

**THE
FLORIDA DEPARTMENT
OF INSURANCE**

**RECOMMENDATIONS ON IMPROVING
PROPERTY INSURANCE
AVAILABILITY IN FLORIDA**

May 10, 1993

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TABLE OF CONTENTS

PART I THE AVAILABILITY PROBLEM

INTRODUCTION	1
DESCRIPTION OF THE PROBLEM	1
CAUSE OF THE PROBLEM	2
MAGNITUDE OF THE PROBLEM	4

PART II RECOMMENDATIONS FOR SOLUTIONS

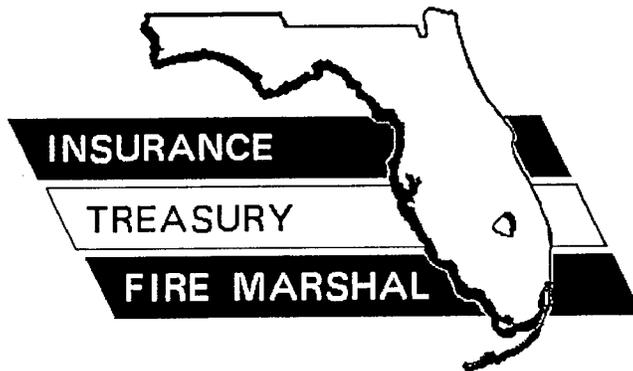
OVERVIEW	5
ESTABLISHMENT OF A FEDERAL CATASTROPHE PROTECTION FUND	5
ESTABLISHMENT OF A STATE AND REGIONAL CATASTROPHE PROTECTION FUND	6
ENHANCEMENT OF PRIVATE MARKET MECHANISMS FOR CATASTROPHE PROTECTION	8

PART III CONCLUSION

SUMMARY	10
FLORIDA	10
FEDERAL	10

APPENDICES

A - SUGGESTED FLORIDA LEGISLATION



PART I THE AVAILABILITY PROBLEM

INTRODUCTION

On February 12, 1993, the Florida Department of Insurance (the Department) issued a report on Hurricane Andrew's Impact on Insurance in the State of Florida. That report indicated that, as a result of Andrew, the number of insurers in the Florida insurance market was shrinking. The February 12th report also recommended certain actions to help prevent this and to stabilize the public's confidence in the insurance market in Florida. This current report is being presented to update and expand on the recommendations contained in the Department's February 12th report.

DESCRIPTION OF THE PROBLEM

Before August 24, 1992, Florida could boast of having one of the nation's healthiest private markets for property insurance. Approximately 300 insurers offered a variety of products to consumers at vigorously competitive prices. Insurance was so available and affordable that most consumers took it for granted.

When Hurricane Andrew hit South Florida on August 24, the storm's disruption to Florida's insurance market began to evolve. A total of seven small insurers became insolvent as a result of hurricane losses; 34 insurers have announced their plans to withdraw from doing any business in Florida and another 29 have begun to detail their plans to restrict writings or withdraw from writing certain types of insurance.

For homeowners and renters in Florida, this market disruption has become increasingly

alarming. For consumers, it is becoming a problem of finding and maintaining affordable property coverage. The immediate cause of the problem is the effort underway by many insurance companies providing property insurance in Florida to reduce their exposure of risk in the state and other coastal areas of the country. Insurers are proposing to accomplish this reduction using many methods including:

- Cancellation of policies
- Non-renewal of policies
- Declining to write any new policies
- Reducing the number of new policies being written
- Changing the policy terms to reduce the coverage provided by the policy

Some insurers are implementing these methods only in certain areas of the state, while others are implementing them statewide. Similarly, some insurers are applying these methods only until their exposure is reduced to what they consider an acceptable level while others are completely removing themselves from the Florida marketplace. In order to determine if the individual insurer efforts in this regard are consistent with Florida statutes designed to protect consumers, the Department is scheduling public hearings throughout the state on those insurers whose reductions affect a substantial number of policyholders.

CAUSE OF THE PROBLEM

Andrew's insured damage of more than \$16 billion far exceeded the estimates of the insurance industry for a storm of Andrew's size and landfall location. The cause of this low estimate has been blamed on many factors, including:

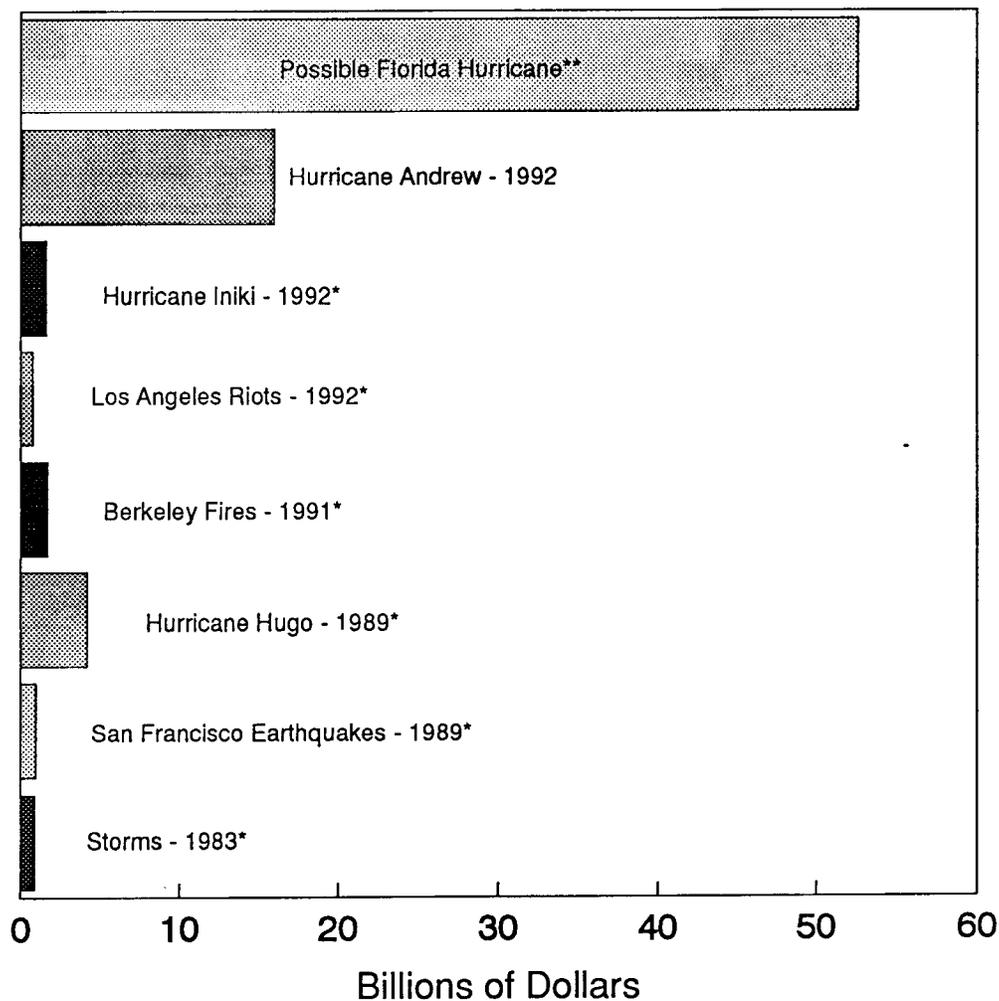
- Unexpectedly poor adherence to building codes
- Underestimation of the concentration of insured exposures in the disaster area.
- Complacency on the part of insurers as to the dangers of hurricanes because of the long period since the last major storm.
- Underestimation of the strength and scope of Andrew.

Most property insurers in Florida have restructured their hurricane maximum probable loss (MPL) models to reflect the experience gathered from Andrew. This has resulted in significantly increased MPL estimates. In many cases, these MPL estimates are higher than an insurer is willing to risk and the result is the reduction in exposures currently underway. For the consumers this means property coverage is no longer easily available in many areas.

An example of a MPL model for hurricanes is contained in a report published December 11, 1993, by Applied Insurance Research (the AIR Report). The AIR Report simulated

hurricanes and the insured losses that could be anticipated. The AIR Report found that the largest simulated hurricane loss in the United States resulted from a class 5 hurricane making landfall in Miami and the insured losses in Florida from this storm would exceed \$52 billion. The comparative magnitude of this loss is illustrated in the following chart. The AIR Report also projects an average annual hurricane loss in Florida of more than \$1.5 billion.

Comparative Insured Losses For Recent Catastrophes and Projected Florida Hurricane



* Copyright: Property Claims Services 1992
 ** Per Applied Insurance Research

The Department has not at this time reached a conclusion as to the validity of the AIR Report, but it does serve as an indicator of the magnitude of the insured losses that can be expected.

Other Florida property insurers are finding reinsurers unwilling to provide the coverage formerly given and as a result are having to reduce their underlying risks accordingly. Still other insurers were so financially weakened by Andrew's claims they argue that the prudent action is to reduce their level of insurance risks until their financial strength is restored.

MAGNITUDE OF THE PROBLEM

Increasingly, consumers are unable to purchase property insurance or are facing the likelihood that their existing policy will be cancelled or non-renewed. As of May 1, 1993, the Department has received notices from insurers representing as much as 30% of the homeowners' insurance market in Florida and more than 10% of the Florida commercial insurance market of their intent to reduce their Florida exposures. Present estimates are that as many as 500,000 Floridians could be faced with obtaining coverage outside of the traditional insurance market within the next 18 months.

Beyond the obvious impact on the Florida consumer of being unable to protect their personal assets, the lack of insurance also threatens to stall the recovery of Florida's economy since mortgage financing cannot be obtained without insurance and the impact of this on the construction industry and the economy in general would be disastrous.

The Florida Residential Property and Casualty Joint Underwriting Association (the RPCJUA) began operation in early 1993 to provide alternative coverage for the consumers who can not find homeowner's insurance in the normal market. While the RPCJUA is achieving this objective, its lack of adequate, independent capital and its increasing size bring into question its financial stability in the event of a major hurricane or other disaster.

The RPCJUA has the ability to assess insurers in Florida in the event the RPCJUA does not have enough funds to pay all of its claims. However, in the event of a major catastrophe, the assessment on insurers would be extremely large and many insurers would not be capable of making the payment, thus increasing the amount of the assessment on the remaining insurers. As a result, the RPCJUA may not have enough funds to pay its claims. In addition this potential assessment liability from the RPCJUA is apparently causing some insurers to completely leave the Florida residential insurance market and preventing others from entering the market.

PART II RECOMMENDATIONS FOR SOLUTIONS

OVERVIEW

In its February 12, 1993, report the Department presented what it believed to be the best solution to the problems of protecting the industry's solvency in the event of another catastrophe and stabilizing the market in terms of availability. The Department still believes the approach contained in the February 12th report is the proper course to follow.

The Department's recommended solution can be divided into three major categories:

- Establishment of a Federal catastrophe protection fund.
- Establishment of a state and regional catastrophe protection fund.
- Enhancement of private market mechanisms for catastrophic protection.

ESTABLISHMENT OF A FEDERAL CATASTROPHE PROTECTION FUND

The potential for a catastrophic event that would cause significant insurer failures and perhaps result in the inability of the industry to meet its obligations has been increasing. This increase is due to a number of factors including high density population centers in high risk areas, a higher standard of living, and higher insured values for the average policyholder. The amount of potential loss is simply becoming too large for any one insurer, state or region of the country to provide a solution.

The San Francisco earthquake focused the attention on this problem and resulted in work towards the establishment of a Federal earthquake disaster fund. However, the focus of the fund on earthquakes was too limited and in part because of this limited purpose, the work to establish the fund has been slow. Andrew has now acted as a catalyst and Federal legislation to establish the fund and expand its coverage to include windstorm is expected to be introduced soon.

As currently conceived, the fund would provide a high level stop loss reinsurance cover for insurers in the event of a catastrophe. This coverage would not begin until the loss was on an order of magnitude of \$15 to \$20 billion. The coverage would be funded by policy assessments and in the event of a disaster before fully funded, the fund would borrow money from the United States Treasury to pay claims. The objective of the fund

would be to prevent any one catastrophe from resulting in significant insurer failures and unpaid policyholder claims. The Department has been working with the National Association of Insurance Commissioners and others in encouraging the Federal government to establish this fund.

ESTABLISHMENT OF A STATE AND REGIONAL CATASTROPHE PROTECTION FUND

The Federal fund discussed above would prevent widespread insurer failures in a massive catastrophe. However, it would not, and in the Department's view, should not offer protection for a catastrophe on the scale of Andrew. Another catastrophic funding layer is appropriate for prevention of insurer failures and market disruption. This layer should be established on a state and regional level. It would function in a manner similar to the Federal fund and provide reinsurance protection between that provided by the private market and the Federal fund. In an ideal setting, there would be no need for this fund because insurers would be required to maintain the needed reserve in their own funds. However, because of the Federal taxing structure currently in effect and the public's lack of confidence in the industry's ability to adequately preserve these funds, maintenance of the funds by the insurers is not considered a workable solution by the Department.

Some view the Florida Windstorm Underwriting Association (the FWUA) as fulfilling the need for the fund. The FWUA functions similarly to the RPCJUA except it writes only the windstorm portion of a policy and has limited underwriting standards for the acceptance of risks. The Department believes the windstorm risk of a policy should, at least in part, be borne by the insurer in the traditional insurance mechanism. To allow insurers to pick and choose when a separate mechanism bears all of the windstorm risk violates the concept of insurance and encourages adverse selection. Rather than being a substitute for traditional insurance as is the FWUA, the fund is viewed by the Department as an important enhancement.

For the fund to be effective, the Department recommends the following elements must be present:

- The fund should be free from Federal or state taxes. The taxes would only serve to increase the burden on the consumer. The fund would be non-profit with no income accruing to the insurers being afforded protection. The only benefit being provided by the fund is to the policyholders themselves.
- The fund must be unencumberable for any purpose other than the payment of claims in the event of a qualifying catastrophe. For policyholders to accept the fund and for it to be available when needed, appropriate safeguards must be established to prevent even the appearance that the fund's monies could be used

for any other purpose. The fund should be an irrevocable trust for the benefit of policyholders in the state of Florida.

- The fund must have a stable, reliable, statutorily mandated funding source (preferably from the catastrophe load on insurance policies). The source of monies for the fund must be definite and dependable. Without a permanent funding source, insurers and policyholders cannot be guaranteed the protection will be adequate when needed. The monies collected into the fund should reduce the catastrophe load factor being charged by insurers.
- The fund should have the ability to borrow against its future funding source. Should a catastrophe occur before sufficient monies are accumulated in the fund to cover the losses from the catastrophe, the fund must have the ability to borrow to cover the shortfall.
- The fund should not be allowed to extend coverage beyond what it has the resources to meet. The fund's resources would be the amount of its monies on hand plus its borrowing capability. To extend coverage beyond this amount would be a false promise to the policyholders of Florida and should not be allowed.
- The fund should be established with the understanding it may be expanded to cover an entire region, not just one state. A multi-state fund spreads the risk of catastrophic loss over a larger number of policyholders. Not only does this lessen the burden on individual policyholders, it helps assure that adequate monies will be collected quickly enough to fund losses from catastrophes the size of Andrew. Other states should support this concept since many share the same risk of loss Florida does.

The Department believes this type of fund would provide the stability needed in the marketplace to prevent the disruptions currently being experienced. The Department has begun discussions with other states to adopt this concept. If the Federal government does not establish the catastrophe fund that is recommended above, this fund's scope should be expanded to also provide the higher level protection the Federal fund would have provided.

The Department recommends the Florida Legislature grant the Department the authority to establish the type of fund described and feels the Legislature should urge other similarly situated states to establish similar funds so a regional fund can be created. In addition, the Department feels the Legislature should adopt a resolution asking the Federal government to clearly designate that funds of this type be free from Federal taxes. The Department has drafted proposed legislation to establish this fund and it is attached as Appendix A.

ENHANCEMENT OF PRIVATE MARKET MECHANISMS FOR CATASTROPHE PROTECTION

The Department believes enhancements are needed to encourage better functioning of the private insurance market and to provide the maximum amount of private catastrophic funding possible. These enhancements can be summarized as follows:

- **Adequate Catastrophe Reserving.** The establishment of catastrophic loss reserves and the investment income accruing from them are not deductible for Federal income tax purposes. This penalizes insurers when they establish such reserves and prevents states from mandating these reserves since policyholders must pay an unreasonable amount for such protection. This problem needs to be addressed at the appropriate Federal level.
- **Reinsurance Treaties.** In concert with adequate catastrophic reserves, insurers financially prepare for catastrophic loss by entering into reinsurance treaties. Currently, the worldwide market for reinsurance is almost non-existent. Reinsurance to cover catastrophic losses appears to be available for aggregate losses of only \$200 million or less and the cost of such reinsurance sometimes exceeds 25% of the coverage. The terms of reinsurance contracts are being severely tightened with resulting less coverage. Part of this has been caused by reinsurers reacting to the unanticipated magnitude of the losses from Andrew. Another contributing factor has been the string of reinsurance losses: San Francisco, London, Los Angeles, Miami, Hawaii and New York. The Department has met with the major worldwide reinsurers and believes the reinsurance market will improve as rates and losses stabilize. However, until this happens, the potential exists for unethical reinsurers to enter the market and defraud insurers because of the extreme pressure on insurers to find reinsurance. The Department believes increased regulatory oversight of the reinsurance activities of insurers is necessary to prevent this. Included in the proposed legislation in Appendix A is the added authority the Department feels is appropriate.
- **FWUA Changes.** As discussed previously, the FWUA currently provides direct windstorm protection to policyholders. The Department believes the role and function of the FWUA should be significantly modified. In addition to the built-in adverse selection problem discussed in the previous section, the FWUA, like the RPCJUA, assesses insurers operating in Florida should it operate at a loss. However, unlike the RPCJUA, the FWUA has a complicated formula for the allocation of the loss to the insurers. The formula was designed to provide economic incentives for insurers to write windstorm coverage rather than referring it to the FWUA. However, since the FWUA is now available statewide, the ability of the formula to achieve its stated purpose is doubtful and the potential for abuse is great. The formula also appears to adversely impact certain insurers compared to other similarly situated insurers and thus provides a disincentive for some

insurers to operate in Florida. Because of these problems, the Department believes the FWUA should cease being a direct writer and become an excess reinsurer. Further, the FWUA should be allowed to write only in those areas where, absent the FWUA, no insurer would write windstorm coverage because of the potential for catastrophic windstorm loss. As restructured, the FWUA would serve as a buffer to smooth the swings in the voluntary reinsurance market and guarantee insurers a stable, intermediate level of reinsurance for catastrophic Florida windstorm risks. The FWUA should still have an assessment mechanism but it should be a pro-rata formula with incentives for insurers to write in high risk areas provided by the level of reinsurance protection granted. As a reinsurer, the FWUA could then work in concert with the RPCJUA and the proposed state fund to provide adequate insurance availability to policyholders but policyholders would have to deal with only one policy and one insurer instead of the multiple policies and insurers existing today. However, because the risk of loss is still ultimately borne by the insurers operating in Florida, the FWUA cannot be viewed as an adequate mechanism for a disaster the magnitude of Andrew. Included in the proposed legislation in Appendix A are the changes the Department proposes for the FWUA.

- Geographic concentration of risk. Too much exposure in too limited a geographic region is the primary cause of the insurer insolvencies resulting from Andrew. The Department believes many insurers were neither aware of their geographic risk concentration nor adequately prepared financially in the event of catastrophic damage. Currently, the Insurance Code does not provide the Department with the specific authority to deal with this issue. The Department feels it should have the specific authority to require reporting by insurers of exposure by geographic region and to require insurers to limit such exposure if it is determined to be excessive. Included in the proposed legislation in Appendix A is the specific authority the Department feels is appropriate.

PART III CONCLUSION

SUMMARY

The consumers of Florida are facing an unprecedented lack of availability of insurance. To resolve this problem to the extent possible, the Department recommends that the Florida legislature and the Federal government take the steps described below as soon as possible.

FLORIDA

The Florida legislature adopt legislation such as proposed in Appendix A of this report as soon as possible. This legislation would:

- Establish a Florida policyholder catastrophe protection fund.
- Restructure the FWUA to provide the appropriate reinsurance protection in high risk areas.
- Provide adequate reinsurance oversight by the Department to assure only reputable reinsurers are providing coverage in Florida.
- Provide the Department with the appropriate regulatory tools to determine if insurers are adequately evaluating their exposures in catastrophe prone geographic regions.

FEDERAL

The Federal government should take the following actions as soon as possible:

- Establish a Federal Catastrophe fund to provide high level protection in the event of a large catastrophe.
- Modify the Internal Revenue Code to specifically exempt state and regional catastrophe policyholder protection funds from Federal taxation.
- Modify the Internal Revenue Code to specifically exempt from Federal taxation catastrophic reserves established by insurers.

APPENDIX A

SUGGESTED FLORIDA LEGISLATION

The suggested legislation that follows is a working draft prepared by the Department. The Department is still refining this proposal by soliciting all comments possible. If you have written comments or suggestions, please send them to:

Treasurer Tom Gallagher
The Florida Department of Insurance
The Capitol, Lower Level 25
Tallahassee, Florida 32399-0300
Attention: Robert Reyes

In addition, the Department is holding a series of public hearings throughout Florida during May and June, 1993, to enable the public to have direct input to these recommendations. Everyone having comments on the current insurance availability problems in Florida is encouraged to attend one of these hearings. To learn the hearing schedule, call the Department's Insurance Consumer Helpline at 1-800-342-2762.

CREATION OF STATUTE DEALING WITH THE FLORIDA CATASTROPHIC PROPERTY LOSS FUND

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

Section 1. Section 627.3517, Florida Statutes, is created to read:

627.3517 Florida Catastrophic Property Loss Fund. --

(1) ESTABLISHMENT OF FUND. --

(a) In order to stabilize the property insurance market in Florida and encourage the availability of property insurance coverage for Florida properties, there shall be established under the administration of the State Board of Administration an irrevocable trust fund titled the Florida Catastrophic Property Loss Fund. The purpose of this Fund shall be to, in an irrevocable trust, hold and invest monies collected from assessments on the premiums collected for insurance policies covering property located in Florida. These monies will be used to provide reimbursement to policyholders of insurers, the Florida Residential Property and Casualty Joint Underwriting Association, the Florida Commercial Property and Casualty Joint Underwriting Association, and the Florida Windstorm Underwriting

Association for catastrophic insured losses.

(b) The department, in consultation with the State Board of Administration, shall adopt rules to establish the irrevocable trust agreement and administer the Fund. These rules shall provide:

1. That the trust agreement be irrevocable and the monies held in trust can only be used for the reimbursement to policyholders for their losses resulting from a catastrophic insured loss.
2. That the trust agreement contain a provision that any modification to the agreement require that the department hold a public hearing and provide policyholders with an opportunity to appear or submit statements regarding any proposed modification.
3. The type and diversification of investments to be made by the Fund.
4. That disbursement from the Fund shall be made only after a catastrophic insured loss has occurred.
5. That in the event of a catastrophe whose losses exceed the monies held by the Fund, the Fund may borrow monies directly or through municipalities to benefit policyholders affected by the catastrophic insured loss.

(c) The amount of the assessment on the premium of insurance policies, which shall be no more than 20% of the premium paid for the coverage, shall be set annually in an assessment and disbursement plan adopted by rule or order of the department no later than November 30th of the year preceding the year of the assessment and disbursement plan. The purpose of the plan is to provide assessment and disbursement levels which may vary on a yearly basis with the goal of increasing the Fund's balance each year to ultimately reach the amount of the maximum probable loss to be incurred by policyholders in a catastrophic insured loss. To that end, the objective of the Department in determining the assessment and disbursement levels is to enable the Fund to reach a balance which will allow it to have sufficient resources to pay claims resulting from the maximum probable loss incurred by policyholders in a catastrophic insured loss. The assessment is not subject to premium taxes and shall result in a reduction of the insurer's catastrophe load factor contained in its property insurance premium. No insurance agent shall receive a commission on the amount of the assessment.

1. In adopting the assessment portion of the plan, the department shall take the necessary steps to assure, to the extent reasonable, that the monies in the Fund are sufficiently increasing to ultimately provide for the

amount of the maximum probable loss that may be incurred by policyholders in the event of a catastrophic insured loss. In adopting the assessment portion of the plan, the department shall consider the following:

- a. The balance of the Fund.
- b. The maximum probable loss to be incurred by policyholders in a catastrophic insured loss.
- c. The amount of catastrophe reinsurance available to insurers writing property insurance in Florida.
- d. The amount of catastrophic loss reimbursement available to insurers from other sources such as the Federal government.
- e. The availability to consumers of property insurance as evidenced by the relative volume of properties being insured by the residential property and casualty joint underwriting association and the commercial property and casualty joint underwriting association.
- f. The amount of any borrowing by the Fund against which future assessments have been pledged.

2. The disbursement portion of the plan, setting forth the amount, availability and distribution of disbursements to policyholders, shall be issued annually by the department in conjunction with the assessment portion of the plan. In no event shall the total amount of disbursement adopted in the plan exceed the total amount of monies reasonably available from all sources to the Fund for the upcoming year. In adopting the disbursement portion of the plan, the department shall consider the following:

- a. The current Fund balance.
- b. The projected balance of the Fund during the coming year.
- c. The amount of monies the Fund can borrow in the coming year.
- d. The coverage provided by insurers in the areas of Florida most subject to catastrophic loss as compared to the remaining areas of Florida.
- e. Other factors that impact on the insurance and reinsurance

market, availability of coverage, and the viability of the Fund.

(d) The assessment on insurance policies covering property located in Florida shall be collected and remitted to the Fund by:

1. The agent if the policy is exported as allowed under this code. The agent shall remit the monies collected at least monthly;
2. The policyholder if the insurance policy is written as independently procured coverage as allowed under this code. The policyholder shall remit the monies collected within 14 days of the effective date of the policy;
3. The Florida Residential Property and Casualty Joint Underwriting Association, the Florida Commercial Property and Casualty Joint Underwriting Association or the Florida Windstorm Underwriting Association if the policies are issued by them. Such monies shall be remitted at least monthly; or
4. The insurer for all other policies. The insurer shall remit the monies collected at least monthly.

(e) The Department of Revenue shall be responsible for the collection and enforcement of the assessment which shall for that purpose have all its statutorily granted powers with respect to the collection and enforcement of taxes generally.

(f) Actual disbursements from the Fund shall be made only upon order of the department and only to reimburse policyholders' claims upon insurers, the Florida Residential Property and Casualty Joint Underwriting Association, the Florida Commercial Property and Casualty Joint Underwriting Association, or the Florida Windstorm Underwriting Association.

(g) Initially, the catastrophic aggregate surplus reduction percentage shall be one percent. At least annually, the department shall review property insurance market conditions and the availability of reinsurance for property insurance and based on its review the department shall adjust the catastrophic aggregate surplus reduction percentage with the objective of having a higher catastrophic aggregate surplus reduction percentage during periods of favorable market conditions and reinsurance availability so as to reduce the fund's exposure during periods of lesser need for the protection it affords and a lower catastrophic aggregate surplus reduction percentage during more adverse periods which result in a greater need for the fund's protection.

(h) The Insurance Commissioner shall appoint an advisory council to assist in the implementation of the Fund and in adoption of the annual assessment and

disbursement plans. The council shall assist the department in gathering and assessing property insurance market information. In addition, the council may provide the department with expertise such as actuarial advice to assist in evaluation of the needs of the Fund. The council shall be composed as follows:

1. One insurer from the five largest writers of property insurance in Florida, initially appointed for a term of two years;
2. One domestic property insurer, initially appointed for a term of three years;
3. One insurer who is not one of the five largest writers of property insurance in Florida and is not a domestic insurer, appointed for an initial term of two years;
4. One representative of the agents writing property insurance in Florida initially appointed for a term of three years.
5. Three representatives of property insurance consumers, two appointed for an initial term of two years and one with an initial term of three years.
6. The department's consumer advocate.

(i) The members of the advisory council shall serve at the pleasure of the Insurance Commissioner and, with the exception of the department's consumer advocate, shall be appointed for a term of two years after their initial appointment term.

(2) DEFINITIONS. For the purposes of this section:

(a) "Fund" means the Florida Catastrophic Property Loss Fund established under subsection (1) of this section.

(b) "Catastrophe" means a hurricane of Class 4 or 5 that causes loss due to windstorm damage to property covered by an insurance policy and the damage giving rise to the loss occurs during the period of time from the issuance of a hurricane watch in Florida by the National Hurricane Center to 72 hours after the downgrading of the hurricane to non-hurricane status by the National Hurricane Center, or 72 hours after the eye of the hurricane leaves Florida, whichever occurs first.

(c) "Catastrophic insured loss" means the incurred insured Florida losses resulting from one or more catastrophes during a given hurricane season that

results in a reduction of the total aggregate surplus as to policyholders of all the insurers writing property insurance in Florida that exceeds the Catastrophic aggregate surplus reduction percentage.

(d) "Catastrophic aggregate surplus reduction percentage" means the percentage reduction in the total aggregate surplus as to policyholders of all the insurers writing property insurance in Florida.

(e) "Loss" or "losses" means the monetary value of damage covered by property insurance as defined in s. 624.604 on property located in Florida.

(f) "Insurance policy" means an insurance policy providing property insurance as defined in s. 624.604 on property located in Florida.

(g) "Hurricane" means a windstorm that has been declared and defined by the National Hurricane Center or its successor organization to be a hurricane.

AMENDMENTS TO EXISTING STATUTE DEALING WITH THE FLORIDA WINDSTORM UNDERWRITING ASSOCIATION

Section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans. --

(2) **WINDSTORM INSURANCE RISK APPORTIONMENT.**

(a) Agreements may be made among property insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to, but are unable to procure, such insurance through ordinary methods; and such insurers may agree among themselves on the use of reasonable rate modifications for such insurance. Such agreements and rate modifications shall be subject to the applicable provisions of this chapter.

(b) The department shall require all insurers licensed to transact property insurance on a direct basis in this state 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. The commissioner shall promulgate rules which provide a formula for the recovery and

repayment of any deferred assessments.

1. For the purpose of this section, properties eligible for such windstorm coverage are defined as dwellings, buildings, and other structures, including mobile homes which are used as dwellings and which are tied down in compliance with mobile home tie-down requirements prescribed by the Department of Highway Safety and Motor Vehicles pursuant to s. 320.8325, and the contents of all such properties.

2. All insurers required to be members of such plan shall participate in its writings, expenses, profits, and losses. Such gross participation shall be in the proportion that the net direct premiums of each member written on property in this state during the preceding calendar year bears to the aggregate net direct premiums of all members of the plan written on property in this state during the preceding calendar year. The commissioner, after review of annual statements, other reports, and any other statistics which he deem necessary, shall certify to the plan the aggregate net direct premiums written on property in this state by all members. The plan of operation shall provide that one additional domestic member of the board of directors be elected by the domestic companies of this state on the basis of cumulative weighted voting based on the net written premiums of domestic companies in this state. Any such plan shall provide a formula whereby a company voluntarily providing windstorm coverage in affected areas will be relieved wholly or partially from apportionment. A company which is a member of a group of companies under common management may elect to have its credits applied on a group basis, and any company or group may elect to have its credits applied to any other company or group.

3. The plan shall also provide that any member with a surplus as to policyholders of \$20,000,000 or less writing 25 percent of its total countrywide property insurance premiums in this state may petition the department, within 90 days of the effective date of chapter 76-96, Laws of Florida, and thereafter within the first 90 days of each calendar year, to qualify as a limited apportionment company. The apportionment of such a company in any calendar year for which it is qualified shall not exceed its gross participation, which shall not be affected by the formula for voluntary writings. In no event shall a limited apportionment company be required to participate in any apportionment of losses in the aggregate which exceeds \$50,000,000 after payment of available plan funds in any calendar year. The plan shall provide that, if the department determines that any assessment will result in an impairment of the surplus of a limited apportionment company, the department may direct that all or part of such assessment be deferred.

4. The plan shall provide for the deferment, in whole or in part, of the assessment of a member insurer if, in the opinion of the commissioner, payment of the assessment would endanger or impair the solvency of the member insurer. In the event an assessment against a member insurer is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in subparagraph 2.

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

6. The plan may write excess reinsurance on a per risk basis subject to rates and coverage being approved by the board and the department.

76. The plan may authorize the formation of a private nonprofit corporation, a private nonprofit unincorporated association, or a nonprofit mutual company which may be empowered, among other things, to borrow money and to accumulate reserves or funds to be used for the payment of insured catastrophe losses. The plan shall incorporate and continue the plan of operation and articles of agreement in effect on the effective date of chapter 76-96, Laws of Florida, to the extent that it is not inconsistent with chapter 76-96, Laws of Florida, and as subsequently modified consistent with chapter 76-96, Laws of Florida. The board of directors and officers currently serving shall continue to serve until their successors are duly qualified as provided under the plan. The assets and obligations of the plan in effect immediately prior to the effective date of chapter 76-96, Laws of Florida, shall be construed to be the assets and obligations of the successor plan created herein.

87. On such coverage, an agent's remuneration shall be that amount of money payable to him by the terms of his contract with the company with which the business is placed. However, no commission will be paid on that portion of the premium which is in excess of the standard premium of that company.

9. The plan is subject to the mandatory offer requirements of s. 627.7015.

(c) The provisions of paragraph (b) are applicable only with respect to any county or area which the department has heretofore designated or as to which the department, after public hearing, finds that the following criteria exist:

1. Due to the lack of windstorm insurance coverage in the county or

area so affected, economic growth and development is being deterred or otherwise stifled in such county or area, mortgages are in default, and financial institutions are unable to make loans;

2. The county or area so affected has adopted and is enforcing the structural requirements of the Southern Standard Building Code, or its equivalent, for new construction and has included adequate minimum floor elevation requirements for structures in areas subject to inundation; and

3. Extending windstorm insurance coverage to such county or area is consistent with and will implement and further the policies and objectives set forth in applicable state laws, rules, and regulations governing coastal management, coastal construction, comprehensive planning, beach and shore preservation, barrier island preservation; coastal zone protection, and the Costal Zone Protection Act of 1985.

Any time after the department has determined that the criteria referred to in this subparagraph do not exist with respect to any county or area of the state, it may, after a subsequent public hearing, declare that such county or area is no longer eligible for windstorm coverage through the plan.

(d) The windstorm board shall monitor and report its exposure to the Florida Catastrophic Property Loss Fund. The windstorm board shall make a reasonable effort to cover its risk exposure by purchasing reinsurance.

CREATION OF STATUTE DEALING WITH GEOGRAPHIC CONCENTRATION OF RISK

Section 624.6095, Florida Statutes, is created to read:

624.6095 Concentration of property insurance exposures.

(1) Each property insurer shall develop and implement a plan for the avoidance of such concentration of property insurance exposures as would render the insurer financially impaired or insolvent in the event of a reasonably anticipated loss event. Such plan shall include the effect of reinsurance.

(2) The department may adopt rules requiring certain property insurers to annually report the concentration of insured property exposures, and the effect of reinsurance on such exposures.

(3) If the department determines that an insurer's property insurance exposures are

so concentrated as to make financial impairment or insolvency likely in the event of a reasonably anticipated loss event, the department may require the insurer to submit to the department with 60 days a plan under which the insurer will alter the geographic distribution of the insurer's exposures to an appropriate level within a reasonable period of time.

AMENDMENTS TO EXISTING STATUTE DEALING WITH REINSURANCE

Section 624.610, Florida Statutes, is amended to read:

624.610 Reinsurance.

(2)

(a) If a ceding insurer reinsures all or any part of any particular risk or class of risks with an approved reinsurer, the ceding insurer may receive credit in accounting and financial statements on account of such reinsurance ceded. An approved reinsurer is:

1. An assuming insurer authorized by the department to transact such line of insurance or reinsurance in this state. Subject to the other requirements of this code, credit may be taken for reinsurance with an authorized insurer.

2. An assuming insurer approved by the department to transact such line of reinsurance in this state. The department shall approve only solvent insurers meeting the criteria established for authorized insurers in this state. From time to time, the department shall publish a list of insurers approved pursuant to this subsection. Subject to the other requirements of this code, credit may be taken for reinsurance with an approved reinsurer.

3. An assuming underwriting member of an insurance exchange domiciled in any other state or jurisdiction in the United States, which insurance exchange was licensed and in operation on or before January 1, 1993, provided the insurance exchange presents to the department for its approval, and maintains, satisfactory evidence that such assuming underwriting member maintains the standards and meets the financial requirements applicable to an authorized insurer. Subject to the other requirements of this section, credit may be taken for reinsurance with members approved under this subsection by the department.

4. A group of individual, unincorporated, or incorporated alien insurers

which maintains funds in an amount not less than \$50 million held in trust for United States policyholders and beneficiaries in a bank or trust company that is subject to supervision by any state of the United States or that is a member of the Federal Reserve System and which group satisfies the department by annually filing evidence that it can meet its obligations under its reinsurance agreements. Subject to the other requirements of this section, credit may be taken for reinsurance with a group approved under this subsection by the department.

(b) Credit in accounting and financial statements on account of reinsurance ceded to a non-approved reinsurer may be allowed only:

1. When it is demonstrated by the ceding insurer to the satisfaction of the department that such reinsurer maintains the standards and meets the financial requirements applicable to an authorized insurer;

2. To the extent of deposits by, or funds withheld from, such reinsurer pursuant to express provision therefor in the reinsurance contract as security for the payment of the obligations thereunder if such deposits or funds are held subject to withdrawal by, and under the control of, the ceding insurer or such deposits or funds are placed in trust for such purposes in a bank which is a member of the Federal Reserve System if withdrawals from the trust cannot be made without the consent of the ceding insurer. The funds withheld may be cash or securities which are qualified as admitted assets under part II of chapter 625 and which have a market value equal to or greater than the credit taken; or

3. To the extent that the amount of a clean, unconditional, evergreen, and irrevocable letter of credit, issued for a term of not less than 1 year and in conformity with the requirements set forth in this subparagraph, equals or exceeds the liability of an unauthorized or unapproved reinsurer for unearned premiums, outstanding losses, and an adequate reserve for incurred but not reported losses under a specific reinsurance agreement. The requirements are that such a clean and irrevocable letter of credit be issued under arrangements satisfactory to the department as constituting security to the ceding insurer substantially equal to that of a deposit under subparagraph 2. and that the letter be issued by a banking institution which is a member of the Federal Reserve System and which has financial standing satisfactory to the commissioner. The department may adopt rules requiring that the letter adhere in its wording to a format for letters of credit as such format has been or may be adopted or approved by the National Association of Insurance Commissioners.

(c) For the purposes of this subsection only, the term "ceding insurer" shall

include any health maintenance organization operating under a certificate of authority issued under part I of chapter 641.

(13) A ceding insurer shall conduct a due diligence inquiry concerning the solvency and reputation of its assuming reinsurer prior to ceding any reinsurance to that reinsurer.

(14) If in the course of an examination under s. 624.316, the department and an insurer are unable to agree as to the nature, protection, or adequacy of any reinsurance contract for which credit is sought, the department may contract with a reinsurance consultant, under procedures specified in this subsection, for the purpose of reviewing and reporting to the department the consultant's evaluations and findings as to the nature, protection, and adequacy of the reinsurance contract. The department shall provide the ceding insurer being examined with a list of at least 10 reinsurance consultants, at least one of whom must be employed by a national public accounting firm, and the ceding insurer shall select one of those consultants to perform the evaluation. If the ceding insurer fails to select one of the ten and to inform the department in writing of its selection within 14 days after receiving the list, the department shall select one of the consultants from the list to perform the evaluation. The insurer shall cooperate in the reinsurance evaluation by such reinsurance consultant. The ceding insurer being examined must make payment for the evaluation, directly to the firm performing the examination, in accordance with the reasonable rates and charges agreed to by the department and the firm.