

By Senator Clary

7-773-01

See HB 291

1 A bill to be entitled
2 An act relating to windstorm property
3 insurance; amending s. 627.062, F.S.; excluding
4 the Florida Windstorm Underwriting Association
5 from certain rate filing arbitration
6 provisions; amending s. 627.0629, F.S.;
7 specifying criteria for certain rate filings;
8 authorizing computer modeling for certain
9 purposes under certain circumstances; providing
10 requirements; providing a limitation for the
11 Florida Windstorm Underwriting Association;
12 providing criteria; amending s. 627.351, F.S.;
13 revising the membership of the board of
14 directors of the Florida Windstorm Underwriting
15 Association; providing an effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Paragraph (a) of subsection (6) of section
20 627.062, Florida Statutes, is amended to read:

21 627.062 Rate standards.--

22 (6)(a) After any action with respect to a rate filing
23 that constitutes agency action for purposes of the
24 Administrative Procedure Act, an insurer other than Florida
25 Windstorm Underwriting Association may, in lieu of demanding a
26 hearing under s. 120.57, require arbitration of the rate
27 filing. Arbitration shall be conducted by a board of
28 arbitrators consisting of an arbitrator selected by the
29 department, an arbitrator selected by the insurer, and an
30 arbitrator selected jointly by the other two arbitrators. Each
31 arbitrator must be certified by the American Arbitration

1 Association. A decision is valid only upon the affirmative
2 vote of at least two of the arbitrators. No arbitrator may be
3 an employee of any insurance regulator or regulatory body or
4 of any insurer, regardless of whether or not the employing
5 insurer does business in this state. The department and the
6 insurer must treat the decision of the arbitrators as the
7 final approval of a rate filing. Costs of arbitration shall be
8 paid by the insurer.

9 Section 2. Subsection (11) is added to section
10 627.0629, Florida Statutes, to read:

11 627.0629 Residential property insurance; rate
12 filings.--

13 (11) All rate filings under this section relating to
14 coverage for windstorm losses shall be based primarily upon
15 average losses over the most recent 30-year period. Such
16 historical experience may be augmented by computer modeling.
17 Any insurer, including the Florida Windstorm Underwriting
18 Association, if using a computer model in making a rate filing
19 under this section, may use only a computer model:

20 (a) Which is developed exclusively with public funds
21 and is subject to the standards and guidelines developed or
22 established by the Florida Commission on Hurricane Loss
23 Projection Methodology under s. 627.0628, and for which the
24 underlying assumptions, data, and methodologies are subject to
25 chapters 119 and 286; or

26 (b) Which is based upon standards and guidelines
27 developed or established by the Florida Commission on
28 Hurricane Loss Projection Methodology under s. 627.0628 and
29 for which the underlying assumptions, data, and methodologies
30 used in such model are available to the Department of
31

1 Insurance solely for inspection or challenge in camera in any
2 administrative or judicial proceeding.

3 Section 3. Paragraph (b) of subsection (2) of section
4 627.351, Florida Statutes, is amended to read:

5 627.351 Insurance risk apportionment plans.--

6 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

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

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

1 are used as dwellings and which are tied down in compliance
2 with mobile home tie-down requirements prescribed by the
3 Department of Highway Safety and Motor Vehicles pursuant to s.
4 320.8325, and the contents of all such properties. An
5 applicant or policyholder is eligible for coverage only if an
6 offer of coverage cannot be obtained by or for the applicant
7 or policyholder from an admitted insurer at approved rates.

8 2.a.(I) All insurers required to be members of such
9 association shall participate in its writings, expenses, and
10 losses. Surplus of the association shall be retained for the
11 payment of claims and shall not be distributed to the member
12 insurers. Such participation by member insurers shall be in
13 the proportion that the net direct premiums of each member
14 insurer written for property insurance in this state during
15 the preceding calendar year bear to the aggregate net direct
16 premiums for property insurance of all member insurers, as
17 reduced by any credits for voluntary writings, in this state
18 during the preceding calendar year. For the purposes of this
19 subsection, the term "net direct premiums" means direct
20 written premiums for property insurance, reduced by premium
21 for liability coverage and for the following if included in
22 allied lines: rain and hail on growing crops; livestock;
23 association direct premiums booked; National Flood Insurance
24 Program direct premiums; and similar deductions specifically
25 authorized by the plan of operation and approved by the
26 department. A member's participation shall begin on the first
27 day of the calendar year following the year in which it is
28 issued a certificate of authority to transact property
29 insurance in the state and shall terminate 1 year after the
30 end of the calendar year during which it no longer holds a
31 certificate of authority to transact property insurance in the

1 state. The commissioner, after review of annual statements,
2 other reports, and any other statistics that the commissioner
3 deems necessary, shall certify to the association the
4 aggregate direct premiums written for property insurance in
5 this state by all member insurers.

6 (II) The plan of operation shall provide for a board
7 of directors consisting of the Insurance Consumer Advocate
8 appointed under s. 627.0613, 2 ~~±~~ consumer representatives
9 ~~representative~~ appointed by the Insurance Commissioner, 1
10 consumer representative appointed by the Governor, 1 ~~consumer~~
11 representative appointed by the Speaker of the House of
12 Representatives, 1 consumer representative appointed by the
13 President of the Senate, and 9 ~~±2~~ additional members appointed
14 as specified in the plan of operation. ~~One of The~~ 9 ~~±2~~
15 additional members shall be elected by the domestic companies
16 of this state on the basis of cumulative weighted voting based
17 on the net direct premiums of domestic companies in this state
18 and shall be residents of this state. Nothing in the 1997
19 amendments to this paragraph terminates the existing board or
20 the terms of any members of the board.

21 (III) The plan of operation shall provide a formula
22 whereby a company voluntarily providing windstorm coverage in
23 affected areas will be relieved wholly or partially from
24 apportionment of a regular assessment pursuant to
25 sub-sub-subparagraph d.(I) or sub-sub-subparagraph d.(II).

26 (IV) A company which is a member of a group of
27 companies under common management may elect to have its
28 credits applied on a group basis, and any company or group may
29 elect to have its credits applied to any other company or
30 group.

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

4 (VI) The plan of operation may also provide for the
5 award of credits, for a period not to exceed 3 years, from a
6 regular assessment pursuant to sub-sub-subparagraph d.(I) or
7 sub-sub-subparagraph d.(II) as an incentive for taking
8 policies out of the Residential Property and Casualty Joint
9 Underwriting Association. In order to qualify for the
10 exemption under this sub-sub-subparagraph, the take-out plan
11 must provide that at least 40 percent of the policies removed
12 from the Residential Property and Casualty Joint Underwriting
13 Association cover risks located in Dade, Broward, and Palm
14 Beach Counties or at least 30 percent of the policies so
15 removed cover risks located in Dade, Broward, and Palm Beach
16 Counties and an additional 50 percent of the policies so
17 removed cover risks located in other coastal counties, and
18 must also provide that no more than 15 percent of the policies
19 so removed may exclude windstorm coverage. With the approval
20 of the department, the association may waive these geographic
21 criteria for a take-out plan that removes at least the lesser
22 of 100,000 Residential Property and Casualty Joint
23 Underwriting Association policies or 15 percent of the total
24 number of Residential Property and Casualty Joint Underwriting
25 Association policies, provided the governing board of the
26 Residential Property and Casualty Joint Underwriting
27 Association certifies that the take-out plan will materially
28 reduce the Residential Property and Casualty Joint
29 Underwriting Association's 100-year probable maximum loss from
30 hurricanes. With the approval of the department, the board
31 may extend such credits for an additional year if the insurer

1 guarantees an additional year of renewability for all policies
2 removed from the Residential Property and Casualty Joint
3 Underwriting Association, or for 2 additional years if the
4 insurer guarantees 2 additional years of renewability for all
5 policies removed from the Residential Property and Casualty
6 Joint Underwriting Association.

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

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

21 d.(I) When the deficit incurred in a particular
22 calendar year is 10 percent or less of the aggregate statewide
23 direct written premium for property insurance for the prior
24 calendar year for all member insurers, the association shall
25 levy an assessment on member insurers in an amount equal to
26 the deficit.

27 (II) When the deficit incurred in a particular
28 calendar year exceeds 10 percent of the aggregate statewide
29 direct written premium for property insurance for the prior
30 calendar year for all member insurers, the association shall
31 levy an assessment on member insurers in an amount equal to

1 the greater of 10 percent of the deficit or 10 percent of the
2 aggregate statewide direct written premium for property
3 insurance for the prior calendar year for member insurers. Any
4 remaining deficit shall be recovered through emergency
5 assessments under sub-sub-subparagraph (III).

6 (III) Upon a determination by the board of directors
7 that a deficit exceeds the amount that will be recovered
8 through regular assessments on member insurers, pursuant to
9 sub-sub-subparagraph (I) or sub-sub-subparagraph (II), the
10 board shall levy, after verification by the department,
11 emergency assessments to be collected by member insurers and
12 by underwriting associations created pursuant to this section
13 which write property insurance, upon issuance or renewal of
14 property insurance policies other than National Flood
15 Insurance policies in the year or years following levy of the
16 regular assessments. The amount of the emergency assessment
17 collected in a particular year shall be a uniform percentage
18 of that year's direct written premium for property insurance
19 for all member insurers and underwriting associations,
20 excluding National Flood Insurance policy premiums, as
21 annually determined by the board and verified by the
22 department. The department shall verify the arithmetic
23 calculations involved in the board's determination within 30
24 days after receipt of the information on which the
25 determination was based. Notwithstanding any other provision
26 of law, each member insurer and each underwriting association
27 created pursuant to this section shall collect emergency
28 assessments from its policyholders without such obligation
29 being affected by any credit, limitation, exemption, or
30 deferment. The emergency assessments so collected shall be
31 transferred directly to the association on a periodic basis as

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

28 (IV) Each member insurer's share of the total regular
29 assessments under sub-sub-subparagraph (I) or
30 sub-sub-subparagraph (II) shall be in the proportion that the
31 insurer's net direct premium for property insurance in this

1 state, for the year preceding the assessment bears to the
2 aggregate statewide net direct premium for property insurance
3 of all member insurers, as reduced by any credits for
4 voluntary writings for that year.

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

21 e. The governing body of any unit of local government,
22 any residents of which are insured under the plan, may issue
23 bonds as defined in s. 125.013 or s. 166.101 to fund an
24 assistance program, in conjunction with the association, for
25 the purpose of defraying deficits of the association. In order
26 to avoid needless and indiscriminate proliferation,
27 duplication, and fragmentation of such assistance programs,
28 any unit of local government, any residents of which are
29 insured by the association, may provide for the payment of
30 losses, regardless of whether or not the losses occurred
31 within or outside of the territorial jurisdiction of the local

1 government. Revenue bonds may not be issued until validated
2 pursuant to chapter 75, unless a state of emergency is
3 declared by executive order or proclamation of the Governor
4 pursuant to s. 252.36 making such findings as are necessary to
5 determine that it is in the best interests of, and necessary
6 for, the protection of the public health, safety, and general
7 welfare of residents of this state and the protection and
8 preservation of the economic stability of insurers operating
9 in this state, and declaring it an essential public purpose to
10 permit certain municipalities or counties to issue bonds as
11 will provide relief to claimants and policyholders of the
12 association and insurers responsible for apportionment of plan
13 losses. Any such unit of local government may enter into such
14 contracts with the association and with any other entity
15 created pursuant to this subsection as are necessary to carry
16 out this paragraph. Any bonds issued under this
17 sub-subparagraph shall be payable from and secured by moneys
18 received by the association from assessments under this
19 subparagraph, and assigned and pledged to or on behalf of the
20 unit of local government for the benefit of the holders of
21 such bonds. The funds, credit, property, and taxing power of
22 the state or of the unit of local government shall not be
23 pledged for the payment of such bonds. If any of the bonds
24 remain unsold 60 days after issuance, the department shall
25 require all insurers subject to assessment to purchase the
26 bonds, which shall be treated as admitted assets; each insurer
27 shall be required to purchase that percentage of the unsold
28 portion of the bond issue that equals the insurer's relative
29 share of assessment liability under this subsection. An
30 insurer shall not be required to purchase the bonds to the
31 extent that the department determines that the purchase would

1 | endanger or impair the solvency of the insurer. The authority
2 | granted by this sub-subparagraph is additional to any bonding
3 | authority granted by subparagraph 6.

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

27 | 4. The plan shall provide for the deferment, in whole
28 | or in part, of a regular assessment of a member insurer under
29 | sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II),
30 | but not for an emergency assessment collected from
31 | policyholders under sub-sub-subparagraph 2.d.(III), if, in the

1 opinion of the commissioner, payment of such regular
2 assessment would endanger or impair the solvency of the member
3 insurer. In the event a regular assessment against a member
4 insurer is deferred in whole or in part, the amount by which
5 such assessment is deferred may be assessed against the other
6 member insurers in a manner consistent with the basis for
7 assessments set forth in sub-sub-subparagraph 2.d.(I) or
8 sub-sub-subparagraph 2.d.(II).

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

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

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

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

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

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

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

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

29 e. The policies issued by the association must provide
30 that if the association obtains an offer from an authorized
31 insurer to cover the risk at its approved rates under either a

1 standard policy including wind coverage or, if consistent with
2 the insurer's underwriting rules as filed with the department,
3 a basic policy including wind coverage, the risk is no longer
4 eligible for coverage through the association. Upon
5 termination of eligibility, the association shall provide
6 written notice to the policyholder and agent of record stating
7 that the association policy must be canceled as of 60 days
8 after the date of the notice because of the offer of coverage
9 from an authorized insurer. Other provisions of the insurance
10 code relating to cancellation and notice of cancellation do
11 not apply to actions under this sub-subparagraph.

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

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

30 b. Any entity created under this subsection, or any
31 entity formed for the purposes of this subsection, may sue and

1 | be sued, may borrow money; issue bonds, notes, or debt
2 | instruments; pledge or sell assessments, market equalization
3 | surcharges and other surcharges, rights, premiums, contractual
4 | rights, projected recoveries from the Florida Hurricane
5 | Catastrophe Fund, other reinsurance recoverables, and other
6 | assets as security for such bonds, notes, or debt instruments;
7 | enter into any contracts or agreements necessary or proper to
8 | accomplish such borrowings; and take other actions necessary
9 | to carry out the purposes of this subsection. The association
10 | may issue bonds or incur other indebtedness, or have bonds
11 | issued on its behalf by a unit of local government pursuant to
12 | subparagraph (g)2., in the absence of a hurricane or other
13 | weather-related event, upon a determination by the association
14 | subject to approval by the department that such action would
15 | enable it to efficiently meet the financial obligations of the
16 | association and that such financings are reasonably necessary
17 | to effectuate the requirements of this subsection. Any such
18 | entity may accumulate reserves and retain surpluses as of the
19 | end of any association year to provide for the payment of
20 | losses incurred by the association during that year or any
21 | future year. The association shall incorporate and continue
22 | the plan of operation and articles of agreement in effect on
23 | the effective date of chapter 76-96, Laws of Florida, to the
24 | extent that it is not inconsistent with chapter 76-96, and as
25 | subsequently modified consistent with chapter 76-96. The board
26 | of directors and officers currently serving shall continue to
27 | serve until their successors are duly qualified as provided
28 | under the plan. The assets and obligations of the plan in
29 | effect immediately prior to the effective date of chapter
30 | 76-96 shall be construed to be the assets and obligations of
31 | the successor plan created herein.

1 c. In recognition of s. 10, Art. I of the State
2 Constitution, prohibiting the impairment of obligations of
3 contracts, it is the intent of the Legislature that no action
4 be taken whose purpose is to impair any bond indenture or
5 financing agreement or any revenue source committed by
6 contract to such bond or other indebtedness issued or incurred
7 by the association or any other entity created under this
8 subsection.

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

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

31 9. Notwithstanding any other provision of law:

1 a. The pledge or sale of, the lien upon, and the
2 security interest in any rights, revenues, or other assets of
3 the association created or purported to be created pursuant to
4 any financing documents to secure any bonds or other
5 indebtedness of the association shall be and remain valid and
6 enforceable, notwithstanding the commencement of and during
7 the continuation of, and after, any rehabilitation,
8 insolvency, liquidation, bankruptcy, receivership,
9 conservatorship, reorganization, or similar proceeding against
10 the association under the laws of this state or any other
11 applicable laws.

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

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

29 d. As used in this subsection, the term "financing
30 documents" means any agreement, instrument, or other document
31 now existing or hereafter created evidencing any bonds or

1 other indebtedness of the association or pursuant to which any
2 such bonds or other indebtedness has been or may be issued and
3 pursuant to which any rights, revenues, or other assets of the
4 association are pledged or sold to secure the repayment of
5 such bonds or indebtedness, together with the payment of
6 interest on such bonds or such indebtedness, or the payment of
7 any other obligation of the association related to such bonds
8 or indebtedness.

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

27 f. There shall be no liability on the part of, and no
28 cause of action of any nature shall arise against, any member
29 insurer or its agents or employees, agents or employees of the
30 association, members of the board of directors of the
31 association, or the department or its representatives, for any

1 action taken by them in the performance of their duties or
2 responsibilities under this subsection. Such immunity does not
3 apply to actions for breach of any contract or agreement
4 pertaining to insurance, or any willful tort.

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

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9 LEGISLATIVE SUMMARY

10 Excludes the Florida Windstorm Underwriting Association
11 from insurers authorized to require rate filing
12 arbitration. Requires rate filings for coverage for
13 windstorm losses to be based on historical experience but
14 authorizes supporting computer modeling. Requires
15 disclosure of assumptions, data, and methodologies of
16 computer modeling used by insurers and reinsurers. Limits
17 use of computer modeling by the Florida Windstorm
18 Underwriting Association to publicly funded models or
19 privately funded models for which the underlying data,
20 assumptions, and calculations used in developing the rate
21 in the model are made available to the Department of
22 Insurance for inspection. Revises the membership of the
23 board of directors of the Florida Windstorm Underwriting
24 Association. (See bill for details.)
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