

1 A bill to be entitled
2 An act relating to insurance; amending s.
3 627.062, F.S.; excluding the Florida Windstorm
4 Underwriting Association from certain
5 rate-filing arbitration provisions; amending s.
6 627.0628, F.S.; limiting authority of insurers
7 to use findings of the Florida Commission on
8 Hurricane Loss Projection Methodology in a rate
9 filing under s. 627.062, F.S.; providing that
10 such findings are not admissible and relevant
11 in consideration of a rate filing by the
12 Department of Insurance unless the department
13 has access to all factors and assumptions used
14 in developing the standards or models found by
15 the commission to be reliable or accurate;
16 amending s. 627.351, F.S.; modifying membership
17 of the board of directors of the Florida
18 Windstorm Underwriting Association; revising
19 the criteria for limited apportionment
20 companies; requiring insurers taking policies
21 out of the association to pay certain amounts
22 or take certain actions relative to the
23 producing agent of record; deleting a
24 requirement that certain insureds lose their
25 eligibility for coverage by the association
26 under certain circumstances; revising the
27 immunity from liability for members of the
28 board of the association; providing for
29 assignment by the association of personal lines
30 residential policies located in a deauthorized
31 area to authorized insurers; providing criteria

1 for distributing assigned policies; providing
2 procedures; providing that assignment of a
3 policy does not affect the producing agent's
4 entitlement to unearned commission; providing
5 for appeals of assignment of policies to the
6 Department of Insurance; providing that a
7 failure to accept residential policies assigned
8 by the association is a willful violation of
9 the Florida Insurance Code; authorizing the
10 department to adopt rules; amending s.
11 627.7013, F.S.; extending the operation of the
12 law limiting the number of personal lines
13 residential policies that may be terminated by
14 an insurer for the purpose of reducing the
15 insurer's exposure to hurricane claims; making
16 legislative findings; amending s. 627.7014,
17 F.S.; extending the operation of the law
18 limiting the number of condominium association
19 property insurance policies that may be
20 terminated by an insurer for the purpose of
21 reducing the insurer's exposure to hurricane
22 claims; making legislative findings;
23 prohibiting the Florida Windstorm Underwriting
24 Association from requiring flood insurance
25 under certain circumstances; authorizing
26 certain premium reductions under certain
27 circumstances; amending s. 624.4072, F.S.;
28 extending the term of the exemption from taxes
29 and assessments on minority-owned property and
30 casualty insurers; postponing the scheduled
31 repeal of the law; providing an effective date.

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

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3 Section 1. Paragraph (a) of subsection (6) of section
4 627.062, Florida Statutes, is amended to read:

5 627.062 Rate standards.--

6 (6)(a) After any action with respect to a rate filing
7 that constitutes agency action for purposes of the
8 Administrative Procedure Act, an insurer other than Florida
9 Windstorm Underwriting Association may, in lieu of demanding a
10 hearing under s. 120.57, require arbitration of the rate
11 filing. Arbitration shall be conducted by a board of
12 arbitrators consisting of an arbitrator selected by the
13 department, an arbitrator selected by the insurer, and an
14 arbitrator selected jointly by the other two arbitrators. Each
15 arbitrator must be certified by the American Arbitration
16 Association. A decision is valid only upon the affirmative
17 vote of at least two of the arbitrators. No arbitrator may be
18 an employee of any insurance regulator or regulatory body or
19 of any insurer, regardless of whether or not the employing
20 insurer does business in this state. The department and the
21 insurer must treat the decision of the arbitrators as the
22 final approval of a rate filing. Costs of arbitration shall be
23 paid by the insurer.

24 Section 2. Section 627.0628, Florida Statutes, is
25 amended to read:

26 627.0628 Florida Commission on Hurricane Loss
27 Projection Methodology.--

28 (1) LEGISLATIVE FINDINGS AND INTENT.--

29 (a) Reliable projections of hurricane losses are
30 necessary in order to assure that rates for residential
31 property insurance meet the statutory requirement that rates

1 be neither excessive nor inadequate. The ability to
2 accurately project hurricane losses has been enhanced greatly
3 in recent years through the use of computer modeling. It is
4 the public policy of this state to encourage the use of the
5 most sophisticated actuarial methods to assure that consumers
6 are charged lawful rates for residential property insurance
7 coverage.

8 (b) The Legislature recognizes the need for expert
9 evaluation of computer models and other recently developed or
10 improved actuarial methodologies for projecting hurricane
11 losses, in order to resolve conflicts among actuarial
12 professionals, and in order to provide both immediate and
13 continuing improvement in the sophistication of actuarial
14 methods used to set rates charged to consumers.

15 (c) It is the intent of the Legislature to create the
16 Florida Commission on Hurricane Loss Projection Methodology as
17 a panel of experts to provide the most actuarially
18 sophisticated guidelines and standards for projection of
19 hurricane losses possible, given the current state of
20 actuarial science. It is the further intent of the
21 Legislature that such standards and guidelines must be used by
22 the State Board of Administration in developing reimbursement
23 premium rates for the Florida Hurricane Catastrophe Fund, and,
24 subject to the provisions of paragraph (3)(c), may be used by
25 insurers in rate filings under s. 627.062 unless the way in
26 which such standards and guidelines were applied by the
27 insurer was erroneous, as shown by a preponderance of the
28 evidence.

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

1 (2) COMMISSION CREATED.--

2 (a) There is created the Florida Commission on
3 Hurricane Loss Projection Methodology, which is assigned to
4 the State Board of Administration. The commission shall be
5 administratively housed within the State Board of
6 Administration, but it shall independently exercise the powers
7 and duties specified in this section.

8 (b) The commission shall consist of the following 11
9 members:

10 1. The insurance consumer advocate.

11 2. The Chief Operating Officer of the Florida
12 Hurricane Catastrophe Fund.

13 3. The Executive Director of the Residential Property
14 and Casualty Joint Underwriting Association.

15 4. The Director of the Division of Emergency
16 Management of the Department of Community Affairs.

17 5. The actuary member of the Florida Hurricane
18 Catastrophe Fund Advisory Council.

19 6. Six members appointed by the Insurance
20 Commissioner, as follows:

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

23 b. An actuary who is employed full time by a property
24 and casualty insurer which was responsible for at least 1
25 percent of the aggregate statewide direct written premium for
26 homeowner's insurance in the calendar year preceding the
27 member's appointment to the commission.

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

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1 d. An expert in statistics who is a full time member
2 of the faculty of the State University System and who has a
3 background in insurance.

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

6 f. An expert in meteorology who is a full time member
7 of the faculty of the State University System and who
8 specializes in hurricanes.

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

18 (d) The State Board of Administration shall annually
19 appoint one of the members of the commission to serve as
20 chair.

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

24 (f) The State Board of Administration shall, as a cost
25 of administration of the Florida Hurricane Catastrophe Fund,
26 provide for travel, expenses, and staff support for the
27 commission.

28 (g) There shall be no liability on the part of, and no
29 cause of action of any nature shall arise against, any member
30 of the commission, any member of the State Board of
31 Administration, or any employee of the State Board of

1 Administration for any action taken in the performance of
2 their duties under this section. In addition, the commission
3 may, in writing, waive any potential cause of action for
4 negligence of a consultant, contractor, or contract employee
5 engaged to assist the commission.

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

7 (a) The commission shall consider any actuarial
8 methods, principles, standards, models, or output ranges that
9 have the potential for improving the accuracy of or
10 reliability of the hurricane loss projections used in
11 residential property insurance rate filings. The commission
12 shall, from time to time, adopt findings as to the accuracy or
13 reliability of particular methods, principles, standards,
14 models, or output ranges.

15 (b) In establishing reimbursement premiums for the
16 Florida Hurricane Catastrophe Fund, the State Board of
17 Administration must, to the extent feasible, employ actuarial
18 methods, principles, standards, models, or output ranges found
19 by the commission to be accurate or reliable.

20 (c) With respect to a rate filing under s. 627.062, an
21 insurer may employ actuarial methods, principles, standards,
22 models, or output ranges found by the commission to be
23 accurate or reliable to determine hurricane loss factors for
24 use in a rate filing under s. 627.062, which findings and
25 factors are admissible and relevant in consideration of a rate
26 filing by the department or in any arbitration or
27 administrative or judicial review. However, such findings and
28 factors are not admissible and relevant in consideration of a
29 rate filing unless the department has access to all factors
30 and assumptions that were used in developing the actuarial
31 methods, principles, standards, models, or output ranges found

1 by the commission to be accurate or reliable and the
2 department is not precluded from disclosing such information
3 in a rate proceeding.

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

14 Section 3. Paragraph (b) of subsection (2) of section
15 627.351, Florida Statutes, is amended, and paragraph (f) is
16 added to subsection (2), to read:

17 627.351 Insurance risk apportionment plans.--

18 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

19 (b) The department shall require all insurers holding
20 a certificate of authority to transact property insurance on a
21 direct basis in this state, other than joint underwriting
22 associations and other entities formed pursuant to this
23 section, to provide windstorm coverage to applicants from
24 areas determined to be eligible pursuant to paragraph (c) who
25 in good faith are entitled to, but are unable to procure, such
26 coverage through ordinary means; or it shall adopt a
27 reasonable plan or plans for the equitable apportionment or
28 sharing among such insurers of windstorm coverage, which may
29 include formation of an association for this purpose. As used
30 in this subsection, the term "property insurance" means
31 insurance on real or personal property, as defined in s.

1 624.604, including insurance for fire, industrial fire, allied
2 lines, farmowners multiperil, homeowners' multiperil,
3 commercial multiperil, and mobile homes, and including
4 liability coverages on all such insurance, but excluding
5 inland marine as defined in s. 624.607(3) and excluding
6 vehicle insurance as defined in s. 624.605(1)(a) other than
7 insurance on mobile homes used as permanent dwellings. The
8 department shall adopt rules that provide a formula for the
9 recovery and repayment of any deferred assessments.

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

20 2.a.(I) All insurers required to be members of such
21 association shall participate in its writings, expenses, and
22 losses. Surplus of the association shall be retained for the
23 payment of claims and shall not be distributed to the member
24 insurers. Such participation by member insurers shall be in
25 the proportion that the net direct premiums of each member
26 insurer written for property insurance in this state during
27 the preceding calendar year bear to the aggregate net direct
28 premiums for property insurance of all member insurers, as
29 reduced by any credits for voluntary writings, in this state
30 during the preceding calendar year. For the purposes of this
31 subsection, the term "net direct premiums" means direct

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

18 (II) The plan of operation shall provide for a board
19 of directors consisting of the Insurance Consumer Advocate
20 appointed under s. 627.0613, 1 representative of a financial
21 institution engaging in residential mortgage lending within
22 the association's eligible areas, 1 representative of realtors
23 engaged in the sale of residential property within the
24 association's eligible areas, 1 representative who has
25 expertise in State Minimum Building Codes and coastal
26 construction, 1 association policyholder, 1 representative who
27 is a licensed property and casualty insurance agent, 1
28 consumer representative appointed by the Insurance
29 Commissioner, 1 consumer representative appointed by the
30 Governor, and 7 ~~12~~ additional members appointed as specified
31 in the plan of operation. One of the 7 ~~12~~ additional members

1 shall be elected by the domestic companies of this state on
2 the basis of cumulative weighted voting based on the net
3 direct premiums of domestic companies in this state. Nothing
4 in the 1997 amendments to this paragraph terminates the
5 existing board or the terms of any members of the board.

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

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

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

19 (VI) The plan of operation may also provide for the
20 award of credits, for a period not to exceed 3 years, from a
21 regular assessment pursuant to sub-sub-subparagraph d.(I) or
22 sub-sub-subparagraph d.(II) as an incentive for taking
23 policies out of the Residential Property and Casualty Joint
24 Underwriting Association. In order to qualify for the
25 exemption under this sub-sub-subparagraph, the take-out plan
26 must provide that at least 40 percent of the policies removed
27 from the Residential Property and Casualty Joint Underwriting
28 Association cover risks located in Dade, Broward, and Palm
29 Beach Counties or at least 30 percent of the policies so
30 removed cover risks located in Dade, Broward, and Palm Beach
31 Counties and an additional 50 percent of the policies so

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

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

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

1 collecting emergency assessments for any deficits of the
2 association; however, it is also the intent of the Legislature
3 to provide a means by which assessment liabilities may be
4 amortized over a period of years.

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

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

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

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

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

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

20 (V) If regular deficit assessments are made under
21 sub-sub-subparagraph (I) or sub-sub-subparagraph (II), or by
22 the Residential Property and Casualty Joint Underwriting
23 Association under sub-subparagraph (6)(b)3.a. or
24 sub-subparagraph (6)(b)3.b., the association shall levy upon
25 the association's policyholders, as part of its next rate
26 filing, or by a separate rate filing solely for this purpose,
27 a market equalization surcharge in a percentage equal to the
28 total amount of such regular assessments divided by the
29 aggregate statewide direct written premium for property
30 insurance for member insurers for the prior calendar year.
31 Market equalization surcharges under this sub-sub-subparagraph

1 are not considered premium and are not subject to commissions,
2 fees, or premium taxes; however, failure to pay a market
3 equalization surcharge shall be treated as failure to pay
4 premium.

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

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

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

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

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

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

28 ~~b. The association may require arbitration of a rate~~
29 ~~filing under s. 627.062(6).~~ It is the intent of the
30 Legislature that the rates for coverage provided by the
31 association be actuarially sound and not competitive with

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

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

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

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

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

9

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

14 e. When the association enters into a contractual
15 agreement for a take-out plan, the producing agent of record
16 of the association policy is entitled to retain any unearned
17 commission on such policy, and the take-out insurer shall:

18 (I) Pay to the producing agent of record of the
19 association policy an amount equal to the insurer's usual and
20 customary commission for the type of policy written if the
21 term of the association policy was in excess of 6 months, or
22 one-half of such usual and customary commission if the term of
23 the association policy was 6 months or less; or

24 (II) Offer to allow the producing agent of record of
25 the association policy to continue servicing the policy for a
26 period of not less than 1 year and offer to pay the agent the
27 insurer's usual and customary commission for the type of
28 policy written.

29

30 The take-out insurer need not take any further action if the
31 offer is rejected. This sub-subparagraph does not apply to any

1 reciprocal interinsurance exchange, nonprofit federation, or
2 any subsidiary or affiliate of such organization. This
3 sub-subparagraph does not apply if the agent is also the agent
4 of record on the new coverage. The requirement of this
5 sub-subparagraph that the producing agent of record is
6 entitled to retain the unearned commission on an association
7 policy does not apply to a policy for which coverage has been
8 provided in the association for 30 days or less.~~The policies~~
9 ~~issued by the association must provide that if the association~~
10 ~~obtains an offer from an authorized insurer to cover the risk~~
11 ~~at its approved rates under either a standard policy including~~
12 ~~wind coverage or, if consistent with the insurer's~~
13 ~~underwriting rules as filed with the department, a basic~~
14 ~~policy including wind coverage, the risk is no longer eligible~~
15 ~~for coverage through the association. Upon termination of~~
16 ~~eligibility, the association shall provide written notice to~~
17 ~~the policyholder and agent of record stating that the~~
18 ~~association policy must be canceled as of 60 days after the~~
19 ~~date of the notice because of the offer of coverage from an~~
20 ~~authorized insurer. Other provisions of the insurance code~~
21 ~~relating to cancellation and notice of cancellation do not~~
22 ~~apply to actions under this sub-subparagraph.~~

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

31

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

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

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

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

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

27 8. Subject to approval by the department, the
28 association may establish different eligibility requirements
29 and operational procedures for any line or type of coverage
30 for any specified eligible area or portion of an eligible area
31 if the board determines that such changes to the eligibility

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

12 9. Notwithstanding any other provision of law:

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

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

31

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

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

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

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

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

19 (f)1. After December 31, 2001, the association may not
20 accept an application for coverage for a risk located in the
21 deauthorized area. As used in this paragraph, the term
22 "deauthorized area" means the area between I-95 and U.S. 1 in
23 Miami-Dade, Broward, and Palm Beach Counties.

24 2. Until January 1, 2002, the association shall afford
25 to all authorized insurers an opportunity to voluntarily
26 remove policies located in the deauthorized area from the
27 association. Each policy must be written for at least three
28 full annual policy terms, using rates and forms approved by
29 the department.

30 3.a. Beginning January 1, 2002, every authorized
31 insurer writing personal lines residential coverage in this

1 state must accept assignments of personal lines residential
2 policies located in the deauthorized area from the
3 association, as provided in this paragraph.

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

20 c. The assignments must be made to each insurer such
21 that each insurer's share of the policies assigned is
22 approximately equal to that insurer's proportional share of
23 personal lines residential insurance policies written in this
24 state. Insurers that voluntarily remove policies from the
25 deauthorized area may receive a reduction in the number of
26 assignments such insurers would otherwise receive from the
27 association.

28 d. If more than one insurer within an insurer group is
29 authorized to write personal lines residential coverage in
30 this state, insurers in the group receiving the assignments
31

1 may cede the assignments among authorized members of the group
2 as approved by the department.

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

17 f. Assignment of a policy does not affect the
18 producing agent's entitlement to unearned commission. If the
19 policy is assigned to an insurer with which the producing
20 agent has a contract, the producing agent shall retain the
21 business. If the policy is assigned to an insurer that is
22 using the services of a managing general agent, the producing
23 agent is entitled to act as the brokering agent. If the agent
24 is not appointed or offered an appointment with the assuming
25 insurer or not brokering the business with a managing general
26 agent being used by the assuming insurer, the agent shall
27 receive an assignment fee of \$50, payable by the association.

28 g. If an insurer believes that the assignment of risks
29 would result in the insurer's insolvency or impair the
30 insurer's capital and surplus, as those terms are defined in
31 s. 631.011(9), (10), and (11), and reasonable means to avoid

1 the insolvency or impairment are unavailable, the insurer may
2 petition the department for revision, in whole or in part, of
3 the selection and assignment of such risks. The insurers shall
4 bear the burden of proving such resulting insolvency or
5 impairment of capital or surplus.

6 4. The failure of an insurer to accept the residential
7 policies selected by the association, constitutes a willful
8 violation of the Florida Insurance Code. Each policy refused
9 or rejected by an insurer constitutes a separate violation.

10 5. The department may adopt rules to administer this
11 paragraph.

12 6. The department may require the revision or
13 amendment of the association's plan of operation or bylaws as
14 necessary for the purposes of this paragraph.

15 7. The department may require the revision or
16 amendment of any plan of operation or bylaws of the market
17 assistance plan established under s. 627.3515 as necessary for
18 the purposes of this paragraph.

19 Section 4. Effective June 1, 2001, paragraph (c) is
20 added to subsection (1) of section 627.7013, Florida Statutes,
21 and paragraph (e) of subsection (2) of that section is amended
22 to read:

23 627.7013 Orderly markets for personal lines
24 residential property insurance.--

25 (1) FINDINGS AND PURPOSE.--

26 (c) The Legislature finds, as of January 1, 2001,
27 that:

28 1. The conditions described in paragraphs (a) and (b)
29 remain applicable to the property insurance market in this
30 state in 2001 and are likely to remain applicable for several
31 years thereafter.

1 2. The general instability of the market is reflected
2 by the following facts:

3 a. The Florida Windstorm Underwriting Association has
4 more than 400,000 policies in force and the Florida
5 Residential Property and Casualty Joint Underwriting
6 Association has more than 60,000 policies in force.

7 b. A further extension of the operation of this
8 section until June 1, 2004, will provide an opportunity for
9 the market to stabilize and for continuation of residual
10 market depopulation efforts.

11 (2) MORATORIUM COMPLETION.--

12 (e) This subsection is repealed ~~on~~ June 1, ~~2004~~ 2001.

13 Section 5. Effective June 1, 2001, present paragraph
14 (c) of subsection (1) of section 627.7014, Florida Statutes,
15 is redesignated as paragraph (d), a new paragraph (c) is added
16 to that subsection, and paragraph (d) of subsection (2) of
17 that section is amended to read:

18 627.7014 Orderly markets for condominium association
19 residential property insurance.--

20 (1) FINDINGS AND PURPOSE.--

21 (c) The Legislature finds, as of January 1, 2001,
22 that:

23 1. The conditions described in paragraph (a) remain
24 applicable to the commercial residential property insurance
25 market in this state in 2001 and are likely to remain
26 applicable for several years thereafter.

27 2. The general instability of the market is reflected
28 by the fact that the Florida Windstorm Underwriting
29 Association has approximately 9,000 commercial residential
30 policies in force as of December 31, 2000.

31

1 3. An extension of the operation of this section until
2 June 1, 2004, will provide an opportunity for the market to
3 stabilize and for continuation of residual market depopulation
4 efforts.

5 (2) MORATORIUM.--

6 (d) This subsection is repealed ~~on~~ June 1, 2004 ~~2001~~.

7 Section 6. Effective upon this act becoming a law, the
8 Florida Windstorm Underwriting Association shall not require
9 flood insurance coverage as a precondition to policyholder or
10 applicant eligibility for coverage by the association;
11 however, the association may offer to reduce policy premiums
12 for any policyholder or applicant who has flood insurance
13 coverage.

14 Section 7. Section 624.4072, Florida Statutes, is
15 amended to read:

16 624.4072 Minority-owned property and casualty
17 insurers; limited exemption for taxation and assessments.--

18 (1) A minority business that is at least 51 percent
19 owned by minority persons, as defined in s. 288.703(3),
20 initially issued a certificate of authority in this state as
21 an authorized insurer after May 1, 1998, to write property and
22 casualty insurance shall be exempt, for a period not to exceed
23 10 ~~5~~ years from the date of receiving its certificate of
24 authority, from the following taxes and assessments:

25 (a) Taxes imposed under ss. 175.101, 185.08, and
26 624.509;

27 (b) Assessments by the Florida Residential Property
28 and Casualty Joint Underwriting Association or by the Florida
29 Windstorm Underwriting Association, as provided under s.
30 627.351, except for emergency assessments collected from
31 policyholders pursuant to s. 627.351(2)(b)2.d.(III) and

1 (6)(b)3.d. Any such insurer shall be a member insurer of the
2 Florida Windstorm Underwriting Association and the Florida
3 Residential Property and Casualty Joint Underwriting
4 Association. The premiums of such insurer shall be included in
5 determining, for the Florida Windstorm Underwriting
6 Association, the aggregate statewide direct written premium
7 for property insurance and in determining, for the Florida
8 Residential Property and Casualty Joint Underwriting
9 Association, the aggregate statewide direct written premium
10 for the subject lines of business for all member insurers.

11 (2) Subsection (1) applies only to personal lines and
12 commercial lines residential property insurance policies as
13 defined in s. 627.4025, and applies only to an insurer that
14 has employees in this state and has a home office or a
15 regional office in this state. With respect to any tax year
16 or assessment year, the exemptions provided by subsection (1)
17 apply only if during the year an average of at least 10
18 percent of the insurer's Florida residential property policies
19 in force covered properties located in enterprise zones
20 designated pursuant to s. 290.0065.

21 (3) The provision of the definition of "minority
22 person" in s. 288.703(3) that requires residency in Florida
23 shall not apply to the term "minority person" as used in this
24 section or s. 627.3511.

25 (4) This section is repealed effective December 31,
26 2010 ~~July 1, 2003~~, and the tax and assessment exemptions
27 authorized by this section shall terminate on such date.

28 Section 8. Except as otherwise provided in this act,
29 this act shall take effect July 1, 2001.

30
31