall begin on the first  
17 day of the calendar year following the year in which it is  
18 issued a certificate of authority to transact property  
19 insurance in the state and shall terminate 1 year after the  
20 end of the calendar year during which it no longer holds a  
21 certificate of authority to transact property insurance in the  
22 state. The commissioner, after review of annual statements,  
23 other reports, and any other statistics that the commissioner  
24 deems necessary, shall certify to the association the  
25 aggregate direct premiums written for property insurance in  
26 this state by all member insurers.

27 (II) The plan of operation shall provide for a board  
28 of directors consisting of the Insurance Consumer Advocate  
29 appointed under s. 627.0613, 1 representative of a financial  
30 institution engaging in residential mortgage lending within  
31 the association's eligible areas, 1 representative of realtors

1 engaged in the sale of residential property within the  
2 association's eligible areas, 1 representative with expertise  
3 in State Minimum Building Codes and coastal construction, 1  
4 association policyholder, 1 representative who is a licensed  
5 property and casualty insurance agent, 1 consumer  
6 representative appointed by the Insurance Commissioner, 1  
7 consumer representative appointed by the Governor, and 7 ~~12~~  
8 additional members appointed as specified in the plan of  
9 operation. One of the 7 ~~12~~ additional members shall be elected  
10 by the domestic companies of this state on the basis of  
11 cumulative weighted voting based on the net direct premiums of  
12 domestic companies in this state. Nothing in the 1997  
13 amendments to this paragraph terminates the existing board or  
14 the terms of any members of the board.

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

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

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

28 (VI) The plan of operation may also provide for the  
29 award of credits, for a period not to exceed 3 years, from a  
30 regular assessment pursuant to sub-sub-subparagraph d.(I) or  
31 sub-sub-subparagraph d.(II) as an incentive for taking

1 policies out of the Residential Property and Casualty Joint  
2 Underwriting Association. In order to qualify for the  
3 exemption under this sub-sub-subparagraph, the take-out plan  
4 must provide that at least 40 percent of the policies removed  
5 from the Residential Property and Casualty Joint Underwriting  
6 Association cover risks located in Dade, Broward, and Palm  
7 Beach Counties or at least 30 percent of the policies so  
8 removed cover risks located in Dade, Broward, and Palm Beach  
9 Counties and an additional 50 percent of the policies so  
10 removed cover risks located in other coastal counties, and  
11 must also provide that no more than 15 percent of the policies  
12 so removed may exclude windstorm coverage. With the approval  
13 of the department, the association may waive these geographic  
14 criteria for a take-out plan that removes at least the lesser  
15 of 100,000 Residential Property and Casualty Joint  
16 Underwriting Association policies or 15 percent of the total  
17 number of Residential Property and Casualty Joint Underwriting  
18 Association policies, provided the governing board of the  
19 Residential Property and Casualty Joint Underwriting  
20 Association certifies that the take-out plan will materially  
21 reduce the Residential Property and Casualty Joint  
22 Underwriting Association's 100-year probable maximum loss from  
23 hurricanes. With the approval of the department, the board  
24 may extend such credits for an additional year if the insurer  
25 guarantees an additional year of renewability for all policies  
26 removed from the Residential Property and Casualty Joint  
27 Underwriting Association, or for 2 additional years if the  
28 insurer guarantees 2 additional years of renewability for all  
29 policies removed from the Residential Property and Casualty  
30 Joint Underwriting Association.  
31

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

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

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

21           (II) When the deficit incurred in a particular  
22 calendar year exceeds 10 percent of the aggregate statewide  
23 direct written premium for property insurance for the prior  
24 calendar year for all member insurers, the association shall  
25 levy an assessment on member insurers in an amount equal to  
26 the greater of 10 percent of the deficit or 10 percent of the  
27 aggregate statewide direct written premium for property  
28 insurance for the prior calendar year for member insurers. Any  
29 remaining deficit shall be recovered through emergency  
30 assessments under sub-sub-subparagraph (III).

31

1           (III) Upon a determination by the board of directors  
2 that a deficit exceeds the amount that will be recovered  
3 through regular assessments on member insurers, pursuant to  
4 sub-sub-subparagraph (I) or sub-sub-subparagraph (II), the  
5 board shall levy, after verification by the department,  
6 emergency assessments to be collected by member insurers and  
7 by underwriting associations created pursuant to this section  
8 which write property insurance, upon issuance or renewal of  
9 property insurance policies other than National Flood  
10 Insurance policies in the year or years following levy of the  
11 regular assessments. The amount of the emergency assessment  
12 collected in a particular year shall be a uniform percentage  
13 of that year's direct written premium for property insurance  
14 for all member insurers and underwriting associations,  
15 excluding National Flood Insurance policy premiums, as  
16 annually determined by the board and verified by the  
17 department. The department shall verify the arithmetic  
18 calculations involved in the board's determination within 30  
19 days after receipt of the information on which the  
20 determination was based. Notwithstanding any other provision  
21 of law, each member insurer and each underwriting association  
22 created pursuant to this section shall collect emergency  
23 assessments from its policyholders without such obligation  
24 being affected by any credit, limitation, exemption, or  
25 deferment. The emergency assessments so collected shall be  
26 transferred directly to the association on a periodic basis as  
27 determined by the association. The aggregate amount of  
28 emergency assessments levied under this sub-sub-subparagraph  
29 in any calendar year may not exceed the greater of 10 percent  
30 of the amount needed to cover the original deficit, plus  
31 interest, fees, commissions, required reserves, and other



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

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

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

17           e. The governing body of any unit of local government,  
18 any residents of which are insured under the plan, may issue  
19 bonds as defined in s. 125.013 or s. 166.101 to fund an  
20 assistance program, in conjunction with the association, for  
21 the purpose of defraying deficits of the association. In order  
22 to avoid needless and indiscriminate proliferation,  
23 duplication, and fragmentation of such assistance programs,  
24 any unit of local government, any residents of which are  
25 insured by the association, may provide for the payment of  
26 losses, regardless of whether or not the losses occurred  
27 within or outside of the territorial jurisdiction of the local  
28 government. Revenue bonds may not be issued until validated  
29 pursuant to chapter 75, unless a state of emergency is  
30 declared by executive order or proclamation of the Governor  
31 pursuant to s. 252.36 making such findings as are necessary to

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

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

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

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

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

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

24           c. The association shall provide for windstorm  
25 coverage on residential properties in limits up to \$10 million  
26 for commercial lines residential risks and up to \$1 million  
27 for personal lines residential risks. If coverage with the  
28 association is sought for a residential risk valued in excess  
29 of these limits, coverage shall be available to the risk up to  
30 the replacement cost or actual cash value of the property, at  
31 the option of the insured, if coverage for the risk cannot be

1 located in the authorized market. The association must accept  
2 a commercial lines residential risk with limits above \$10  
3 million or a personal lines residential risk with limits above  
4 \$1 million if coverage is not available in the authorized  
5 market. The association may write coverage above the limits  
6 specified in this subparagraph with or without facultative or  
7 other reinsurance coverage, as the association determines  
8 appropriate.

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

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

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

21  
22 The acceptance or rejection of a risk by the association  
23 pursuant to such criteria and procedures must be construed as  
24 the private placement of insurance, and the provisions of  
25 chapter 120 do not apply.

26           e. The policies issued by the association must provide  
27 that if the association obtains an offer from an authorized  
28 insurer to cover the risk at its approved rates under either a  
29 standard policy including wind coverage or, if consistent with  
30 the insurer's underwriting rules as filed with the department,  
31 a basic policy including wind coverage, the risk is no longer

1 eligible for coverage through the association. Upon  
2 termination of eligibility, the association shall provide  
3 written notice to the policyholder and agent of record stating  
4 that the association policy must be canceled as of 60 days  
5 after the date of the notice because of the offer of coverage  
6 from an authorized insurer. Other provisions of the insurance  
7 code relating to cancellation and notice of cancellation do  
8 not apply to actions under this sub-subparagraph.

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

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

27       b. Any entity created under this subsection, or any  
28 entity formed for the purposes of this subsection, may sue and  
29 be sued, may borrow money; issue bonds, notes, or debt  
30 instruments; pledge or sell assessments, market equalization  
31 surcharges and other surcharges, rights, premiums, contractual

1 rights, projected recoveries from the Florida Hurricane  
2 Catastrophe Fund, other reinsurance recoverables, and other  
3 assets as security for such bonds, notes, or debt instruments;  
4 enter into any contracts or agreements necessary or proper to  
5 accomplish such borrowings; and take other actions necessary  
6 to carry out the purposes of this subsection. The association  
7 may issue bonds or incur other indebtedness, or have bonds  
8 issued on its behalf by a unit of local government pursuant to  
9 subparagraph (g)2., in the absence of a hurricane or other  
10 weather-related event, upon a determination by the association  
11 subject to approval by the department that such action would  
12 enable it to efficiently meet the financial obligations of the  
13 association and that such financings are reasonably necessary  
14 to effectuate the requirements of this subsection. Any such  
15 entity may accumulate reserves and retain surpluses as of the  
16 end of any association year to provide for the payment of  
17 losses incurred by the association during that year or any  
18 future year. The association shall incorporate and continue  
19 the plan of operation and articles of agreement in effect on  
20 the effective date of chapter 76-96, Laws of Florida, to the  
21 extent that it is not inconsistent with chapter 76-96, and as  
22 subsequently modified consistent with chapter 76-96. The board  
23 of directors and officers currently serving shall continue to  
24 serve until their successors are duly qualified as provided  
25 under the plan. The assets and obligations of the plan in  
26 effect immediately prior to the effective date of chapter  
27 76-96 shall be construed to be the assets and obligations of  
28 the successor plan created herein.

29 c. In recognition of s. 10, Art. I of the State  
30 Constitution, prohibiting the impairment of obligations of  
31 contracts, it is the intent of the Legislature that no action



1 be taken whose purpose is to impair any bond indenture or  
2 financing agreement or any revenue source committed by  
3 contract to such bond or other indebtedness issued or incurred  
4 by the association or any other entity created under this  
5 subsection.

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

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

28           9. Notwithstanding any other provision of law:

29           a. The pledge or sale of, the lien upon, and the  
30 security interest in any rights, revenues, or other assets of  
31 the association created or purported to be created pursuant to

1 any financing documents to secure any bonds or other  
2 indebtedness of the association shall be and remain valid and  
3 enforceable, notwithstanding the commencement of and during  
4 the continuation of, and after, any rehabilitation,  
5 insolvency, liquidation, bankruptcy, receivership,  
6 conservatorship, reorganization, or similar proceeding against  
7 the association under the laws of this state or any other  
8 applicable laws.

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

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

26           d. As used in this subsection, the term "financing  
27 documents" means any agreement, instrument, or other document  
28 now existing or hereafter created evidencing any bonds or  
29 other indebtedness of the association or pursuant to which any  
30 such bonds or other indebtedness has been or may be issued and  
31 pursuant to which any rights, revenues, or other assets of the

1 association are pledged or sold to secure the repayment of  
2 such bonds or indebtedness, together with the payment of  
3 interest on such bonds or such indebtedness, or the payment of  
4 any other obligation of the association related to such bonds  
5 or indebtedness.

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

24 f. There shall be no liability on the part of, and no  
25 cause of action of any nature shall arise against, any member  
26 insurer or its agents or employees, agents or employees of the  
27 association, members of the board of directors of the  
28 association, or the department or its representatives, for any  
29 action taken by them in the performance of their duties or  
30 responsibilities under this subsection. Such immunity does not  
31

1 apply to actions for breach of any contract or agreement  
2 pertaining to insurance, or any willful tort.

3 (f)1. After December 31, 2000, the association may not  
4 accept an application for coverage for a risk located in the  
5 deauthorized area. For purposes of this paragraph,  
6 "deauthorized area" means the area between I-95 and U.S. 1 in  
7 Miami-Dade, Broward, and Palm Beach Counties.

8 2. Until January 1, 2001, the association shall afford  
9 to all authorized insurers an opportunity to voluntarily  
10 remove policies located in the deauthorized area from the  
11 association. Each policy shall be written for at least three  
12 full annual policy terms, using rates and forms approved by  
13 the department.

14 3.a. Beginning January 1, 2001, every authorized  
15 insurer writing personal lines residential coverage in this  
16 state must accept assignments of personal lines residential  
17 policies located in the deauthorized area from the  
18 association, as provided in this paragraph.

19 b. No later than January 1, 2001, the association  
20 shall identify the personal lines residential policies in the  
21 deauthorized area that will be assigned to each insurer. The  
22 association shall provide each insurer access to information  
23 concerning each policy assigned to the insurer. The selection  
24 and subsequent assignment shall be coordinated by the  
25 association among the various insurers by allocating the  
26 distribution of the assigned policies among such insurers in  
27 such a manner as to limit adverse solvency consequences, avoid  
28 excess concentration of policies in any one area with respect  
29 to the insurer's personal lines residential coverage book of  
30 business, take into account the characteristics of risks  
31 underwritten in the voluntary market by the assigned insurer,

1 attempt to match assigned risks as closely as possible to the  
2 insurer's expertise, and take into account variations in the  
3 market value of the assigned risks.

4 c. The assignments shall be made to each insurer such  
5 that each insurer's share of the policies assigned is  
6 approximately equal to that insurer's proportional share of  
7 personal lines residential insurance policies written in this  
8 state. Insurers that voluntarily remove policies from the  
9 deauthorized area may receive a reduction in the number of  
10 assignments such insurers would otherwise receive from the  
11 association.

12 d. If more than one insurer within an insurer group is  
13 authorized to write personal lines residential coverage in  
14 this state, insurers in the group receiving the assignments  
15 may cede the assignments among authorized members of the group  
16 as approved by the department.

17 e. Each insurer to which policies are assigned must  
18 renew each policy for at least 3 years, unless canceled by the  
19 insurer for a lawful reason other than reduction of hurricane  
20 exposure or unless nonrenewed by the policyholder. Nothing in  
21 this paragraph shall preclude an insurer from offering an  
22 assigned policyholder coverage for nonwind perils. If such  
23 offer is accepted, the insurer may satisfy its assignment  
24 obligations with regard to that risk by writing all perils  
25 coverage at such insurer's approved rates and on its approved  
26 forms. For each assigned policy canceled or nonrenewed by the  
27 insurer for any reason during the coverage period required by  
28 this paragraph, the insurer shall accept from the association,  
29 if available, one additional policy covering a risk similar to  
30 the risk covered by the canceled or nonrenewed policy.

31

1           f. Assignment of a policy shall not affect the  
2 producing agent's entitlement to unearned commission. If the  
3 policy is assigned to an insurer with which the producing  
4 agent has a contract, the producing agent shall retain the  
5 business. If the policy is assigned to an insurer that is  
6 using the services of a managing general agent, the producing  
7 agent is entitled to act as the brokering agent. If the agent  
8 is not appointed or offered an appointment with the assuming  
9 insurer or not brokering the business with a managing general  
10 agent being used by the assuming insurer, the agent shall  
11 receive an assignment fee of \$50, payable by the association.

12           g. If an insurer believes the assignment of risks  
13 would result in the insurer's insolvency or impair the  
14 insurer's capital and surplus under the respective definitions  
15 provided in s. 631.011(9), (10), and (11) and reasonable means  
16 to avoid the insolvency or impairment are not available, the  
17 insurer may petition the department for revision, in whole or  
18 in part, of the selection and assignment of such risks. The  
19 insurer shall bear the burden of proving such resulting  
20 insolvency or impairment of capital or surplus.

21           4. If an insurer fails to accept the residential  
22 policies selected by the association, the failure shall be  
23 treated as a willful violation of the Florida Insurance Code.  
24 Each policy refused or rejected by an insurer shall constitute  
25 a separate violation.

26           5. The department may adopt rules to implement the  
27 provisions of this paragraph.

28           6. The department may require the revision or  
29 amendment of the association's plan of operation or bylaws as  
30 necessary to implement this paragraph or to accomplish the  
31 purposes of this paragraph.

1           7. The department may require the revision or  
2 amendment of the plan of operation or bylaws of the market  
3 assistance plan, established under s. 627.3515, if any, as  
4 necessary to implement this paragraph or to accomplish the  
5 purposes of this paragraph.

6           (6) RESIDENTIAL PROPERTY AND CASUALTY JOINT  
7 UNDERWRITING ASSOCIATION.--

8           (d)1. It is the intent of the Legislature that the  
9 rates for coverage provided by the association be actuarially  
10 sound and not competitive with approved rates charged in the  
11 admitted voluntary market, so that the association functions  
12 as a residual market mechanism to provide insurance only when  
13 the insurance cannot be procured in the voluntary market.  
14 Rates shall include an appropriate catastrophe loading factor  
15 that reflects the actual catastrophic exposure of the  
16 association and recognizes that the association has little or  
17 no capital or surplus; and the association shall carefully  
18 review each rate filing to assure that provider compensation  
19 is not excessive.

20           2. For each county, the average rates of the  
21 association for each line of business for personal lines  
22 residential policies shall be no lower than the average rates  
23 charged by the insurer that had the highest average rate in  
24 that county among the 20 insurers with the greatest total  
25 direct written premium in the state for that line of business  
26 in the preceding year, except that with respect to mobile home  
27 coverages, the average rates of the association shall be no  
28 lower than the average rates charged by the insurer that had  
29 the highest average rate in that county among the 5 insurers  
30 with the greatest total written premium for mobile home  
31 owner's policies in the state in the preceding year.

1           3. Rates for commercial residential coverage shall not  
2 be subject to the requirements of subparagraph 2., but shall  
3 be subject to all other requirements of this paragraph and s.  
4 627.062.

5           4. Nothing in this paragraph shall require or allow  
6 the association to adopt a rate that is inadequate under s.  
7 627.062 or to reduce rates approved under s. 627.062.

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

13           Section 3. Subsection (6) of section 627.062, Florida  
14 Statutes, is repealed.

15           Section 4. This act shall take effect upon becoming a  
16 law.

17  
18           \*\*\*\*\*

19           HOUSE SUMMARY

20  
21           Limits an insurer's use of otherwise acceptable actuarial  
22 methods, principles, standards, models or output ranges  
23 to determine hurricane loss factors until a publicly  
24 owned model developed by the state university system is  
25 found to accurately and reliably determine such factors  
26 for rate filings. Revises membership of the board of  
27 directors of the windstorm insurance risk apportionment  
28 association's plan of operation. Deletes authorization  
29 for the association to require arbitration of rate  
30 filings. Declares Miami-Dade and Broward and Palm Beach  
31 Counties to be a deauthorized area and prohibits the  
association from accepting applications for coverage for  
risks located in the deauthorized area. Provides for  
assignments to insurers by the association of personal  
lines residential policies in the deauthorized area. See  
bill for details.