

By Representative Waters

1                                   A bill to be entitled  
2           An act relating to the Florida Hurricane  
3           Catastrophe Fund; amending s. 215.555, F.S.;  
4           clarifying legislative findings; revising  
5           definitions; revising reimbursement contract  
6           provisions relating to equalization charges,  
7           reimbursable loss reporting, auditing of  
8           insurers, and confidentiality of certain audit  
9           information; revising reimbursement premium  
10          provisions relating to collection of interest;  
11          revising revenue bond provisions relating to  
12          emergency assessments against insurers,  
13          legislative findings as to the Florida  
14          Hurricane Catastrophe Fund Finance Corporation,  
15          and protections for bondholders; authorizing  
16          the State Board of Administration to enforce  
17          reimbursement contracts; providing  
18          severability; providing an effective date.

19  
20 Be It Enacted by the Legislature of the State of Florida:

21  
22           Section 1. Paragraph (e) of subsection (1), paragraphs  
23          (c) and (e) of subsection (2), subsection (4), paragraphs (b)  
24          and (c) of subsection (5), and subsection (6) of section  
25          215.555, Florida Statutes, 1998 Supplement, are amended,  
26          paragraphs (l) and (m) are added to subsection (2),  
27          subsections (11) and (12) of said section are renumbered as  
28          subsections (12) and (13), respectively, and new subsections  
29          (11) and (14) are added to said section, to read:

30                   215.555 Florida Hurricane Catastrophe Fund.--  
31

1           (1) FINDINGS AND PURPOSE.--The Legislature finds and  
2 declares as follows:

3           (e) A state program to provide a stable and ongoing  
4 source of reimbursement to insurers for a portion of their  
5 catastrophic hurricane losses will create additional insurance  
6 capacity sufficient to ameliorate the current dangers to the  
7 state's economy and to the public health, safety, and welfare.

8           (2) DEFINITIONS.--As used in this section:

9           (c) "Covered policy" means any insurance policy  
10 covering residential property in this state, including, but  
11 not limited to, any homeowner's, mobile home owner's, farm  
12 owner's, condominium association, condominium unit owner's,  
13 tenant's, or apartment building policy, or any other policy  
14 covering a residential structure or its contents issued by any  
15 authorized insurer, including any joint underwriting  
16 association or similar entity created pursuant to law.  
17 "Covered policy" does not include any policy that excludes  
18 wind coverage or hurricane coverage or any reinsurance  
19 agreement and does not include any policy otherwise meeting  
20 this definition which is issued by a surplus lines insurer or  
21 a reinsurer.

22           (e) "Retention" means the amount of losses below which  
23 an insurer is not entitled to reimbursement from the fund. An  
24 insurer's retention shall be calculated as follows:

25           1. The board shall calculate and report to each  
26 insurer the retention multiples for that year. For the  
27 contract year beginning June 1, 1995, the retention multiple  
28 shall be equal to \$3 billion divided by the total estimated  
29 reimbursement premium for the contract year; for subsequent  
30 years, the retention multiple shall be equal to \$3 billion,  
31 adjusted to reflect the percentage growth in exposure premium

1 for covered policies since ~~1998~~ 1995, divided by the total  
2 estimated reimbursement premium for the contract year. Total  
3 reimbursement premium for purposes of the calculation under  
4 this subparagraph shall be estimated using the assumption that  
5 all insurers have selected the 90-percent coverage level.

6 2. The retention multiple as determined under  
7 subparagraph 1. shall be adjusted to reflect the coverage  
8 level elected by the insurer. For insurers electing the  
9 90-percent coverage level, the adjusted retention multiple is  
10 100 percent of the amount determined under subparagraph 1. For  
11 insurers electing the 75-percent coverage level, the retention  
12 multiple is 120 percent of the amount determined under  
13 subparagraph 1. For insurers electing the 45-percent coverage  
14 level, the adjusted retention multiple is 200 percent of the  
15 amount determined under subparagraph 1.

16 3. An insurer shall determine its provisional  
17 retention by multiplying its provisional reimbursement premium  
18 by the applicable adjusted retention multiple and shall  
19 determine its actual retention by multiplying its actual  
20 reimbursement premium by the applicable adjusted retention  
21 multiple.

22 (l) "Estimated claims-paying capacity" means the sum  
23 of the projected year-end balance of the fund as of December  
24 31 of a contract year plus the board's estimate of the board's  
25 borrowing capacity determined in May and October of each year  
26 pursuant to paragraph (4)(c).

27 (m) "Actual claims-paying capacity" means the sum of  
28 the balance of the fund as of December 31 of a contract year  
29 plus the amount the board is able to raise through the  
30 issuance of revenue bonds under subsection (6).

31

1           (3) FLORIDA HURRICANE CATASTROPHE FUND CREATED.--There  
2 is created the Florida Hurricane Catastrophe Fund to be  
3 administered by the State Board of Administration. Moneys in  
4 the fund may not be expended, loaned, or appropriated except  
5 to pay obligations of the fund arising out of reimbursement  
6 contracts entered into under subsection (4), payment of debt  
7 service on revenue bonds issued under subsection (6), costs of  
8 the mitigation program under subsection (7), costs of  
9 procuring reinsurance, and costs of administration of the  
10 fund. The board shall invest the moneys in the fund pursuant  
11 to ss. 215.44-215.52. Except as otherwise provided in this  
12 section, earnings from all investments shall be retained in  
13 the fund. The board may employ or contract with such staff and  
14 professionals as the board deems necessary for the  
15 administration of the fund. The board may adopt such rules as  
16 are reasonable and necessary to implement this section. Such  
17 rules must conform to the Legislature's specific intent in  
18 establishing the fund as expressed in subsection (1), must  
19 enhance the fund's potential ability to respond to claims for  
20 covered events, must contain general provisions so that the  
21 rules can be applied with reasonable flexibility so as to  
22 accommodate insurers in situations of an unusual nature or  
23 where undue hardship may result, except that such flexibility  
24 may not in any way impair, override, supersede, or constrain  
25 the public purpose of the fund, and must be consistent with  
26 sound insurance practices. The board may, by rule, provide for  
27 the exemption from subsections (4) and (5) of insurers writing  
28 covered policies with less than \$500,000 in aggregate exposure  
29 for covered policies, which exposure results in a de minimis  
30 reimbursement premium, if the exemption does not affect the  
31 actuarial soundness of the fund.

1           (4) REIMBURSEMENT CONTRACTS.--

2           (a) The board shall enter into a contract with each  
3 insurer writing covered policies in this state to provide to  
4 the insurer the reimbursement described in paragraph (b), in  
5 exchange for the reimbursement premium paid into the fund  
6 under subsection (5). As a condition of doing business in this  
7 state, each such insurer shall enter into such a contract.

8           (b)

9           1. The contract shall contain a promise by the board  
10 to reimburse the insurer for 45 percent, 75 percent, or 90  
11 percent of its losses from each covered event in excess of the  
12 insurer's retention, plus 5 percent of the reimbursed losses  
13 to cover loss adjustment expenses.

14           2. The insurer must elect one of the percentage  
15 coverage levels specified in this paragraph and may, upon  
16 renewal of a reimbursement contract, elect a lower percentage  
17 coverage level if no revenue bonds issued under subsection (6)  
18 after a covered event are outstanding, or elect a higher  
19 percentage coverage level, regardless of whether or not  
20 revenue bonds are outstanding, if it pays to the fund an  
21 ~~actuarially appropriate~~ equalization charge if as determined  
22 appropriate by the board. All members of an insurer group must  
23 elect the same percentage coverage level. Any joint  
24 underwriting association, risk apportionment plan, or other  
25 entity created under s. 627.351 must elect the 90-percent  
26 coverage level.

27           3. The contract shall provide that reimbursement  
28 amounts shall not be reduced by reinsurance paid or payable to  
29 the insurer from other sources; however, recoveries from such  
30 other sources, taken together with reimbursements under the  
31 contract, may not exceed 100 percent of the insurer's losses

1 from covered events. If such recoveries and reimbursements  
2 exceed 100 percent of the insurer's losses from covered  
3 events, and if there is no agreement between the insurer and  
4 the reinsurer to the contrary, any amount in excess of 100  
5 percent of the insurer's losses shall be returned to the fund.

6 (c)1. The contract shall also provide that the  
7 obligation of the board with respect to all contracts covering  
8 a particular contract year shall not exceed the actual  
9 claims-paying capacity of the fund, which is the balance of  
10 the fund as of December 31 of that contract year, together  
11 with the maximum amount that the board is able to raise  
12 through the issuance of revenue bonds under subsection (6), up  
13 to a limit of \$11 billion for that contract year, unless the  
14 board determines that there is sufficient estimated  
15 claims-paying capacity to provide \$11 billion of capacity for  
16 the current contract year and an additional \$11 billion of  
17 capacity for subsequent contract years. Upon such  
18 determination being made, the estimated claims-paying capacity  
19 for the current contract year shall be determined by adding to  
20 the \$11 billion limit one half of the fund's estimated  
21 claims-paying capacity in excess of \$22 billion.

22 2. The contract shall require the board to annually  
23 notify insurers of the fund's estimated ~~anticipated~~ borrowing  
24 capacity for the next contract year, the projected year-end  
25 balance of the fund, and the insurer's estimated share of  
26 total reimbursement premium to be paid to the fund. For all  
27 regulatory and reinsurance purposes, an insurer may calculate  
28 its projected payout from the fund as its share of the total  
29 fund premium for the current contract year multiplied by the  
30 sum of the projected year-end fund balance and the estimated  
31 ~~anticipated~~ borrowing capacity for that contract year as

1 reported under this paragraph. In May and October of each  
2 year, the board shall publish in the Florida Administrative  
3 Weekly a statement of the fund's estimated ~~anticipated~~  
4 borrowing capacity and the projected year-end balance of the  
5 fund for the current contract year.

6 (d)

7 1. For purposes of determining potential liability and  
8 to aid in the sound administration of the fund, the contract  
9 shall require each insurer to report such insurer's losses  
10 from each covered event on an interim basis, as directed by  
11 the board. The contract shall require the insurer to report  
12 to the board, ~~as directed by the board, but~~ no later than  
13 December 31 of each year, and quarterly thereafter, its  
14 reimbursable losses from covered events for the year. The  
15 contract shall require the board to determine and pay, as soon  
16 as practicable after receiving these reports of reimbursable  
17 losses, the initial amount of reimbursement due and  
18 adjustments to this amount based on later loss information.  
19 The adjustments to reimbursement amounts shall require the  
20 board to pay, or the insurer to return, amounts reflecting the  
21 most recent calculation of losses.

22 2. If the board determines that the projected year-end  
23 balance of the fund, together with the amount that the board  
24 determines that it is possible to raise through revenue bonds  
25 issued under subsection (6) and through other borrowing and  
26 financing arrangements under paragraph (7)(b), are  
27 insufficient to pay reimbursement to all insurers at the level  
28 promised in the contract, the board shall:

29 a. First reimburse insurers writing covered policies,  
30 which insurers are in full compliance with this section and  
31 have petitioned the Department of Insurance and qualified as

1 limited apportionment companies under s. 627.351(2)(b)3. The  
2 amount of such reimbursement shall be the lesser of \$10  
3 million or an amount equal to 10 times the insurer's  
4 reimbursement premium for the current year. The amount of  
5 reimbursement paid under this sub-subparagraph may not exceed  
6 the full amount of reimbursement promised in the reimbursement  
7 contract. This sub-subparagraph does not apply with respect to  
8 any contract year in which the year-end projected cash balance  
9 of the fund, exclusive of any bonding capacity of the fund,  
10 exceeds \$2 billion. Only one member of any insurer group may  
11 receive reimbursement under this sub-subparagraph.

12         b. Next pay to each insurer such insurer's projected  
13 payout, which is the amount of reimbursement it is owed, up to  
14 an amount equal to the insurer's pro rata share of the actual  
15 premium paid for that contract year, multiplied by the actual  
16 claims-paying capacity available for that contract year,  
17 provided, entities created pursuant to s. 627.351 shall be  
18 further reimbursed in accordance with sub-subparagraph c. This  
19 determination shall be adjusted to reflect payments made under  
20 sub-subparagraph a.

21         c. Thereafter, establish, based on reimbursable  
22 losses, the prorated reimbursement level at the highest level  
23 for which any remaining fund balance or bond proceeds are  
24 sufficient to reimburse entities created pursuant to s.  
25 627.351 for losses exceeding the amounts payable pursuant to  
26 sub-subparagraph b. for the current contract year.

27         (e)

28         1. Except as provided in subparagraphs 2. and 3., the  
29 contract shall provide that if an insurer demonstrates to the  
30 board that it is likely to qualify for reimbursement under the  
31 contract, and demonstrates to the board that the immediate



1 receipt of moneys from the board is likely to prevent the  
2 insurer from becoming insolvent, the board shall advance the  
3 insurer, at market interest rates, the amounts necessary to  
4 maintain the solvency of the insurer, up to 50 percent of the  
5 board's estimate of the reimbursement due the insurer. The  
6 insurer's reimbursement shall be reduced by an amount equal to  
7 the amount of the advance loan and interest thereon.

8           2. With respect only to an entity created under s.  
9 627.351, the contract shall also provide that the board may,  
10 upon application by such entity, advance to such entity, at  
11 market interest rates, up to 90 percent of the lesser of:

12           a. The board's estimate of the amount of reimbursement  
13 due to such entity; or

14           b. The entity's share of the actual reimbursement  
15 premium paid for that contract year, multiplied by the  
16 currently available liquid assets of the fund. In order for  
17 the entity to qualify for an advance under this subparagraph,  
18 the entity must demonstrate to the board that the advance is  
19 essential to allow the entity to pay claims for a covered  
20 event and the board must determine that the fund's assets are  
21 sufficient and are sufficiently liquid to allow the board to  
22 make an advance to the entity and still fulfill the board's  
23 reimbursement obligations to other insurers. The entity's  
24 final reimbursement for any contract year in which an advance  
25 has been made under this subparagraph must be reduced by an  
26 amount equal to the amount of the advance and any interest on  
27 such advance. In order to determine what amounts, if any, are  
28 due the entity, the board may require the entity to report its  
29 exposure and its losses at any time to determine retention  
30 levels and reimbursements payable.

31

1           3. The contract shall also provide specifically and  
2 solely with respect to any limited apportionment company under  
3 s. 627.351(2)(b)3. that the board may, upon application by  
4 such company, advance to such company the amount of the  
5 estimated reimbursement payable to such company as calculated  
6 pursuant to paragraph (d), at market interest rates, if the  
7 board determines that the fund's assets are sufficient and are  
8 sufficiently liquid to permit the board to make an advance to  
9 such company and at the same time fulfill its reimbursement  
10 obligations to the insurers that are participants in the fund.  
11 Such company's final reimbursement for any contract year in  
12 which an advance pursuant to this subparagraph has been made  
13 shall be reduced by an amount equal to the amount of the  
14 advance and interest thereon. In order to determine what  
15 amounts, if any, are due to such company, the board may  
16 require such company to report its exposure and its losses at  
17 such times as may be required to determine retention levels  
18 and loss reimbursements payable.

19           (f) In order to ensure that insurers have properly  
20 reported the insured values on which the reimbursement premium  
21 is based and to ensure that insurers have properly reported  
22 the losses for which reimbursements have been made, the board  
23 shall inspect, examine, and audit the records of each  
24 insurer's covered policies at such times as the board deems  
25 appropriate and in such manner as is consistent with generally  
26 accepted auditing standards. The costs of the audits shall be  
27 borne by the board. However, in order to remove any incentive  
28 for an insurer to delay preparations for an audit, the board  
29 shall be reimbursed by the insurer for any audit expenses  
30 incurred in addition to the usual and customary costs of the  
31 audit, which additional expenses were incurred as a result of

1 an insurer's failure, despite proper notice, to be prepared  
2 for the audit or as a result of an insurer's failure to  
3 provide requested information while the audit is in progress.  
4 If the board finds any insurer's records or other necessary  
5 information to be inadequate or inadequately posted, recorded,  
6 or maintained, the board may employ experts to reconstruct,  
7 rewrite, record, post, or maintain such records or  
8 information, at the expense of the insurer being audited, if  
9 such insurer has failed to maintain, complete, or correct such  
10 records or deficiencies after the board has given the insurer  
11 notice and a reasonable opportunity to do so. Any information  
12 contained in an audit report, which information is described  
13 in s. 215.557, is confidential and exempt from the provisions  
14 of s. 119.07(1) and s. 24(a), Art. I of the State  
15 Constitution, as provided in s. 215.557.

16 (g)(f) The contract shall provide that in the event of  
17 the insolvency of an insurer, the fund shall pay directly to  
18 the Florida Insurance Guaranty Association for the benefit of  
19 Florida policyholders of the insurer the net amount of all  
20 reimbursement moneys owed to the insurer. As used in this  
21 paragraph, the term "net amount of all reimbursement moneys"  
22 means that amount which remains after reimbursement for  
23 preliminary or duplicate payments owed to private reinsurers  
24 or other inuring reinsurance payments to private reinsurers  
25 that satisfy statutory or contractual obligations of the  
26 insolvent insurer attributable to covered events to such  
27 reinsurers. Such private reinsurers shall be reimbursed or  
28 otherwise paid prior to payment to the Florida Insurance  
29 Guaranty Association, notwithstanding any law to the contrary.  
30 The guaranty association shall pay all claims up to the  
31 maximum amount permitted by chapter 631; thereafter, any

1 remaining moneys shall be paid pro rata to claims not fully  
2 satisfied. This paragraph does not apply to a joint  
3 underwriting association, risk apportionment plan, or other  
4 entity created under s. 627.351.

5 (5) REIMBURSEMENT PREMIUMS.--

6 (b) The ~~State board of Administration~~ shall select an  
7 independent actuarial consultant to develop a formula for  
8 determining the actuarially indicated premium to be paid to  
9 the fund. The formula shall specify, for each zip code or  
10 other limited geographical area, the amount of premium to be  
11 paid by an insurer for each \$1,000 of insured value under  
12 covered policies in that zip code or other area. In  
13 establishing premiums, the board shall consider the coverage  
14 elected under paragraph (4)(b) and any factors that tend to  
15 enhance the actuarial sophistication of ratemaking for the  
16 fund, including deductibles, type of construction, type of  
17 coverage provided, relative concentration of risks, and other  
18 such factors deemed by the board to be appropriate. The  
19 formula may provide for a procedure to determine the premiums  
20 to be paid by new insurers that begin writing covered policies  
21 after the beginning of a contract year, taking into  
22 consideration when the insurer starts writing covered  
23 policies, the potential exposure of the insurer, the potential  
24 exposure of the fund, the administrative costs to the insurer  
25 and to the fund, and any other factors deemed appropriate by  
26 the board. The formula must be approved by unanimous vote of  
27 the board. The board may, at any time, revise the formula  
28 pursuant to the procedure provided in this paragraph.

29 (c) No later than September 1 of each year, each  
30 insurer shall notify the board of its insured values under  
31 covered policies by zip code, as of June 30 of that year. On

1 the basis of these reports, the board shall calculate the  
2 premium due from the insurer, based on the formula adopted  
3 under paragraph (b). The insurer shall pay the required annual  
4 premium pursuant to a periodic payment plan specified in the  
5 contract. The board shall provide for payment of reimbursement  
6 premium in periodic installments and for the adjustment of  
7 provisional premium installments collected prior to submission  
8 of the exposure report to reflect data in the exposure report.  
9 The board shall collect interest on late reimbursement premium  
10 payments consistent with the assumptions made in developing  
11 the premium formula in accordance with paragraph (b).

12 (6) REVENUE BONDS.--

13 (a) General provisions.--

14 1. Upon the occurrence of a hurricane and a  
15 determination that the moneys in the fund are or will be  
16 insufficient to pay reimbursement at the levels promised in  
17 the reimbursement contracts, the board may take the necessary  
18 steps under paragraph (b) or paragraph (c) for the issuance of  
19 revenue bonds for the benefit of the fund. The proceeds of  
20 such revenue bonds may be used to make reimbursement payments  
21 under reimbursement contracts; to refinance or replace  
22 previously existing borrowings or financial arrangements; to  
23 pay interest on bonds; to fund reserves for the bonds; to pay  
24 expenses incident to the issuance or sale of any bond issued  
25 under this section, including costs of validating, printing,  
26 and delivering the bonds, costs of printing the official  
27 statement, costs of publishing notices of sale of the bonds,  
28 and related administrative expenses; or for such other  
29 purposes related to the financial obligations of the fund as  
30 the board may determine. The term of the bonds may not exceed  
31 30 years. The board may pledge or authorize the corporation to

1 | pledge all or a portion of all revenues under subsection (5)  
2 | and under subparagraph 3. to secure such revenue bonds and the  
3 | board may execute such agreements between the board and the  
4 | issuer of any revenue bonds and providers of other financing  
5 | arrangements under paragraph (7)(b) as the board deems  
6 | necessary to evidence, secure, preserve, and protect such  
7 | pledge. If reimbursement premiums received under subsection  
8 | (5) or earnings on such premiums are used to pay debt service  
9 | on revenue bonds, such premiums and earnings shall be used  
10 | only after the use of the moneys derived from assessments  
11 | under subparagraph 3. The funds, credit, property, or taxing  
12 | power of the state or political subdivisions of the state  
13 | shall not be pledged for the payment of such bonds. The board  
14 | may also enter into agreements under paragraph (b) or  
15 | paragraph (c) for the purpose of issuing revenue bonds in the  
16 | absence of a hurricane upon a determination that such action  
17 | would maximize the ability of the fund to meet future  
18 | obligations.

19 |         2. The Legislature finds and declares that the  
20 | issuance of bonds under this subsection is for the public  
21 | purpose of paying the proceeds of the bonds to insurers,  
22 | thereby enabling insurers to pay the claims of policyholders  
23 | to assure that policyholders are able to pay the cost of  
24 | construction, reconstruction, repair, restoration, and other  
25 | costs associated with damage to property of policyholders of  
26 | covered policies after the occurrence of a hurricane. Revenue  
27 | bonds may not be issued under this subsection until validated  
28 | under chapter 75. The validation of at least the first  
29 | obligations incurred pursuant to this subsection shall be  
30 | appealed to the Supreme Court, to be handled on an expedited  
31 | basis.

1           3. If the board determines that the amount of revenue  
2 produced under subsection (5) is insufficient to fund the  
3 obligations, costs, and expenses of the fund and the  
4 corporation, including repayment of revenue bonds, the board  
5 shall direct the Department of Insurance to levy an emergency  
6 assessment on each insurer writing property and casualty  
7 business in this state at a percentage sufficient to meet the  
8 obligations of the board for the current contract year as  
9 described in subsection (4). Pursuant to the emergency  
10 assessment, each such insurer shall pay to the corporation  
11 ~~fund~~ by July 1 of each year an amount set by the board not  
12 exceeding 2 percent of its gross direct written premium for  
13 the prior year from all property and casualty business in this  
14 state except for workers' compensation, except that, if the  
15 Governor has declared a state of emergency under s. 252.36 due  
16 to the occurrence of a covered event, the amount of the  
17 assessment may be increased to an amount not exceeding 8 ~~4~~  
18 percent of such premium. As used in this subsection, the term  
19 "property and casualty business" includes all lines of  
20 business identified on Form 2, Exhibit of Premiums and Losses,  
21 in the annual statement required by s. 624.424 and any rules  
22 adopted under such section, except for those lines identified  
23 as accident and health insurance. The annual assessments under  
24 this subparagraph shall continue as long as the revenue bonds  
25 issued with respect to which the assessment was imposed are  
26 outstanding, unless adequate provision has been made for the  
27 payment of such bonds pursuant to the documents authorizing  
28 issuance of the bonds. An insurer shall not at any time be  
29 subject to aggregate annual assessments under this  
30 subparagraph of more than 2 percent of premium, except that in  
31 the case of a declared emergency, an insurer shall not at any

1 time be subject to aggregate annual assessments under this  
2 subparagraph of more than 8 ~~4~~ percent of premium. Any rate  
3 filing or portion of a rate filing reflecting a rate change  
4 attributable entirely to the assessment levied under this  
5 subparagraph shall be deemed approved when made, subject to  
6 the authority of the Department of Insurance to require  
7 actuarial justification as to the adequacy of any rate at any  
8 time. If the rate filing reflects only a rate change  
9 attributable to the assessment under this paragraph, the  
10 filing may consist of a certification so stating. The  
11 assessments otherwise payable to the corporation pursuant to  
12 this subparagraph shall be paid instead to the fund unless and  
13 until the Department of Insurance has received from the  
14 corporation and the fund a notice, which shall be conclusive  
15 and upon which the Department of Insurance may rely without  
16 further inquiry, that the corporation has issued bonds and the  
17 fund has no agreements in effect with local governments  
18 pursuant to paragraph (6)(b). On or after the date of such  
19 notice and until such date as the corporation has no bonds  
20 outstanding, the fund shall have no right, title, or interest  
21 in or to the assessments, except as provided in the fund's  
22 agreements with the corporation.

23 (b) Revenue bond issuance through counties or  
24 municipalities.--

25 1. If the board elects to enter into agreements with  
26 local governments for the issuance of revenue bonds for the  
27 benefit of the fund, the board shall enter into such contracts  
28 with one or more local governments, including agreements  
29 providing for the pledge of revenues, as are necessary to  
30 effect such issuance. The governing body of a county or  
31 municipality is authorized to issue bonds as defined in s.



1 125.013 or s. 166.101 from time to time to fund an assistance  
2 program, in conjunction with the Florida Hurricane Catastrophe  
3 Fund, for the purposes set forth in this section or for the  
4 purpose of paying the costs of construction, reconstruction,  
5 repair, restoration, and other costs associated with damage to  
6 properties of policyholders of covered policies due to the  
7 occurrence of a hurricane by assuring that policyholders  
8 located in this state are able to recover claims under  
9 property insurance policies after a covered event.

10         2. In order to avoid needless and indiscriminate  
11 proliferation, duplication, and fragmentation of such  
12 assistance programs, any local government may provide for the  
13 payment of fund reimbursements, regardless of whether or not  
14 the losses for which reimbursement is made occurred within or  
15 outside of the territorial jurisdiction of the local  
16 government.

17         3. The state hereby covenants with holders of bonds  
18 issued under this paragraph that the state will not repeal or  
19 abrogate the power of the board to direct the Department of  
20 Insurance to levy the assessments and to collect the proceeds  
21 of the revenues pledged to the payment of such bonds as long  
22 as any such bonds remain outstanding unless adequate provision  
23 has been made for the payment of such bonds pursuant to the  
24 documents authorizing the issuance of such bonds.

25         4. There shall be no liability on the part of, and no  
26 cause of action shall arise against any members or employees  
27 of the governing body of a local government for any actions  
28 taken by them in the performance of their duties under this  
29 paragraph.

30         (c) Florida Hurricane Catastrophe Fund Finance  
31 Corporation.--

1           1. In addition to the findings and declarations in  
2 subsection (1), the Legislature also finds and declares that:

3           a. The public benefits corporation created under this  
4 paragraph will provide a mechanism necessary for the  
5 cost-effective and efficient issuance of bonds. This mechanism  
6 will eliminate unnecessary costs in the bond issuance process,  
7 thereby increasing the amounts available to pay reimbursement  
8 for losses to property sustained as a result of hurricane  
9 damage.

10          b. The purpose of such bonds is to fund reimbursements  
11 through the Florida Hurricane Catastrophe Fund to pay for the  
12 costs of construction, reconstruction, repair, restoration,  
13 and other costs associated with damage to properties of  
14 policyholders of covered policies due to the occurrence of a  
15 hurricane.

16          c. The efficacy of the financing mechanism will be  
17 enhanced by the corporation's ownership of the assessments, by  
18 the insulation of the assessments from possible bankruptcy  
19 proceedings, and by covenants of the state with the  
20 corporation's bondholders.

21           2.

22          a. There is created a public benefits corporation,  
23 that is an instrumentality of the state,to be known as the  
24 Florida Hurricane Catastrophe Fund Finance Corporation.

25          b. The corporation shall operate under a five-member  
26 board of directors consisting of the Governor or a designee,  
27 the Comptroller or a designee, the Treasurer or a designee,  
28 the director of the Division of Bond Finance of the State  
29 Board of Administration, and the chief operating officer of  
30 the Florida Hurricane Catastrophe Fund.

31

1           c. The corporation has all of the powers of  
2 corporations under chapter 607 and under chapter 617, subject  
3 only to the provisions of this subsection.

4           d. The corporation may issue bonds and engage in such  
5 other financial transactions as are necessary to provide  
6 sufficient funds to achieve the purposes of this section.

7           e. The corporation may invest in any of the  
8 investments authorized under s. 215.47.

9           f. There shall be no liability on the part of, and no  
10 cause of action shall arise against, any board members or  
11 employees of the corporation for any actions taken by them in  
12 the performance of their duties under this paragraph.

13           3.

14           a. In actions under chapter 75 to validate any bonds  
15 issued by the corporation, the notice required by s. 75.06  
16 shall be published only in Leon County and in two newspapers  
17 of general circulation in the state, and the complaint and  
18 order of the court shall be served only on the State Attorney  
19 of the Second Judicial Circuit.

20           b. The state hereby covenants with holders of bonds of  
21 the corporation that the state will not repeal or abrogate the  
22 power of the board to direct the Department of Insurance to  
23 levy the assessments and to collect the proceeds of the  
24 revenues pledged to the payment of such bonds as long as any  
25 such bonds remain outstanding unless adequate provision has  
26 been made for the payment of such bonds pursuant to the  
27 documents authorizing the issuance of such bonds.

28           4. The bonds of the corporation are not a debt of the  
29 state or of any political subdivision, and neither the state  
30 nor any political subdivision is liable on such bonds. The  
31 corporation does not have the power to pledge the credit, the

1 revenues, or the taxing power of the state or of any political  
2 subdivision. The credit, revenues, or taxing power of the  
3 state or of any political subdivision shall not be deemed to  
4 be pledged to the payment of any bonds of the corporation.

5 5.

6 a. The property, revenues, and other assets of the  
7 corporation; the transactions and operations of the  
8 corporation and the income from such transactions and  
9 operations; and all bonds issued under this paragraph and  
10 interest on such bonds are exempt from taxation by the state  
11 and any political subdivision, including the intangibles tax  
12 under chapter 199 and the income tax under chapter 220. This  
13 exemption does not apply to any tax imposed by chapter 220 on  
14 interest, income, or profits on debt obligations owned by  
15 corporations other than the Florida Hurricane Catastrophe Fund  
16 Finance Corporation.

17 b. All bonds of the corporation shall be and  
18 constitute legal investments without limitation for all public  
19 bodies of this state; for all banks, trust companies, savings  
20 banks, savings associations, savings and loan associations,  
21 and investment companies; for all administrators, executors,  
22 trustees, and other fiduciaries; for all insurance companies  
23 and associations and other persons carrying on an insurance  
24 business; and for all other persons who are now or may  
25 hereafter be authorized to invest in bonds or other  
26 obligations of the state and shall be and constitute eligible  
27 securities to be deposited as collateral for the security of  
28 any state, county, municipal, or other public funds. This  
29 sub-subparagraph shall be considered as additional and  
30 supplemental authority and shall not be limited without  
31 specific reference to this sub-subparagraph.

1           6. The corporation and its corporate existence shall  
2 continue until terminated by law; however, no such law shall  
3 take effect as long as the corporation has bonds outstanding  
4 unless adequate provision has been made for the payment of  
5 such bonds pursuant to the documents authorizing the issuance  
6 of such bonds. Upon termination of the existence of the  
7 corporation, all of its rights and properties in excess of its  
8 obligations shall pass to and be vested in the state.

9           (d) Protection of bondholders.--

10           1. As long as the corporation has any bonds  
11 outstanding, neither the fund nor the corporation shall have  
12 the authority to file a voluntary petition under chapter 9 of  
13 the federal bankruptcy code or such corresponding chapter or  
14 sections as may be in effect, from time to time, and neither  
15 any public officer nor any organization, entity, or other  
16 person shall authorize the fund or the corporation to be or  
17 become a debtor under chapter 9 of the federal bankruptcy code  
18 or such corresponding chapter or sections as may be in effect,  
19 from time to time, during any such period.

20           2. The state hereby covenants with holders of bonds of  
21 the corporation that the state will not limit or alter the  
22 denial of authority under this paragraph or the rights under  
23 this section vested in the fund or the corporation to fulfill  
24 the terms of any agreements made with such bondholders or in  
25 any way impair the rights and remedies of such bondholders as  
26 long as any such bonds remain outstanding unless adequate  
27 provision has been made for the payment of such bonds pursuant  
28 to the documents authorizing the issuance of such bonds.

29           3. Notwithstanding any other provision of law, any  
30 pledge of or other security interest in revenue, money,  
31 accounts, contract rights, general intangibles, or other

1 personal property made or created by the fund or the  
2 corporation shall be valid, binding, and perfected from the  
3 time such pledge is made or other security interest attaches  
4 without any physical delivery of the collateral or further act  
5 and the lien of any such pledge or other security interest  
6 shall be valid, binding, and perfected against all parties  
7 having claims of any kind in tort, contract, or otherwise  
8 against the fund or the corporation irrespective of whether or  
9 not such parties have notice of such claims. No instrument by  
10 which such a pledge or security interest is created nor any  
11 financing statement need be recorded or filed.

12 (11) LEGAL PROCEEDINGS.--The board is authorized to  
13 take any action necessary to enforce the rules, and the  
14 provisions and requirements of the reimbursement contract,  
15 required by and adopted pursuant to this section.

16 (14) SEVERABILITY.--If any clause, sentence,  
17 paragraph, or other part of this section be adjudged by any  
18 court of competent jurisdiction to be invalid, such judgment  
19 shall not affect, impair, or invalidate the remainder thereof  
20 but shall be confined in its operation to the clause,  
21 sentence, paragraph, or other part thereof directly involved  
22 in the controversy in which such judgment shall have been  
23 rendered.

24 Section 2. This act shall take effect October 1, 1999.  
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HOUSE SUMMARY

Revises provisions relating to the Florida Hurricane Catastrophe Fund to: clarify legislative findings; revise definitions; revise reimbursement contract provisions relating to equalization charges, reimbursable loss reporting, auditing of insurers, and confidentiality of audit information; revise reimbursement premium provisions relating to collection of interest; revise revenue bond provisions relating to emergency assessments against insurers, legislative findings as to the Florida Hurricane Catastrophe Fund Finance Corporation, and protections for bondholders; and authorize the State Board of Administration to enforce reimbursement contracts. See bill for details.