

By Representative Heyman

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.

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29 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Paragraph (c) of subsection (3) of section
2 627.0628, Florida Statutes, is amended to read:

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

5 (3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.--
6 (c) With respect to a rate filing under s. 627.062, an
7 insurer may employ actuarial methods, principles, standards,
8 models, or output ranges found by the commission to be
9 accurate or reliable to determine hurricane loss factors for
10 use in a rate filing under s. 627.062, which findings and
11 factors are admissible and relevant in consideration of a rate
12 filing by the department or in any arbitration or
13 administrative or judicial review. Notwithstanding the
14 provisions of subsection (1), an insurer may not avail itself
15 of the provisions of this paragraph until the commission finds
16 that a publicly owned model developed by the State University
17 System is accurate and reliable for determining hurricane-loss
18 factors for use in a rate filing under s. 627.062.

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

23 627.351 Insurance risk apportionment plans.--

24 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

25 (b) The department shall require all insurers holding
26 a certificate of authority to transact property insurance on a
27 direct basis in this state, other than joint underwriting
28 associations and other entities formed pursuant to this
29 section, to provide windstorm coverage to applicants from
30 areas determined to be eligible pursuant to paragraph (c) who
31 in good faith are entitled to, but are unable to procure, such

1 coverage through ordinary means; or it shall adopt a
2 reasonable plan or plans for the equitable apportionment or
3 sharing among such insurers of windstorm coverage, which may
4 include formation of an association for this purpose. As used
5 in this subsection, the term "property insurance" means
6 insurance on real or personal property, as defined in s.
7 624.604, including insurance for fire, industrial fire, allied
8 lines, farmowners multiperil, homeowners' multiperil,
9 commercial multiperil, and mobile homes, and including
10 liability coverages on all such insurance, but excluding
11 inland marine as defined in s. 624.607(3) and excluding
12 vehicle insurance as defined in s. 624.605(1)(a) other than
13 insurance on mobile homes used as permanent dwellings. The
14 department shall adopt rules that provide a formula for the
15 recovery and repayment of any deferred assessments.

16 1. For the purpose of this section, properties
17 eligible for such windstorm coverage are defined as dwellings,
18 buildings, and other structures, including mobile homes which
19 are used as dwellings and which are tied down in compliance
20 with mobile home tie-down requirements prescribed by the
21 Department of Highway Safety and Motor Vehicles pursuant to s.
22 320.8325, and the contents of all such properties. An
23 applicant or policyholder is eligible for coverage only if an
24 offer of coverage cannot be obtained by or for the applicant
25 or policyholder from an admitted insurer at approved rates.

26 2.a.(I) All insurers required to be members of such
27 association shall participate in its writings, expenses, and
28 losses. Surplus of the association shall be retained for the
29 payment of claims and shall not be distributed to the member
30 insurers. Such participation by member insurers shall be in
31 the proportion that the net direct premiums of each member

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

24 (II) The plan of operation shall provide for a board
25 of directors consisting of the Insurance Consumer Advocate
26 appointed under s. 627.0613, 1 representative of a financial
27 institution engaging in residential mortgage lending within
28 the association's eligible areas, 1 representative of realtors
29 engaged in the sale of residential property within the
30 association's eligible areas, 1 representative who has
31 expertise in State Minimum Building Codes and coastal

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

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

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

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

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

1 must provide that at least 40 percent of the policies removed
2 from the Residential Property and Casualty Joint Underwriting
3 Association cover risks located in Dade, Broward, and Palm
4 Beach Counties or at least 30 percent of the policies so
5 removed cover risks located in Dade, Broward, and Palm Beach
6 Counties and an additional 50 percent of the policies so
7 removed cover risks located in other coastal counties, and
8 must also provide that no more than 15 percent of the policies
9 so removed may exclude windstorm coverage. With the approval
10 of the department, the association may waive these geographic
11 criteria for a take-out plan that removes at least the lesser
12 of 100,000 Residential Property and Casualty Joint
13 Underwriting Association policies or 15 percent of the total
14 number of Residential Property and Casualty Joint Underwriting
15 Association policies, provided the governing board of the
16 Residential Property and Casualty Joint Underwriting
17 Association certifies that the take-out plan will materially
18 reduce the Residential Property and Casualty Joint
19 Underwriting Association's 100-year probable maximum loss from
20 hurricanes. With the approval of the department, the board
21 may extend such credits for an additional year if the insurer
22 guarantees an additional year of renewability for all policies
23 removed from the Residential Property and Casualty Joint
24 Underwriting Association, or for 2 additional years if the
25 insurer guarantees 2 additional years of renewability for all
26 policies removed from the Residential Property and Casualty
27 Joint Underwriting Association.

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

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

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

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

28 (III) Upon a determination by the board of directors
29 that a deficit exceeds the amount that will be recovered
30 through regular assessments on member insurers, pursuant to
31 sub-sub-subparagraph (I) or sub-sub-subparagraph (II), the

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

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

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

27 (V) If regular deficit assessments are made under
28 sub-sub-subparagraph (I) or sub-sub-subparagraph (II), or by
29 the Residential Property and Casualty Joint Underwriting
30 Association under sub-subparagraph (6)(b)3.a. or
31 sub-subparagraph (6)(b)3.b., the association shall levy upon

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

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

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

26 3. The plan shall also provide that any member with a
27 surplus as to policyholders of \$20 million or less writing 25
28 percent or more of its total countrywide property insurance
29 premiums in this state may petition the department, within the
30 first 90 days of each calendar year, to qualify as a limited
31 apportionment company. The apportionment of such a member

1 company in any calendar year for which it is qualified shall
2 not exceed its gross participation, which shall not be
3 affected by the formula for voluntary writings. In no event
4 shall a limited apportionment company be required to
5 participate in any apportionment of losses pursuant to
6 sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II)
7 in the aggregate which exceeds \$50 million after payment of
8 available plan funds in any calendar year. However, a limited
9 apportionment company shall collect from its policyholders any
10 emergency assessment imposed under sub-sub-subparagraph
11 2.d.(III). The plan shall provide that, if the department
12 determines that any regular assessment will result in an
13 impairment of the surplus of a limited apportionment company,
14 the department may direct that all or part of such assessment
15 be deferred. However, there shall be no limitation or
16 deferment of an emergency assessment to be collected from
17 policyholders under sub-sub-subparagraph 2.d.(III).

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

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1 5.a. The plan of operation may include deductibles and
2 rules for classification of risks and rate modifications
3 consistent with the objective of providing and maintaining
4 funds sufficient to pay catastrophe losses.

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

19 c. The association shall provide for windstorm
20 coverage on residential properties in limits up to \$10 million
21 for commercial lines residential risks and up to \$1 million
22 for personal lines residential risks. If coverage with the
23 association is sought for a residential risk valued in excess
24 of these limits, coverage shall be available to the risk up to
25 the replacement cost or actual cash value of the property, at
26 the option of the insured, if coverage for the risk cannot be
27 located in the authorized market. The association must accept
28 a commercial lines residential risk with limits above \$10
29 million or a personal lines residential risk with limits above
30 \$1 million if coverage is not available in the authorized
31 market. The association may write coverage above the limits

1 specified in this subparagraph with or without facultative or
2 other reinsurance coverage, as the association determines
3 appropriate.

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

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

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

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

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

1 from an authorized insurer. Other provisions of the insurance
2 code relating to cancellation and notice of cancellation do
3 not apply to actions under this sub-subparagraph.

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

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

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

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

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

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, 2002, 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, 2003, 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, 2003, 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, 2003, 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 atastrophic 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 HOUSE 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