

By Representatives Heyman, Barreiro, Lerner, Gelber, Prieguez, Gannon, Sobel, Gottlieb, Seiler, Cantens, Brutus, Greenstein, Meadows and Smith

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:

30

31

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,<sup>1</sup>  
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