

By Senator Campbell

32-687-03

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A bill to be entitled
An act relating to insurance rates; repealing
s. 627.062(6), F.S., relating to arbitration
procedures in the case of a rate filing with
the Department of Insurance; amending s.
627.351, F.S., relating to windstorm insurance
risk apportionment; removing a provision
authorizing arbitration of a rate filing;
providing an effective date.

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

Section 1. Subsection (6) of section 627.062, Florida
Statutes, is repealed.

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

627.351 Insurance risk apportionment plans.--

(2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

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

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

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

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

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

18 (II) Effective July 1, 2002, the association shall
19 operate subject to the supervision and approval of a board of
20 governors who are the same individuals that have been
21 appointed by the Treasurer to serve on the board of governors
22 of the Citizens Property Insurance Corporation.

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

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

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

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

1 hurricanes. With the approval of the department, the board
2 may extend such credits for an additional year if the insurer
3 guarantees an additional year of renewability for all policies
4 removed from the Residential Property and Casualty Joint
5 Underwriting Association, or for 2 additional years if the
6 insurer guarantees 2 additional years of renewability for all
7 policies removed from the Residential Property and Casualty
8 Joint Underwriting Association.

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

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

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

29 (II) When the deficit incurred in a particular
30 calendar year exceeds 10 percent of the aggregate statewide
31 direct written premium for property insurance for the prior

1 calendar year for all member insurers, the association shall
2 levy an assessment on member insurers in an amount equal to
3 the greater of 10 percent of the deficit or 10 percent of the
4 aggregate statewide direct written premium for property
5 insurance for the prior calendar year for member insurers. Any
6 remaining deficit shall be recovered through emergency
7 assessments under sub-sub-subparagraph (III).

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

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

30 | (IV) Each member insurer's share of the total regular
31 | assessments under sub-sub-subparagraph (I) or

1 sub-sub-subparagraph (II) shall be in the proportion that the
2 insurer's net direct premium for property insurance in this
3 state, for the year preceding the assessment bears to the
4 aggregate statewide net direct premium for property insurance
5 of all member insurers, as reduced by any credits for
6 voluntary writings for that year.

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

23 e. The governing body of any unit of local government,
24 any residents of which are insured under the plan, may issue
25 bonds as defined in s. 125.013 or s. 166.101 to fund an
26 assistance program, in conjunction with the association, for
27 the purpose of defraying deficits of the association. In order
28 to avoid needless and indiscriminate proliferation,
29 duplication, and fragmentation of such assistance programs,
30 any unit of local government, any residents of which are
31 insured by the association, may provide for the payment of

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

1 insurer shall not be required to purchase the bonds to the
2 extent that the department determines that the purchase would
3 endanger or impair the solvency of the insurer. The authority
4 granted by this sub-subparagraph is additional to any bonding
5 authority granted by subparagraph 6.

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

29 4. The plan shall provide for the deferment, in whole
30 or in part, of a regular assessment of a member insurer under
31 sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II),

1 but not for an emergency assessment collected from
2 policyholders under sub-sub-subparagraph 2.d.(III), if, in the
3 opinion of the commissioner, payment of such regular
4 assessment would endanger or impair the solvency of the member
5 insurer. In the event a regular assessment against a member
6 insurer is deferred in whole or in part, the amount by which
7 such assessment is deferred may be assessed against the other
8 member insurers in a manner consistent with the basis for
9 assessments set forth in sub-sub-subparagraph 2.d.(I) or
10 sub-sub-subparagraph 2.d.(II).

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

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

29 c. The association shall provide for windstorm
30 coverage on residential properties in limits up to \$10 million
31 for commercial lines residential risks and up to \$1 million

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

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

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

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

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

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1 e. If the risk accepts an offer of coverage through
2 the market assistance program or through a mechanism
3 established by the association, either before the policy is
4 issued by the association or during the first 30 days of
5 coverage by the association, and the producing agent who
6 submitted the application to the association is not currently
7 appointed by the insurer, the insurer shall:

8 (I) Pay to the producing agent of record of the
9 policy, for the first year, an amount that is the greater of
10 the insurer's usual and customary commission for the type of
11 policy written or a fee equal to the usual and customary
12 commission of the association; or

13 (II) Offer to allow the producing agent of record of
14 the policy to continue servicing the policy for a period of
15 not less than 1 year and offer to pay the agent the greater of
16 the insurer's or the association's usual and customary
17 commission for the type of policy written.

18
19 If the producing agent is unwilling or unable to accept
20 appointment, the new insurer shall pay the agent in accordance
21 with sub-sub-subparagraph (I). Subject to the provisions of s.
22 627.3517, the policies issued by the association must provide
23 that if the association obtains an offer from an authorized
24 insurer to cover the risk at its approved rates under either a
25 standard policy including wind coverage or, if consistent with
26 the insurer's underwriting rules as filed with the department,
27 a basic policy including wind coverage, the risk is no longer
28 eligible for coverage through the association. Upon
29 termination of eligibility, the association shall provide
30 written notice to the policyholder and agent of record stating
31 that the association policy must be canceled as of 60 days

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

5 f. When the association enters into a contractual
6 agreement for a take-out plan, the producing agent of record
7 of the association policy is entitled to retain any unearned
8 commission on the policy, and the insurer shall:

9 (I) Pay to the producing agent of record of the
10 association policy, for the first year, an amount that is the
11 greater of the insurer's usual and customary commission for
12 the type of policy written or a fee equal to the usual and
13 customary commission of the association; or

14 (II) Offer to allow the producing agent of record of
15 the association policy to continue servicing the policy for a
16 period of not less than 1 year and offer to pay the agent the
17 greater of the insurer's or the association's usual and
18 customary commission for the type of policy written.

19
20 If the producing agent is unwilling or unable to accept
21 appointment, the new insurer shall pay the agent in accordance
22 with sub-sub-subparagraph (I).

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

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1 necessary to facilitate the issuance of bonds, including the
2 pledging of assessments or other revenues.

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

1 under the plan. The assets and obligations of the plan in
2 effect immediately prior to the effective date of chapter
3 76-96 shall be construed to be the assets and obligations of
4 the successor plan created herein.

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

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

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

1 for an effective date of coverage later than the date of the
2 closing of the transfer as established by the transferor, the
3 transferee, and, if applicable, the lender.

4 9. Notwithstanding any other provision of law:

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

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

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

3 d. As used in this subsection, the term "financing
4 documents" means any agreement, instrument, or other document
5 now existing or hereafter created evidencing any bonds or
6 other indebtedness of the association or pursuant to which any
7 such bonds or other indebtedness has been or may be issued and
8 pursuant to which any rights, revenues, or other assets of the
9 association are pledged or sold to secure the repayment of
10 such bonds or indebtedness, together with the payment of
11 interest on such bonds or such indebtedness, or the payment of
12 any other obligation of the association related to such bonds
13 or indebtedness.

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

1 f. There shall be no liability on the part of, and no
2 cause of action of any nature shall arise against, any member
3 insurer or its agents or employees, agents or employees of the
4 association, members of the board of directors of the
5 association, or the department or its representatives, for any
6 action taken by them in the performance of their duties or
7 responsibilities under this subsection. Such immunity does not
8 apply to actions for breach of any contract or agreement
9 pertaining to insurance, or any willful tort.

10 Section 3. This act shall take effect upon becoming a
11 law.

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14 SENATE SUMMARY

15 Repeals a provision authorizing arbitration in the case
16 of an insurance rate filing with the Department of
Insurance.

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