

By Senator Silver

38-88-01

1 A bill to be entitled
2 An act relating to insurance; amending s.
3 627.0628, F.S.; providing that insurers may not
4 use a model to determine hurricane-loss factors
5 for use in a rate filing until the Florida
6 Commission on Hurricane Loss Projection
7 Methodology finds that a publicly owned model
8 developed by the State University System is
9 reliable to determine such factors; amending s.
10 627.351, F.S.; modifying membership of the
11 board of directors of the Florida Windstorm
12 Underwriting Association; providing for
13 assignment by the association of personal lines
14 residential policies located in a deauthorized
15 area to authorized insurers; providing criteria
16 for distributing assigned policies; providing
17 procedures; providing that assignment of a
18 policy does not affect the producing agent's
19 entitlement to unearned commission; providing
20 for appeals of assignment of policies to the
21 Department of Insurance; providing that a
22 failure to accept residential policies assigned
23 by the association is a willful violation of
24 the Florida Insurance Code; authorizing the
25 department to adopt rules; repealing s.
26 627.062(6), F.S., relating to rate standards;
27 providing an effective date.
28
29 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Section 627.0628, Florida Statutes, is
2 amended to read:

3 627.0628 Florida Commission on Hurricane Loss
4 Projection Methodology.--

5 (1) LEGISLATIVE FINDINGS AND INTENT.--

6 (a) Reliable projections of hurricane losses are
7 necessary in order to assure that rates for residential
8 property insurance meet the statutory requirement that rates
9 be neither excessive nor inadequate. The ability to
10 accurately project hurricane losses has been enhanced greatly
11 in recent years through the use of computer modeling. It is
12 the public policy of this state to encourage the use of the
13 most sophisticated actuarial methods to assure that consumers
14 are charged lawful rates for residential property insurance
15 coverage.

16 (b) The Legislature recognizes the need for expert
17 evaluation of computer models and other recently developed or
18 improved actuarial methodologies for projecting hurricane
19 losses, in order to resolve conflicts among actuarial
20 professionals, and in order to provide both immediate and
21 continuing improvement in the sophistication of actuarial
22 methods used to set rates charged to consumers.

23 (c) It is the intent of the Legislature to create the
24 Florida Commission on Hurricane Loss Projection Methodology as
25 a panel of experts to provide the most actuarially
26 sophisticated guidelines and standards for projection of
27 hurricane losses possible, given the current state of
28 actuarial science. It is the further intent of the
29 Legislature that such standards and guidelines must be used by
30 the State Board of Administration in developing reimbursement
31 premium rates for the Florida Hurricane Catastrophe Fund, and

1 may be used by insurers in rate filings under s. 627.062
2 unless the way in which such standards and guidelines were
3 applied by the insurer was erroneous, as shown by a
4 preponderance of the evidence.

5 (d) It is the intent of the Legislature that such
6 standards and guidelines be employed as soon as possible, and
7 that they be subject to continuing review thereafter.

8 (2) COMMISSION CREATED.--

9 (a) There is created the Florida Commission on
10 Hurricane Loss Projection Methodology, which is assigned to
11 the State Board of Administration. The commission shall be
12 administratively housed within the State Board of
13 Administration, but it shall independently exercise the powers
14 and duties specified in this section.

15 (b) The commission shall consist of the following 11
16 members:

17 1. The insurance consumer advocate.

18 2. The Chief Operating Officer of the Florida
19 Hurricane Catastrophe Fund.

20 3. The Executive Director of the Residential Property
21 and Casualty Joint Underwriting Association.

22 4. The Director of the Division of Emergency
23 Management of the Department of Community Affairs.

24 5. The actuary member of the Florida Hurricane
25 Catastrophe Fund Advisory Council.

26 6. Six members appointed by the Insurance
27 Commissioner, as follows:

28 a. An employee of the Department of Insurance who is
29 an actuary responsible for property insurance rate filings.

30 b. An actuary who is employed full time by a property
31 and casualty insurer which was responsible for at least 1

1 percent of the aggregate statewide direct written premium for
2 homeowner's insurance in the calendar year preceding the
3 member's appointment to the commission.

4 c. An expert in insurance finance who is a full time
5 member of the faculty of the State University System and who
6 has a background in actuarial science.

7 d. An expert in statistics who is a full time member
8 of the faculty of the State University System and who has a
9 background in insurance.

10 e. An expert in computer system design who is a full
11 time member of the faculty of the State University System.

12 f. An expert in meteorology who is a full time member
13 of the faculty of the State University System and who
14 specializes in hurricanes.

15 (c) Members designated under subparagraphs (b)1.-5.
16 shall serve on the commission as long as they maintain the
17 respective offices designated in subparagraphs (b)1.-5.
18 Members appointed by the Insurance Commissioner under
19 subparagraph (b)6. shall serve on the commission until the end
20 of the term of office of the Insurance Commissioner who
21 appointed them, unless earlier removed by the Insurance
22 Commissioner for cause. Vacancies on the commission shall be
23 filled in the same manner as the original appointment.

24 (d) The State Board of Administration shall annually
25 appoint one of the members of the commission to serve as
26 chair.

27 (e) Members of the commission shall serve without
28 compensation, but shall be reimbursed for per diem and travel
29 expenses pursuant to s. 112.061.

30 (f) The State Board of Administration shall, as a cost
31 of administration of the Florida Hurricane Catastrophe Fund,

1 provide for travel, expenses, and staff support for the
2 commission.

3 (g) There shall be no liability on the part of, and no
4 cause of action of any nature shall arise against, any member
5 of the commission, any member of the State Board of
6 Administration, or any employee of the State Board of
7 Administration for any action taken in the performance of
8 their duties under this section. In addition, the commission
9 may, in writing, waive any potential cause of action for
10 negligence of a consultant, contractor, or contract employee
11 engaged to assist the commission.

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

13 (a) The commission shall consider any actuarial
14 methods, principles, standards, models, or output ranges that
15 have the potential for improving the accuracy of or
16 reliability of the hurricane loss projections used in
17 residential property insurance rate filings. The commission
18 shall, from time to time, adopt findings as to the accuracy or
19 reliability of particular methods, principles, standards,
20 models, or output ranges.

21 (b) In establishing reimbursement premiums for the
22 Florida Hurricane Catastrophe Fund, the State Board of
23 Administration must, to the extent feasible, employ actuarial
24 methods, principles, standards, models, or output ranges found
25 by the commission to be accurate or reliable.

26 (c) With respect to a rate filing under s. 627.062, an
27 insurer may employ actuarial methods, principles, standards,
28 models, or output ranges found by the commission to be
29 accurate or reliable to determine hurricane loss factors for
30 use in a rate filing under s. 627.062, which findings and
31 factors are admissible and relevant in consideration of a rate

1 filing by the department or in any arbitration or
2 administrative or judicial review. Notwithstanding the
3 provisions of subsection (1), an insurer may not avail itself
4 of the provisions of this paragraph until the commission finds
5 that a publicly owned model developed by the State University
6 System is accurate and reliable for determining hurricane-loss
7 factors for use in a rate filing under s. 627.062.

8 (d) The commission shall adopt initial actuarial
9 methods, principles, standards, models, or output ranges no
10 later than December 31, 1995. The commission shall adopt
11 revisions to such actuarial methods, principles, standards,
12 models, or output ranges at least annually thereafter. As
13 soon as possible, but no later than July 1, 1996, the
14 commission shall adopt revised actuarial methods, principles,
15 standards, models, or output ranges which include
16 specification of acceptable computer models or output ranges
17 derived from computer models.

18 Section 2. Paragraph (b) of subsection (2) and
19 paragraph (d) of subsection (6) of section 627.351, Florida
20 Statutes, are amended, and paragraph (f) is added to
21 subsection (2), to read:

22 627.351 Insurance risk apportionment plans.--

23 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

24 (b) The department shall require all insurers holding
25 a certificate of authority to transact property insurance on a
26 direct basis in this state, other than joint underwriting
27 associations and other entities formed pursuant to this
28 section, to provide windstorm coverage to applicants from
29 areas determined to be eligible pursuant to paragraph (c) who
30 in good faith are entitled to, but are unable to procure, such
31 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 representative of a financial
26 institution engaging in residential mortgage lending within
27 the association's eligible areas, 1 representative of realtors
28 engaged in the sale of residential property within the
29 association's eligible areas, 1 representative who has
30 expertise in State Minimum Building Codes and coastal
31 construction, 1 association policyholder, 1 representative who

1 is a licensed property and casualty insurance agent,¹
2 consumer representative appointed by the Insurance
3 Commissioner, ¹ consumer representative appointed by the
4 Governor, and 7 ~~12~~ additional members appointed as specified
5 in the plan of operation. One of the 7 ~~12~~ additional members
6 shall be elected by the domestic companies of this state on
7 the basis of cumulative weighted voting based on the net
8 direct premiums of domestic companies in this state. Nothing
9 in the 1997 amendments to this paragraph terminates the
10 existing board or the terms of any members of the board.

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

16 (IV) A company which is a member of a group of
17 companies under common management may elect to have its
18 credits applied on a group basis, and any company or group may
19 elect to have its credits applied to any other company or
20 group.

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

24 (VI) The plan of operation may also provide for the
25 award of credits, for a period not to exceed 3 years, from a
26 regular assessment pursuant to sub-sub-subparagraph d.(I) or
27 sub-sub-subparagraph d.(II) as an incentive for taking
28 policies out of the Residential Property and Casualty Joint
29 Underwriting Association. In order to qualify for the
30 exemption under this sub-sub-subparagraph, the take-out plan
31 must provide that at least 40 percent of the policies removed

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

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

30 c. The Legislature finds that the potential for
31 unlimited deficit assessments under this subparagraph may

1 induce insurers to attempt to reduce their writings in the
2 voluntary market, and that such actions would worsen the
3 availability problems that the association was created to
4 remedy. It is the intent of the Legislature that insurers
5 remain fully responsible for paying regular assessments and
6 collecting emergency assessments for any deficits of the
7 association; however, it is also the intent of the Legislature
8 to provide a means by which assessment liabilities may be
9 amortized over a period of years.

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

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

26 (III) Upon a determination by the board of directors
27 that a deficit exceeds the amount that will be recovered
28 through regular assessments on member insurers, pursuant to
29 sub-sub-subparagraph (I) or sub-sub-subparagraph (II), the
30 board shall levy, after verification by the department,
31 emergency assessments to be collected by member insurers and

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

1 proceeds of the emergency assessments under this
2 sub-sub-subparagraph as the source of revenue for bonds, to
3 retire any other debt incurred as a result of the deficit or
4 events giving rise to the deficit, or in any other way that
5 the board determines will efficiently recover the deficit. The
6 emergency assessments under this sub-sub-subparagraph shall
7 continue as long as any bonds issued or other indebtedness
8 incurred with respect to a deficit for which the assessment
9 was imposed remain outstanding, unless adequate provision has
10 been made for the payment of such bonds or other indebtedness
11 pursuant to the document governing such bonds or other
12 indebtedness. Emergency assessments collected under this
13 sub-sub-subparagraph are not part of an insurer's rates, are
14 not premium, and are not subject to premium tax, fees, or
15 commissions; however, failure to pay the emergency assessment
16 shall be treated as failure to pay premium.

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

25 (V) If regular deficit assessments are made under
26 sub-sub-subparagraph (I) or sub-sub-subparagraph (II), or by
27 the Residential Property and Casualty Joint Underwriting
28 Association under sub-subparagraph (6)(b)3.a. or
29 sub-subparagraph (6)(b)3.b., the association shall levy upon
30 the association's policyholders, as part of its next rate
31 filing, or by a separate rate filing solely for this purpose,

1 a market equalization surcharge in a percentage equal to the
2 total amount of such regular assessments divided by the
3 aggregate statewide direct written premium for property
4 insurance for member insurers for the prior calendar year.
5 Market equalization surcharges under this sub-sub-subparagraph
6 are not considered premium and are not subject to commissions,
7 fees, or premium taxes; however, failure to pay a market
8 equalization surcharge shall be treated as failure to pay
9 premium.

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

1 association and insurers responsible for apportionment of plan
2 losses. Any such unit of local government may enter into such
3 contracts with the association and with any other entity
4 created pursuant to this subsection as are necessary to carry
5 out this paragraph. Any bonds issued under this
6 sub-subparagraph shall be payable from and secured by moneys
7 received by the association from assessments under this
8 subparagraph, and assigned and pledged to or on behalf of the
9 unit of local government for the benefit of the holders of
10 such bonds. The funds, credit, property, and taxing power of
11 the state or of the unit of local government shall not be
12 pledged for the payment of such bonds. If any of the bonds
13 remain unsold 60 days after issuance, the department shall
14 require all insurers subject to assessment to purchase the
15 bonds, which shall be treated as admitted assets; each insurer
16 shall be required to purchase that percentage of the unsold
17 portion of the bond issue that equals the insurer's relative
18 share of assessment liability under this subsection. An
19 insurer shall not be required to purchase the bonds to the
20 extent that the department determines that the purchase would
21 endanger or impair the solvency of the insurer. The authority
22 granted by this sub-subparagraph is additional to any bonding
23 authority granted by subparagraph 6.

24 3. The plan shall also provide that any member with a
25 surplus as to policyholders of \$20 million or less writing 25
26 percent or more of its total countrywide property insurance
27 premiums in this state may petition the department, within the
28 first 90 days of each calendar year, to qualify as a limited
29 apportionment company. The apportionment of such a member
30 company in any calendar year for which it is qualified shall
31 not exceed its gross participation, which shall not be

1 affected by the formula for voluntary writings. In no event
2 shall a limited apportionment company be required to
3 participate in any apportionment of losses pursuant to
4 sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II)
5 in the aggregate which exceeds \$50 million after payment of
6 available plan funds in any calendar year. However, a limited
7 apportionment company shall collect from its policyholders any
8 emergency assessment imposed under sub-sub-subparagraph
9 2.d.(III). The plan shall provide that, if the department
10 determines that any regular assessment will result in an
11 impairment of the surplus of a limited apportionment company,
12 the department may direct that all or part of such assessment
13 be deferred. However, there shall be no limitation or
14 deferment of an emergency assessment to be collected from
15 policyholders under sub-sub-subparagraph 2.d.(III).

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

29 5.a. The plan of operation may include deductibles and
30 rules for classification of risks and rate modifications
31

1 consistent with the objective of providing and maintaining
2 funds sufficient to pay catastrophe losses.

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

17 c. The association shall provide for windstorm
18 coverage on residential properties in limits up to \$10 million
19 for commercial lines residential risks and up to \$1 million
20 for personal lines residential risks. If coverage with the
21 association is sought for a residential risk valued in excess
22 of these limits, coverage shall be available to the risk up to
23 the replacement cost or actual cash value of the property, at
24 the option of the insured, if coverage for the risk cannot be
25 located in the authorized market. The association must accept
26 a commercial lines residential risk with limits above \$10
27 million or a personal lines residential risk with limits above
28 \$1 million if coverage is not available in the authorized
29 market. The association may write coverage above the limits
30 specified in this subparagraph with or without facultative or
31

1 other reinsurance coverage, as the association determines
2 appropriate.

3 d. The plan of operation must provide objective
4 criteria and procedures, approved by the department, to be
5 uniformly applied for all applicants in determining whether an
6 individual risk is so hazardous as to be uninsurable. In
7 making this determination and in establishing the criteria and
8 procedures, the following shall be considered:

9 (I) Whether the likelihood of a loss for the
10 individual risk is substantially higher than for other risks
11 of the same class; and

12 (II) Whether the uncertainty associated with the
13 individual risk is such that an appropriate premium cannot be
14 determined.

15
16 The acceptance or rejection of a risk by the association
17 pursuant to such criteria and procedures must be construed as
18 the private placement of insurance, and the provisions of
19 chapter 120 do not apply.

20 e. The policies issued by the association must provide
21 that if the association obtains an offer from an authorized
22 insurer to cover the risk at its approved rates under either a
23 standard policy including wind coverage or, if consistent with
24 the insurer's underwriting rules as filed with the department,
25 a basic policy including wind coverage, the risk is no longer
26 eligible for coverage through the association. Upon
27 termination of eligibility, the association shall provide
28 written notice to the policyholder and agent of record stating
29 that the association policy must be canceled as of 60 days
30 after the date of the notice because of the offer of coverage
31 from an authorized insurer. Other provisions of the insurance

1 code relating to cancellation and notice of cancellation do
2 not apply to actions under this sub-subparagraph.

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

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

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

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

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

31

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

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

23 9. Notwithstanding any other provision of law:

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

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

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

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

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

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

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

28 (f)1. After December 31, 2001, the association may not
29 accept an application for coverage for a risk located in the
30 deauthorized area. As used in this paragraph, the term
31

1 "deauthorized area" means the area between I-95 and U.S. 1 in
2 Miami-Dade, Broward, and Palm Beach Counties.

3 2. Until January 1, 2002, the association shall afford
4 to all authorized insurers an opportunity to voluntarily
5 remove policies located in the deauthorized area from the
6 association. Each policy must be written for at least three
7 full annual policy terms, using rates and forms approved by
8 the department.

9 3.a. Beginning January 1, 2002, every authorized
10 insurer writing personal lines residential coverage in this
11 state must accept assignments of personal lines residential
12 policies located in the deauthorized area from the
13 association, as provided in this paragraph.

14 b. By January 1, 2002, the association shall identify
15 the personal lines residential policies in the deauthorized
16 area that will be assigned to each insurer. The association
17 shall provide each insurer access to information concerning
18 each policy assigned to the insurer. The selection and
19 subsequent assignment must be coordinated by the association
20 among the various insurers by allocating the distribution of
21 the assigned policies among such insurers in such a manner as
22 to limit adverse solvency consequences; to avoid excess
23 concentration of policies in any one area with respect to the
24 insurer's personal lines residential coverage book of
25 business; to take into account the characteristics of risks
26 underwritten in the voluntary market by the assigned insurer
27 and attempt to match assigned risks as closely as possible to
28 the insurer's expertise; and to take into account variations
29 in the market value of the assigned risks.

30 c. The assignments must be made to each insurer such
31 that each insurer's share of the policies assigned is

1 approximately equal to that insurer's proportional share of
2 personal lines residential insurance policies written in this
3 state. Insurers that voluntarily remove policies from the
4 deauthorized area may receive a reduction in the number of
5 assignments such insurers would otherwise receive from the
6 association.

7 d. If more than one insurer within an insurer group is
8 authorized to write personal lines residential coverage in
9 this state, insurers in the group receiving the assignments
10 may cede the assignments among authorized members of the group
11 as approved by the department.

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

26 f. Assignment of a policy does not affect the
27 producing agent's entitlement to unearned commission. If the
28 policy is assigned to an insurer with which the producing
29 agent has a contract, the producing agent shall retain the
30 business. If the policy is assigned to an insurer that is
31 using the services of a managing general agent, the producing

1 agent is entitled to act as the brokering agent. If the agent
2 is not appointed or offered an appointment with the assuming
3 insurer or not brokering the business with a managing general
4 agent being used by the assuming insurer, the agent shall
5 receive an assignment fee of \$50, payable by the association.

6 g. If an insurer believes that the assignment of risks
7 would result in the insurer's insolvency or impair the
8 insurer's capital and surplus, as those terms are defined in
9 s. 631.011(9), (10), and (11), and reasonable means to avoid
10 the insolvency or impairment are unavailable, the insurer may
11 petition the department for revision, in whole or in part, of
12 the selection and assignment of such risks. The insurers shall
13 bear the burden of proving such resulting insolvency or
14 impairment of capital or surplus.

15 4. The failure of an insurer to accept the residential
16 policies selected by the association, constitutes a willful
17 violation of the Florida Insurance Code. Each policy refused
18 or rejected by an insurer constitutes a separate violation.

19 5. The department may adopt rules to administer this
20 paragraph.

21 6. The department may require the revision or
22 amendment of the association's plan of operation or bylaws as
23 necessary for the purposes of this paragraph.

24 7. The department may require the revision or
25 amendment of any plan of operation or bylaws of the market
26 assistance plan established under s. 627.3515 as necessary for
27 the purposes of this paragraph.

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

30 (d)1. It is the intent of the Legislature that the
31 rates for coverage provided by the association be actuarially

1 sound and not competitive with approved rates charged in the
2 admitted voluntary market, so that the association functions
3 as a residual market mechanism to provide insurance only when
4 the insurance cannot be procured in the voluntary market.
5 Rates shall include an appropriate catastrophe loading factor
6 that reflects the actual catastrophic exposure of the
7 association and recognizes that the association has little or
8 no capital or surplus; and the association shall carefully
9 review each rate filing to assure that provider compensation
10 is not excessive.

11 2. For each county, the average rates of the
12 association for each line of business for personal lines
13 residential policies shall be no lower than the average rates
14 charged by the insurer that had the highest average rate in
15 that county among the 20 insurers with the greatest total
16 direct written premium in the state for that line of business
17 in the preceding year, except that with respect to mobile home
18 coverages, the average rates of the association shall be no
19 lower than the average rates charged by the insurer that had
20 the highest average rate in that county among the 5 insurers
21 with the greatest total written premium for mobile home
22 owner's policies in the state in the preceding year.

23 3. Rates for commercial residential coverage shall not
24 be subject to the requirements of subparagraph 2., but shall
25 be subject to all other requirements of this paragraph and s.
26 627.062.

27 4. Nothing in this paragraph shall require or allow
28 the association to adopt a rate that is inadequate under s.
29 627.062 or to reduce rates approved under s. 627.062.

30 5. ~~The association may require arbitration of a filing~~
31 ~~pursuant to s. 627.062(6).~~Rate filings of the association

1 under this paragraph shall be made on a use and file basis
2 under s. 627.062(2)(a)2. The association shall make a rate
3 filing at least once a year, but no more often than quarterly.

4 Section 3. Subsection (6) of section 627.062, Florida
5 Statutes, is repealed.

6 Section 4. This act shall take effect upon becoming a
7 law.

8
9 *****

10 SENATE SUMMARY

11 Provides that insurers may not use a model to determine
12 hurricane-loss factors for use in a rate filing until the
13 Florida Commission on Hurricane Loss Projection
14 Methodology finds that a publicly owned model developed
15 by the State University System is reliable to determine
16 such factors. Modifies the membership of the board of
17 directors of the Florida Windstorm Underwriting
18 Association. Provides for the assignment by the
19 association of personal lines residential policies
20 located in a deauthorized area as defined to authorized
21 insurers. Provides for the distribution of assigned
22 policies. Provides procedures. Provides that assignment
23 of a policy does not affect the producing agent's
24 entitlement to unearned commissions. Provides for an
25 appeal of the association's assignment of policies to the
26 Department of Insurance. Provides that a failure to
27 accept residential policies assigned by the association
28 is a willful violation of the Florida Insurance Code.
29 Authorizes the department to adopt rules. Repeals s.
30 627.062(6), F.S., relating to rate standards.
31