

By Representative Cosgrove

1                                   A bill to be entitled  
2           An act relating to the Florida Windstorm  
3           Underwriting Association; amending s. 627.351,  
4           F.S.; limiting application of insurance risk of  
5           the Florida Windstorm Underwriting Association  
6           to hurricanes only; revising the membership of  
7           the board of directors under the association's  
8           plan of operation; requiring the plan to  
9           provide for an insured's choice of actual cash  
10          value or full replacement cost of certain  
11          losses; specifying a rate limitation; requiring  
12          the association's plan to provide for credits  
13          for certain actions or alternative coverages;  
14          requiring the Department of Insurance to  
15          declare certain areas or counties ineligible  
16          for coverage through the plan under certain  
17          circumstances; limiting the time of eligibility  
18          for coverage under the association's plan;  
19          providing an effective date.

20  
21 Be It Enacted by the Legislature of the State of Florida:

22  
23           Section 1. Subsection (2) of section 627.351, Florida  
24 Statutes, is amended to read:

25           627.351 Insurance risk apportionment plans.--

26           (2) HURRICANE ~~WINDSTORM~~ INSURANCE RISK  
27 APPORTIONMENT.--

28           (a) Agreements may be made among property insurers  
29 with respect to the equitable apportionment among them of  
30 insurance which may be afforded applicants who are in good  
31 faith entitled to, but are unable to procure, such insurance

1 through ordinary methods; and such insurers may agree among  
2 themselves on the use of reasonable rate modifications for  
3 such insurance. Such agreements and rate modifications shall  
4 be subject to the applicable provisions of this chapter.

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

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

1 compliance with mobile home tie-down requirements prescribed  
2 by the Department of Highway Safety and Motor Vehicles  
3 pursuant to s. 320.8325, and the contents of all such  
4 properties. An applicant or policyholder is eligible for  
5 coverage only if an offer of coverage cannot be obtained by or  
6 for the applicant or policyholder from an admitted insurer at  
7 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, four ~~†~~ consumer representatives  
9 ~~representative~~ appointed by the Insurance Commissioner, four ~~†~~  
10 consumer representatives ~~representative~~ appointed by the  
11 Governor, and six ~~†2~~ additional members appointed as specified  
12 in the plan of operation. One of the six ~~†2~~ additional members  
13 shall be elected by the domestic companies of this state on  
14 the basis of cumulative weighted voting based on the net  
15 direct premiums of domestic companies in this state. ~~Nothing~~  
16 ~~in the 1997 amendments to this paragraph terminates the~~  
17 ~~existing board or the terms of any members of the board.~~

18 (III) The plan of operation shall provide a formula  
19 whereby a company voluntarily providing hurricane ~~windstorm~~  
20 coverage in affected areas will be relieved wholly or  
21 partially from apportionment of a regular assessment pursuant  
22 to 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           (VI) The plan of operation may also provide for the  
2 award of credits, for a period not to exceed 3 years, from a  
3 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 hurricane ~~windstorm~~ coverage. With the  
17 approval of the department, the association may waive these  
18 geographic criteria for a take-out plan that removes at least  
19 the lesser 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 board of directors  
4 that a deficit exceeds the amount that will be recovered  
5 through regular assessments on member insurers, pursuant to  
6 sub-sub-subparagraph (I) or sub-sub-subparagraph (II), the  
7 board shall levy, after verification by the department,  
8 emergency assessments to be collected by member insurers and  
9 by underwriting associations created pursuant to this section  
10 which write property insurance, upon issuance or renewal of  
11 property insurance policies other than National Flood  
12 Insurance policies in the year or years following levy of the  
13 regular assessments. The amount of the emergency assessment  
14 collected in a particular year shall be a uniform percentage  
15 of that year's direct written premium for property insurance  
16 for all member insurers and underwriting associations,  
17 excluding National Flood Insurance policy premiums, as  
18 annually determined by the board and verified by the  
19 department. The department shall verify the arithmetic  
20 calculations involved in the board's determination within 30  
21 days after receipt of the information on which the  
22 determination was based. Notwithstanding any other provision  
23 of law, each member insurer and each underwriting association  
24 created pursuant to this section shall collect emergency  
25 assessments from its policyholders without such obligation  
26 being affected by any credit, limitation, exemption, or  
27 deferment. The emergency assessments so collected shall be  
28 transferred directly to the association on a periodic basis as  
29 determined by the association. The aggregate amount of  
30 emergency assessments levied under this sub-sub-subparagraph  
31 in any calendar year may not exceed the greater of 10 percent

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

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



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

26           c. The association shall provide for hurricane  
27 ~~windstorm~~ coverage on residential properties in limits up to  
28 \$10 million for commercial lines residential risks and up to  
29 \$1 million for personal lines residential risks. If coverage  
30 with the association is sought for a residential risk valued  
31 in excess of these limits, coverage shall be available to the

1 risk up to the replacement cost or actual cash value of the  
2 property, at the option of the insured, if coverage for the  
3 risk cannot be located in the authorized market. The  
4 association must accept a commercial lines residential risk  
5 with limits above \$10 million or a personal lines residential  
6 risk with limits above \$1 million if coverage is not available  
7 in the authorized market. The association may write coverage  
8 above the limits specified in this subparagraph with or  
9 without facultative or other reinsurance coverage, as the  
10 association determines appropriate.

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

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

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

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

28 e. The plan of operation must provide for an insured's  
29 choice of full replacement cost or actual cash value for all  
30 covered losses, at a cost of no more than the approved rate of  
31

1 the authorized insurer with the highest percentage of market  
2 share.

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

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

26 h. The plan shall provide for granting credits against  
27 premiums for policies issued by the association for:

28 (I) Separate flood insurance.

29 (II) Separating out any peril other than hurricane  
30 that might otherwise be covered under policies issued by the  
31 association.

1           (III) Mitigation of loss from damage resulting from a  
2 hurricane.

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

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

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

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

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

30 8. Subject to approval by the department, the  
31 association may establish different eligibility requirements



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

15 9. Notwithstanding any other provision of law:

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

27 b. No such proceeding shall relieve the association of  
28 its obligation, or otherwise affect its ability to perform its  
29 obligation, to continue to collect, or levy and collect,  
30 assessments, market equalization or other surcharges,  
31 projected recoveries from the Florida Hurricane Catastrophe

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 hurricane ~~windstorm~~ insurance  
27 coverage in the county or area so affected, economic growth  
28 and 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;

31

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 hurricane ~~windstorm~~ insurance coverage to  
7 such 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, the department shall ~~it may~~,  
18 after a subsequent public hearing, declare that such county or  
19 area is no longer eligible for hurricane ~~windstorm~~ coverage  
20 through the plan.

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

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

1       (f) After October 1, 2000, and notwithstanding any  
2 other provision of this subsection, no area or county shall be  
3 eligible for hurricane coverage through the plan for more than  
4 2 consecutive years. Any area or county which wishes to  
5 remain eligible for hurricane coverage through the plan after  
6 the expiration of any such period of eligibility shall  
7 petition the department for a redetermination of eligibility  
8 for such coverage under this subsection.

9           Section 2. This act shall take effect October 1, 2000.

10  
11                   \*\*\*\*\*

12                                   HOUSE SUMMARY

13       Revises provisions relating to the Florida Windstorm  
14       Underwriting Association to:

15       Limit application of insurance risk of the association to  
16       hurricanes only.

17       Revise the membership of the board of directors of the  
18       association.

19       Limit coverage under the association's plan to  
20       replacement cost.

21       Require the association's plan to provide for credits for  
22       flood insurance, separating out related perils, and  
23       mitigation of loss.

24       Require the Department of Insurance to declare as  
25       ineligible for coverage through the plan areas or  
26       counties which no longer meet eligibility criteria.

27       Limit the time of eligibility for coverage under the  
28       association's plan.