

By Senator Holzendorf

2-1524A-99

See HB

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 that section are renumbered as

28 subsections (12) and (13), respectively, and new subsections

29 (11) and (14) are added to that 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)1. The contract shall contain a promise by the
9 board to reimburse the insurer for 45 percent, 75 percent, or
10 90 percent of its losses from each covered event in excess of
11 the insurer's retention, plus 5 percent of the reimbursed
12 losses to cover loss adjustment expenses.

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

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

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

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

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

1 year, the board shall publish in the Florida Administrative
2 Weekly a statement of the fund's estimated ~~anticipated~~
3 borrowing capacity and the projected year-end balance of the
4 fund for the current contract year.

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

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

27 a. First reimburse insurers writing covered policies,
28 which insurers are in full compliance with this section and
29 have petitioned the Department of Insurance and qualified as
30 limited apportionment companies under s. 627.351(2)(b)3. The
31 amount of such reimbursement shall be the lesser of \$10

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

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

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

25 (e)1. Except as provided in subparagraphs 2. and 3.,
26 the contract shall provide that if an insurer demonstrates to
27 the board that it is likely to qualify for reimbursement under
28 the contract, and demonstrates to the board that the immediate
29 receipt of moneys from the board is likely to prevent the
30 insurer from becoming insolvent, the board shall advance the
31 insurer, at market interest rates, the amounts necessary to

1 maintain the solvency of the insurer, up to 50 percent of the
2 board's estimate of the reimbursement due the insurer. The
3 insurer's reimbursement shall be reduced by an amount equal to
4 the amount of the advance loan and interest thereon.

5 2. With respect only to an entity created under s.
6 627.351, the contract shall also provide that the board may,
7 upon application by such entity, advance to such entity, at
8 market interest rates, up to 90 percent of the lesser of:

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

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

28 3. The contract shall also provide specifically and
29 solely with respect to any limited apportionment company under
30 s. 627.351(2)(b)3. that the board may, upon application by
31 such company, advance to such company the amount of the

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

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

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

12 (g)~~(f)~~ The contract shall provide that in the event of
13 the insolvency of an insurer, the fund shall pay directly to
14 the Florida Insurance Guaranty Association for the benefit of
15 Florida policyholders of the insurer the net amount of all
16 reimbursement moneys owed to the insurer. As used in this
17 paragraph, the term "net amount of all reimbursement moneys"
18 means that amount which remains after reimbursement for
19 preliminary or duplicate payments owed to private reinsurers
20 or other inuring reinsurance payments to private reinsurers
21 that satisfy statutory or contractual obligations of the
22 insolvent insurer attributable to covered events to such
23 reinsurers. Such private reinsurers shall be reimbursed or
24 otherwise paid prior to payment to the Florida Insurance
25 Guaranty Association, notwithstanding any law to the contrary.
26 The guaranty association shall pay all claims up to the
27 maximum amount permitted by chapter 631; thereafter, any
28 remaining moneys shall be paid pro rata to claims not fully
29 satisfied. This paragraph does not apply to a joint
30 underwriting association, risk apportionment plan, or other
31 entity created under s. 627.351.

1 (5) REIMBURSEMENT PREMIUMS.--

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

25 (c) No later than September 1 of each year, each
26 insurer shall notify the board of its insured values under
27 covered policies by zip code, as of June 30 of that year. On
28 the basis of these reports, the board shall calculate the
29 premium due from the insurer, based on the formula adopted
30 under paragraph (b). The insurer shall pay the required annual
31 premium pursuant to a periodic payment plan specified in the

1 contract. The board shall provide for payment of reimbursement
2 premium in periodic installments and for the adjustment of
3 provisional premium installments collected prior to submission
4 of the exposure report to reflect data in the exposure report.
5 The board shall collect interest on late reimbursement premium
6 payments consistent with the assumptions made in developing
7 the premium formula in accordance with paragraph (b).

8 (6) REVENUE BONDS.--

9 (a) General provisions.--

10 1. Upon the occurrence of a hurricane and a
11 determination that the moneys in the fund are or will be
12 insufficient to pay reimbursement at the levels promised in
13 the reimbursement contracts, the board may take the necessary
14 steps under paragraph (b) or paragraph (c) for the issuance of
15 revenue bonds for the benefit of the fund. The proceeds of
16 such revenue bonds may be used to make reimbursement payments
17 under reimbursement contracts; to refinance or replace
18 previously existing borrowings or financial arrangements; to
19 pay interest on bonds; to fund reserves for the bonds; to pay
20 expenses incident to the issuance or sale of any bond issued
21 under this section, including costs of validating, printing,
22 and delivering the bonds, costs of printing the official
23 statement, costs of publishing notices of sale of the bonds,
24 and related administrative expenses; or for such other
25 purposes related to the financial obligations of the fund as
26 the board may determine. The term of the bonds may not exceed
27 30 years. The board may pledge or authorize the corporation to
28 pledge all or a portion of all revenues under subsection (5)
29 and under subparagraph 3. to secure such revenue bonds and the
30 board may execute such agreements between the board and the
31 issuer of any revenue bonds and providers of other financing

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

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

28 3. If the board determines that the amount of revenue
29 produced under subsection (5) is insufficient to fund the
30 obligations, costs, and expenses of the fund and the
31 corporation, including repayment of revenue bonds, the board

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

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

19 (b) Revenue bond issuance through counties or
20 municipalities.--

21 1. If the board elects to enter into agreements with
22 local governments for the issuance of revenue bonds for the
23 benefit of the fund, the board shall enter into such contracts
24 with one or more local governments, including agreements
25 providing for the pledge of revenues, as are necessary to
26 effect such issuance. The governing body of a county or
27 municipality is authorized to issue bonds as defined in s.
28 125.013 or s. 166.101 from time to time to fund an assistance
29 program, in conjunction with the Florida Hurricane Catastrophe
30 Fund, for the purposes set forth in this section or for the
31 purpose of paying the costs of construction, reconstruction,

1 repair, restoration, and other costs associated with damage to
2 properties of policyholders of covered policies due to the
3 occurrence of a hurricane by assuring that policyholders
4 located in this state are able to recover claims under
5 property insurance policies after a covered event.

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

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

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

26 (c) Florida Hurricane Catastrophe Fund Finance
27 Corporation.--

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

30 a. The public benefits corporation created under this
31 paragraph will provide a mechanism necessary for the

1 cost-effective and efficient issuance of bonds. This mechanism
2 will eliminate unnecessary costs in the bond issuance process,
3 thereby increasing the amounts available to pay reimbursement
4 for losses to property sustained as a result of hurricane
5 damage.

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

12 c. The efficacy of the financing mechanism will be
13 enhanced by the corporation's ownership of the assessments, by
14 the insulation of the assessments from possible bankruptcy
15 proceedings, and by covenants of the state with the
16 corporation's bondholders.

17 2.a. There is created a public benefits corporation,
18 that is an instrumentality of the state, to be known as the
19 Florida Hurricane Catastrophe Fund Finance Corporation.

20 b. The corporation shall operate under a five-member
21 board of directors consisting of the Governor or a designee,
22 the Comptroller or a designee, the Treasurer or a designee,
23 the director of the Division of Bond Finance of the State
24 Board of Administration, and the chief operating officer of
25 the Florida Hurricane Catastrophe Fund.

26 c. The corporation has all of the powers of
27 corporations under chapter 607 and under chapter 617, subject
28 only to the provisions of this subsection.

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

1 e. The corporation may invest in any of the
2 investments authorized under s. 215.47.

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

7 3.a. In actions under chapter 75 to validate any bonds
8 issued by the corporation, the notice required by s. 75.06
9 shall be published only in Leon County and in two newspapers
10 of general circulation in the state, and the complaint and
11 order of the court shall be served only on the State Attorney
12 of the Second Judicial Circuit.

13 b. The state hereby covenants with holders of bonds of
14 the corporation that the state will not repeal or abrogate the
15 power of the board to direct the Department of Insurance to
16 levy the assessments and to collect the proceeds of the
17 revenues pledged to the payment of such bonds as long as any
18 such bonds remain outstanding unless adequate provision has
19 been made for the payment of such bonds pursuant to the
20 documents authorizing the issuance of such bonds.

21 4. The bonds of the corporation are not a debt of the
22 state or of any political subdivision, and neither the state
23 nor any political subdivision is liable on such bonds. The
24 corporation does not have the power to pledge the credit, the
25 revenues, or the taxing power of the state or of any political
26 subdivision. The credit, revenues, or taxing power of the
27 state or of any political subdivision shall not be deemed to
28 be pledged to the payment of any bonds of the corporation.

29 5.a. The property, revenues, and other assets of the
30 corporation; the transactions and operations of the
31 corporation and the income from such transactions and

1 operations; and all bonds issued under this paragraph and
2 interest on such bonds are exempt from taxation by the state
3 and any political subdivision, including the intangibles tax
4 under chapter 199 and the income tax under chapter 220. This
5 exemption does not apply to any tax imposed by chapter 220 on
6 interest, income, or profits on debt obligations owned by
7 corporations other than the Florida Hurricane Catastrophe Fund
8 Finance Corporation.

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

24 6. The corporation and its corporate existence shall
25 continue until terminated by law; however, no such law shall
26 take effect as long as the corporation has bonds outstanding
27 unless adequate provision has been made for the payment of
28 such bonds pursuant to the documents authorizing the issuance
29 of such bonds. Upon termination of the existence of the
30 corporation, all of its rights and properties in excess of its
31 obligations shall pass to and be vested in the state.

1 (d) Protection of bondholders.--
2 1. As long as the corporation has any bonds
3 outstanding, neither the fund nor the corporation shall have
4 the authority to file a voluntary petition under chapter 9 of
5 the federal bankruptcy code or such corresponding chapter or
6 sections as may be in effect, from time to time, and neither
7 any public officer nor any organization, entity, or other
8 person shall authorize the fund or the corporation to be or
9 become a debtor under chapter 9 of the federal bankruptcy code
10 or such corresponding chapter or sections as may be in effect,
11 from time to time, during any such period.
12 2. The state hereby covenants with holders of bonds of
13 the corporation that the state will not limit or alter the
14 denial of authority under this paragraph or the rights under
15 this section vested in the fund or the corporation to fulfill
16 the terms of any agreements made with such bondholders or in
17 any way impair the rights and remedies of such bondholders as
18 long as any such bonds remain outstanding unless adequate
19 provision has been made for the payment of such bonds pursuant
20 to the documents authorizing the issuance of such bonds.
21 3. Notwithstanding any other provision of law, any
22 pledge of or other security interest in revenue, money,
23 accounts, contract rights, general intangibles, or other
24 personal property made or created by the fund or the
25 corporation shall be valid, binding, and perfected from the
26 time such pledge is made or other security interest attaches
27 without any physical delivery of the collateral or further act
28 and the lien of any such pledge or other security interest
29 shall be valid, binding, and perfected against all parties
30 having claims of any kind in tort, contract, or otherwise
31 against the fund or the corporation irrespective of whether or

1 not such parties have notice of such claims. No instrument by
2 which such a pledge or security interest is created nor any
3 financing statement need be recorded or filed.

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

8 (14) SEVERABILITY.--If any clause, sentence,
9 paragraph, or other part of this section be adjudged by any
10 court of competent jurisdiction to be invalid, such judgment
11 shall not affect, impair, or invalidate the remainder thereof
12 but shall be confined in its operation to the clause,
13 sentence, paragraph, or other part thereof directly involved
14 in the controversy in which such judgment shall have been
15 rendered.

16 Section 2. This act shall take effect October 1, 1999.

17 *****

18
19 LEGISLATIVE SUMMARY

20
21 Revises provisions relating to the Florida Hurricane
22 Catastrophe Fund to: clarify legislative findings; revise
23 definitions; revise reimbursement contract provisions
24 relating to equalization charges, reimbursable loss
25 reporting, auditing of insurers, and confidentiality of
26 audit information; revise reimbursement premium
27 provisions relating to collection of interest; revise
28 revenue bond provisions relating to emergency assessments
29 against insurers, legislative findings as to the Florida
30 Hurricane Catastrophe Fund Finance Corporation, and
31 protections for bondholders; and authorize the State
Board of Administration to enforce reimbursement
contracts. (See bill for details.)