

By the Committee on Banking and Insurance; and Senators
Silver, Geller and Clary

311-1716B-01

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

1 for distributing assigned policies; providing
2 procedures; providing that assignment of a
3 policy does not affect the producing agent's
4 entitlement to unearned commission; providing
5 for appeals of assignment of policies to the
6 Department of Insurance; providing that a
7 failure to accept residential policies assigned
8 by the association is a willful violation of
9 the Florida Insurance Code; authorizing the
10 department to adopt rules; amending s.
11 627.7013, F.S.; extending the operation of the
12 law limiting the number of personal lines
13 residential policies that may be terminated by
14 an insurer for the purpose of reducing the
15 insurer's exposure to hurricane claims; making
16 legislative findings; amending s. 627.7014,
17 F.S.; extending the operation of the law
18 limiting the number of condominium association
19 property insurance policies that may be
20 terminated by an insurer for the purpose of
21 reducing the insurer's exposure to hurricane
22 claims; making legislative findings; providing
23 an effective date.

24

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

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27 Section 1. Paragraph (a) of subsection (6) of section
28 627.062, Florida Statutes, is amended to read:

29 627.062 Rate standards.--

30 (6)(a) After any action with respect to a rate filing
31 that constitutes agency action for purposes of the

1 Administrative Procedure Act, an insurer other than Florida
2 Windstorm Underwriting Association may, in lieu of demanding a
3 hearing under s. 120.57, require arbitration of the rate
4 filing. Arbitration shall be conducted by a board of
5 arbitrators consisting of an arbitrator selected by the
6 department, an arbitrator selected by the insurer, and an
7 arbitrator selected jointly by the other two arbitrators. Each
8 arbitrator must be certified by the American Arbitration
9 Association. A decision is valid only upon the affirmative
10 vote of at least two of the arbitrators. No arbitrator may be
11 an employee of any insurance regulator or regulatory body or
12 of any insurer, regardless of whether or not the employing
13 insurer does business in this state. The department and the
14 insurer must treat the decision of the arbitrators as the
15 final approval of a rate filing. Costs of arbitration shall be
16 paid by the insurer.

17 Section 2. Section 627.0628, Florida Statutes, is
18 amended to read:

19 627.0628 Florida Commission on Hurricane Loss
20 Projection Methodology.--

21 (1) LEGISLATIVE FINDINGS AND INTENT.--

22 (a) Reliable projections of hurricane losses are
23 necessary in order to assure that rates for residential
24 property insurance meet the statutory requirement that rates
25 be neither excessive nor inadequate. The ability to
26 accurately project hurricane losses has been enhanced greatly
27 in recent years through the use of computer modeling. It is
28 the public policy of this state to encourage the use of the
29 most sophisticated actuarial methods to assure that consumers
30 are charged lawful rates for residential property insurance
31 coverage.

1 (b) The Legislature recognizes the need for expert
2 evaluation of computer models and other recently developed or
3 improved actuarial methodologies for projecting hurricane
4 losses, in order to resolve conflicts among actuarial
5 professionals, and in order to provide both immediate and
6 continuing improvement in the sophistication of actuarial
7 methods used to set rates charged to consumers.

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

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

25 (2) COMMISSION CREATED.--

26 (a) There is created the Florida Commission on
27 Hurricane Loss Projection Methodology, which is assigned to
28 the State Board of Administration. The commission shall be
29 administratively housed within the State Board of
30 Administration, but it shall independently exercise the powers
31 and duties specified in this section.

- 1 (b) The commission shall consist of the following 11
2 members:
- 3 1. The insurance consumer advocate.
 - 4 2. The Chief Operating Officer of the Florida
5 Hurricane Catastrophe Fund.
 - 6 3. The Executive Director of the Residential Property
7 and Casualty Joint Underwriting Association.
 - 8 4. The Director of the Division of Emergency
9 Management of the Department of Community Affairs.
 - 10 5. The actuary member of the Florida Hurricane
11 Catastrophe Fund Advisory Council.
 - 12 6. Six members appointed by the Insurance
13 Commissioner, as follows:
 - 14 a. An employee of the Department of Insurance who is
15 an actuary responsible for property insurance rate filings.
 - 16 b. An actuary who is employed full time by a property
17 and casualty insurer which was responsible for at least 1
18 percent of the aggregate statewide direct written premium for
19 homeowner's insurance in the calendar year preceding the
20 member's appointment to the commission.
 - 21 c. An expert in insurance finance who is a full time
22 member of the faculty of the State University System and who
23 has a background in actuarial science.
 - 24 d. An expert in statistics who is a full time member
25 of the faculty of the State University System and who has a
26 background in insurance.
 - 27 e. An expert in computer system design who is a full
28 time member of the faculty of the State University System.
 - 29 f. An expert in meteorology who is a full time member
30 of the faculty of the State University System and who
31 specializes in hurricanes.

1 (c) Members designated under subparagraphs (b)1.-5.
2 shall serve on the commission as long as they maintain the
3 respective offices designated in subparagraphs (b)1.-5.
4 Members appointed by the Insurance Commissioner under
5 subparagraph (b)6. shall serve on the commission until the end
6 of the term of office of the Insurance Commissioner who
7 appointed them, unless earlier removed by the Insurance
8 Commissioner for cause. Vacancies on the commission shall be
9 filled in the same manner as the original appointment.

10 (d) The State Board of Administration shall annually
11 appoint one of the members of the commission to serve as
12 chair.

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

16 (f) The State Board of Administration shall, as a cost
17 of administration of the Florida Hurricane Catastrophe Fund,
18 provide for travel, expenses, and staff support for the
19 commission.

20 (g) There shall be no liability on the part of, and no
21 cause of action of any nature shall arise against, any member
22 of the commission, any member of the State Board of
23 Administration, or any employee of the State Board of
24 Administration for any action taken in the performance of
25 their duties under this section. In addition, the commission
26 may, in writing, waive any potential cause of action for
27 negligence of a consultant, contractor, or contract employee
28 engaged to assist the commission.

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

30 (a) The commission shall consider any actuarial
31 methods, principles, standards, models, or output ranges that

1 have the potential for improving the accuracy of or
2 reliability of the hurricane loss projections used in
3 residential property insurance rate filings. The commission
4 shall, from time to time, adopt findings as to the accuracy or
5 reliability of particular methods, principles, standards,
6 models, or output ranges.

7 (b) In establishing reimbursement premiums for the
8 Florida Hurricane Catastrophe Fund, the State Board of
9 Administration must, to the extent feasible, employ actuarial
10 methods, principles, standards, models, or output ranges found
11 by the commission to be accurate or reliable.

12 (c) With respect to a rate filing under s. 627.062, an
13 insurer may employ actuarial methods, principles, standards,
14 models, or output ranges found by the commission to be
15 accurate or reliable to determine hurricane loss factors for
16 use in a rate filing under s. 627.062, which findings and
17 factors are admissible and relevant in consideration of a rate
18 filing by the department or in any arbitration or
19 administrative or judicial review. However, such findings and
20 factors are not admissible and relevant in consideration of a
21 rate filing unless the department has access to all factors
22 and assumptions that were used in developing the actuarial
23 methods, principles, standards, models, or output ranges found
24 by the commission to be accurate or reliable and the
25 department is not precluded from disclosing such information
26 in a rate proceeding.

27 (d) The commission shall adopt initial actuarial
28 methods, principles, standards, models, or output ranges no
29 later than December 31, 1995. The commission shall adopt
30 revisions to such actuarial methods, principles, standards,
31 models, or output ranges at least annually thereafter. As

1 soon as possible, but no later than July 1, 1996, the
2 commission shall adopt revised actuarial methods, principles,
3 standards, models, or output ranges which include
4 specification of acceptable computer models or output ranges
5 derived from computer models.

6 Section 3. Paragraph (b) of subsection (2) of section
7 627.351, Florida Statutes, is amended, and paragraph (f) is
8 added to subsection (2), to read:

9 627.351 Insurance risk apportionment plans.--

10 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

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

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1 department shall adopt rules that provide a formula for the
2 recovery and repayment of any deferred assessments.

3 1. For the purpose of this section, properties
4 eligible for such windstorm coverage are defined as dwellings,
5 buildings, and other structures, including mobile homes which
6 are used as dwellings and which are tied down in compliance
7 with mobile home tie-down requirements prescribed by the
8 Department of Highway Safety and Motor Vehicles pursuant to s.
9 320.8325, and the contents of all such properties. An
10 applicant or policyholder is eligible for coverage only if an
11 offer of coverage cannot be obtained by or for the applicant
12 or policyholder from an admitted insurer at approved rates.

13 2.a.(I) All insurers required to be members of such
14 association shall participate in its writings, expenses, and
15 losses. Surplus of the association shall be retained for the
16 payment of claims and shall not be distributed to the member
17 insurers. Such participation by member insurers shall be in
18 the proportion that the net direct premiums of each member
19 insurer written for property insurance in this state during
20 the preceding calendar year bear to the aggregate net direct
21 premiums for property insurance of all member insurers, as
22 reduced by any credits for voluntary writings, in this state
23 during the preceding calendar year. For the purposes of this
24 subsection, the term "net direct premiums" means direct
25 written premiums for property insurance, reduced by premium
26 for liability coverage and for the following if included in
27 allied lines: rain and hail on growing crops; livestock;
28 association direct premiums booked; National Flood Insurance
29 Program direct premiums; and similar deductions specifically
30 authorized by the plan of operation and approved by the
31 department. A member's participation shall begin on the first

1 day of the calendar year following the year in which it is
2 issued a certificate of authority to transact property
3 insurance in the state and shall terminate 1 year after the
4 end of the calendar year during which it no longer holds a
5 certificate of authority to transact property insurance in the
6 state. The commissioner, after review of annual statements,
7 other reports, and any other statistics that the commissioner
8 deems necessary, shall certify to the association the
9 aggregate direct premiums written for property insurance in
10 this state by all member insurers.

11 (II) The plan of operation shall provide for a board
12 of directors consisting of the Insurance Consumer Advocate
13 appointed under s. 627.0613, 1 representative of a financial
14 institution engaging in residential mortgage lending within
15 the association's eligible areas, 1 representative of realtors
16 engaged in the sale of residential property within the
17 association's eligible areas, 1 representative who has
18 expertise in State Minimum Building Codes and coastal
19 construction, 1 association policyholder, 1 representative who
20 is a licensed property and casualty insurance agent, 1
21 consumer representative appointed by the Insurance
22 Commissioner, 1 consumer representative appointed by the
23 Governor, and 7 ~~12~~ additional members appointed as specified
24 in the plan of operation. One of the 7 ~~12~~ additional members
25 shall be elected by the domestic companies of this state on
26 the basis of cumulative weighted voting based on the net
27 direct premiums of domestic companies in this state. Nothing
28 in the 1997 amendments to this paragraph terminates the
29 existing board or the terms of any members of the board.

30 (III) The plan of operation shall provide a formula
31 whereby a company voluntarily providing windstorm coverage in

1 affected areas will be relieved wholly or partially from
2 apportionment of a regular assessment pursuant to
3 sub-sub-subparagraph d.(I) or sub-sub-subparagraph d.(II).

4 (IV) A company which is a member of a group of
5 companies under common management may elect to have its
6 credits applied on a group basis, and any company or group may
7 elect to have its credits applied to any other company or
8 group.

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

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

1 number of Residential Property and Casualty Joint Underwriting
2 Association policies, provided the governing board of the
3 Residential Property and Casualty Joint Underwriting
4 Association certifies that the take-out plan will materially
5 reduce the Residential Property and Casualty Joint
6 Underwriting Association's 100-year probable maximum loss from
7 hurricanes. With the approval of the department, the board
8 may extend such credits for an additional year if the insurer
9 guarantees an additional year of renewability for all policies
10 removed from the Residential Property and Casualty Joint
11 Underwriting Association, or for 2 additional years if the
12 insurer guarantees 2 additional years of renewability for all
13 policies removed from the Residential Property and Casualty
14 Joint Underwriting Association.

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

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

29 d.(I) When the deficit incurred in a particular
30 calendar year is 10 percent or less 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 deficit.

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

14 (III) Upon a determination by the board of directors
15 that a deficit exceeds the amount that will be recovered
16 through regular assessments on member insurers, pursuant to
17 sub-sub-subparagraph (I) or sub-sub-subparagraph (II), the
18 board shall levy, after verification by the department,
19 emergency assessments to be collected by member insurers and
20 by underwriting associations created pursuant to this section
21 which write property insurance, upon issuance or renewal of
22 property insurance policies other than National Flood
23 Insurance policies in the year or years following levy of the
24 regular assessments. The amount of the emergency assessment
25 collected in a particular year shall be a uniform percentage
26 of that year's direct written premium for property insurance
27 for all member insurers and underwriting associations,
28 excluding National Flood Insurance policy premiums, as
29 annually determined by the board and verified by the
30 department. The department shall verify the arithmetic
31 calculations involved in the board's determination within 30

1 days after receipt of the information on which the
2 determination was based. Notwithstanding any other provision
3 of law, each member insurer and each underwriting association
4 created pursuant to this section shall collect emergency
5 assessments from its policyholders without such obligation
6 being affected by any credit, limitation, exemption, or
7 deferment. The emergency assessments so collected shall be
8 transferred directly to the association on a periodic basis as
9 determined by the association. The aggregate amount of
10 emergency assessments levied under this sub-sub-subparagraph
11 in any calendar year may not exceed the greater of 10 percent
12 of the amount needed to cover the original deficit, plus
13 interest, fees, commissions, required reserves, and other
14 costs associated with financing of the original deficit, or 10
15 percent of the aggregate statewide direct written premium for
16 property insurance written by member insurers and underwriting
17 associations for the prior year, plus interest, fees,
18 commissions, required reserves, and other costs associated
19 with financing the original deficit. The board may pledge the
20 proceeds of the emergency assessments under this
21 sub-sub-subparagraph as the source of revenue for bonds, to
22 retire any other debt incurred as a result of the deficit or
23 events giving rise to the deficit, or in any other way that
24 the board determines will efficiently recover the deficit. The
25 emergency assessments under this sub-sub-subparagraph shall
26 continue as long as any bonds issued or other indebtedness
27 incurred with respect to a deficit for which the assessment
28 was imposed remain outstanding, unless adequate provision has
29 been made for the payment of such bonds or other indebtedness
30 pursuant to the document governing such bonds or other
31 indebtedness. Emergency assessments collected under this

1 sub-sub-subparagraph are not part of an insurer's rates, are
2 not premium, and are not subject to premium tax, fees, or
3 commissions; however, failure to pay the emergency assessment
4 shall be treated as failure to pay premium.

5 (IV) Each member insurer's share of the total regular
6 assessments under sub-sub-subparagraph (I) or
7 sub-sub-subparagraph (II) shall be in the proportion that the
8 insurer's net direct premium for property insurance in this
9 state, for the year preceding the assessment bears to the
10 aggregate statewide net direct premium for property insurance
11 of all member insurers, as reduced by any credits for
12 voluntary writings for that year.

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

29 e. The governing body of any unit of local government,
30 any residents of which are insured under the plan, may issue
31 bonds as defined in s. 125.013 or s. 166.101 to fund an

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

1 remain unsold 60 days after issuance, the department shall
2 require all insurers subject to assessment to purchase the
3 bonds, which shall be treated as admitted assets; each insurer
4 shall be required to purchase that percentage of the unsold
5 portion of the bond issue that equals the insurer's relative
6 share of assessment liability under this subsection. An
7 insurer shall not be required to purchase the bonds to the
8 extent that the department determines that the purchase would
9 endanger or impair the solvency of the insurer. The authority
10 granted by this sub-subparagraph is additional to any bonding
11 authority granted by subparagraph 6.

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

1 be deferred. However, there shall be no limitation or
2 deferment of an emergency assessment to be collected from
3 policyholders under sub-sub-subparagraph 2.d.(III).

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

17 5.a. The plan of operation may include deductibles and
18 rules for classification of risks and rate modifications
19 consistent with the objective of providing and maintaining
20 funds sufficient to pay catastrophe losses.

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

1 voluntary market for hurricane coverage for each line of
2 business in the various areas eligible for association
3 coverage.

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

20 d. The plan of operation must provide objective
21 criteria and procedures, approved by the department, to be
22 uniformly applied for all applicants in determining whether an
23 individual risk is so hazardous as to be uninsurable. In
24 making this determination and in establishing the criteria and
25 procedures, the following shall be considered:

26 (I) Whether the likelihood of a loss for the
27 individual risk is substantially higher than for other risks
28 of the same class; and

29 (II) Whether the uncertainty associated with the
30 individual risk is such that an appropriate premium cannot be
31 determined.

1
2 The acceptance or rejection of a risk by the association
3 pursuant to such criteria and procedures must be construed as
4 the private placement of insurance, and the provisions of
5 chapter 120 do not apply.

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

10 (I) Pay to the producing agent of record of the
11 association policy an amount equal to the insurer's usual and
12 customary commission for the type of policy written if the
13 term of the association policy was in excess of 6 months, or
14 one-half of such usual and customary commission if the term of
15 the association policy was 6 months or less; or

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

21
22 The take-out insurer need not take any further action if the
23 offer is rejected. This sub-subparagraph does not apply to any
24 reciprocal interinsurance exchange, nonprofit federation, or
25 any subsidiary or affiliate of such organization. This
26 sub-subparagraph does not apply if the agent is also the agent
27 of record on the new coverage. The requirement of this
28 sub-subparagraph that the producing agent of record is
29 entitled to retain the unearned commission on an association
30 policy does not apply to a policy for which coverage has been
31 provided in the association for 30 days or less.~~The policies~~

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

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

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~~

31

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 (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
31

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, any violation of criminal law, or any
10 willful tort.

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

16 2. Until January 1, 2002, the association shall afford
17 to all authorized insurers an opportunity to voluntarily
18 remove policies located in the deauthorized area from the
19 association. Each policy must be written for at least three
20 full annual policy terms, using rates and forms approved by
21 the department.

22 3.a. Beginning January 1, 2002, every authorized
23 insurer writing personal lines residential coverage in this
24 state must accept assignments of personal lines residential
25 policies located in the deauthorized area from the
26 association, as provided in this paragraph.

27 b. By January 1, 2002, the association shall identify
28 the personal lines residential policies in the deauthorized
29 area that will be assigned to each insurer. The association
30 shall provide each insurer access to information concerning
31 each policy assigned to the insurer. The selection and

1 subsequent assignment must be coordinated by the association
2 among the various insurers by allocating the distribution of
3 the assigned policies among such insurers in such a manner as
4 to limit adverse solvency consequences; to avoid excess
5 concentration of policies in any one area with respect to the
6 insurer's personal lines residential coverage book of
7 business; to take into account the characteristics of risks
8 underwritten in the voluntary market by the assigned insurer
9 and attempt to match assigned risks as closely as possible to
10 the insurer's expertise; and to take into account variations
11 in the market value of the assigned risks.

12 c. The assignments must be made to each insurer such
13 that each insurer's share of the policies assigned is
14 approximately equal to that insurer's proportional share of
15 personal lines residential insurance policies written in this
16 state. Insurers that voluntarily remove policies from the
17 deauthorized area may receive a reduction in the number of
18 assignments such insurers would otherwise receive from the
19 association.

20 d. If more than one insurer within an insurer group is
21 authorized to write personal lines residential coverage in
22 this state, insurers in the group receiving the assignments
23 may cede the assignments among authorized members of the group
24 as approved by the department.

25 e. Each insurer to which policies are assigned must
26 renew each policy for at least 3 years, unless canceled by the
27 insurer for a lawful reason other than reduction of hurricane
28 exposure or unless nonrenewed by the policyholder. Nothing in
29 this paragraph precludes an insurer from offering an assigned
30 policyholder coverage for nonwind perils. If such an offer is
31 accepted, the insurer may satisfy its assignment obligations

1 with regard to that risk by writing all perils coverage at
2 such insurer's approved rates and on its approved forms. For
3 each assigned policy canceled or nonrenewed by the insurer for
4 any reason during the coverage period required by this
5 paragraph, the insurer shall accept from the association, if
6 available, one additional policy covering a risk similar to
7 the risk covered by the canceled or nonrenewed policy.

8 f. Assignment of a policy does not affect the
9 producing agent's entitlement to unearned commission. If the
10 policy is assigned to an insurer with which the producing
11 agent has a contract, the producing agent shall retain the
12 business. If the policy is assigned to an insurer that is
13 using the services of a managing general agent, the producing
14 agent is entitled to act as the brokering agent. If the agent
15 is not appointed or offered an appointment with the assuming
16 insurer or not brokering the business with a managing general
17 agent being used by the assuming insurer, the agent shall
18 receive an assignment fee of \$50, payable by the association.

19 g. If an insurer believes that the assignment of risks
20 would result in the insurer's insolvency or impair the
21 insurer's capital and surplus, as those terms are defined in
22 s. 631.011(9), (10), and (11), and reasonable means to avoid
23 the insolvency or impairment are unavailable, the insurer may
24 petition the department for revision, in whole or in part, of
25 the selection and assignment of such risks. The insurers shall
26 bear the burden of proving such resulting insolvency or
27 impairment of capital or surplus.

28 4. The failure of an insurer to accept the residential
29 policies selected by the association, constitutes a willful
30 violation of the Florida Insurance Code. Each policy refused
31 or rejected by an insurer constitutes a separate violation.

1 5. The department may adopt rules to administer this
2 paragraph.

3 6. The department may require the revision or
4 amendment of the association's plan of operation or bylaws as
5 necessary for the purposes of this paragraph.

6 7. The department may require the revision or
7 amendment of any plan of operation or bylaws of the market
8 assistance plan established under s. 627.3515 as necessary for
9 the purposes of this paragraph.

10 Section 4. Effective June 1, 2001, paragraph (c) is
11 added to subsection (1) of section 627.7013, Florida Statutes,
12 and paragraph (e) of subsection (2) of that section is amended
13 to read:

14 627.7013 Orderly markets for personal lines
15 residential property insurance.--

16 (1) FINDINGS AND PURPOSE.--

17 (c) The Legislature finds, as of January 1, 2001,
18 that:

19 1. The conditions described in paragraphs (a) and (b)
20 remain applicable to the property insurance market in this
21 state in 2001 and are likely to remain applicable for several
22 years thereafter.

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

25 a. The Florida Windstorm Underwriting Association has
26 more than 400,000 policies in force and the Florida
27 Residential Property and Casualty Joint Underwriting
28 Association has more than 60,000 policies in force.

29 b. A further extension of the operation of this
30 section until June 1, 2004, will provide an opportunity for
31

1 the market to stabilize and for continuation of residual
2 market depopulation efforts.

3 (2) MORATORIUM COMPLETION.--

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

5 Section 5. Effective June 1, 2001, present paragraph
6 (c) of subsection (1) of section 627.7014, Florida Statutes,
7 is redesignated as paragraph (d), a new paragraph (c) is added
8 to that subsection, and paragraph (d) of subsection (2) of
9 that section is amended to read:

10 627.7014 Orderly markets for condominium association
11 residential property insurance.--

12 (1) FINDINGS AND PURPOSE.--

13 (c) The Legislature finds, as of January 1, 2001,
14 that:

15 1. The conditions described in paragraph (a) remain
16 applicable to the commercial residential property insurance
17 market in this state in 2001 and are likely to remain
18 applicable for several years thereafter.

19 2. The general instability of the market is reflected
20 by the fact that the Florida Windstorm Underwriting
21 Association has approximately 9,000 commercial residential
22 policies in force as of December 31, 2000.

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

27 (2) MORATORIUM.--

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

29 Section 6. Except as otherwise provided in this act,
30 this act shall take effect July 1, 2001.

31

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 SB's 182, 328 & 970

4 Prohibits the Florida Windstorm Underwriting Association
5 (FWUA) from utilizing the law that allows property and
6 casualty insurers to submit a rate filing to an arbitration
7 panel.

8 Restricts the use of hurricane loss projection models in rate
9 proceedings by providing that findings and factors adopted by
10 the Florida Commission on Hurricane Loss Projection
11 Methodology are not admissible and relevant in consideration
12 of a rate filing, unless the Department of Insurance has
13 access to all factors and assumptions used in developing the
14 models, and unless the department is not precluded from
15 disclosing such information in a rate proceeding.

16 Revises the composition of the Board of Governors of the FWUA.

17 Reduces the boundaries of the FWUA.

18 Establishes an assigned risk plan, beginning January 1, 2002,
19 to remove policies located in the de-authorized area from the
20 FWUA and assigning those policies to authorized insurers.

21 Deletes the provisions of current law that state that if the
22 FWUA obtains an offer of coverage from an authorized insurer
23 to insure a home or other risk at its approval rates, the risk
24 is no longer eligible for coverage through the FWUA.

25 Requires that if the FWUA enters into a contractual agreement
26 for a take-out plan, the take-out insurer must pay to the
27 previous agent a commission.

28 Extends, for 3 more years, the law that limits the number of
29 personal lines residential policies that insurers may
30 non-renew for the purpose of reducing their hurricane
31 exposure. The current limitations are scheduled for repeal on
June 1, 2001, which the bill extends until June 1, 2004.

Increases from \$20 million to \$25 million, the maximum amount
of surplus that an insurer may have to qualify as a limited
apportionment company in the FWUA.