

By the Committee on Banking and Insurance; and Senator Holzendorf

311-1868A-99

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:

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

1 fund for covered policies since 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 (1) "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.

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

30 (3) FLORIDA HURRICANE CATASTROPHE FUND CREATED.--There
31 is created the Florida Hurricane Catastrophe Fund to be

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

30 (4) REIMBURSEMENT CONTRACTS.--

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

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

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

24 3. The contract shall provide that reimbursement
25 amounts shall not be reduced by reinsurance paid or payable to
26 the insurer from other sources; however, recoveries from such
27 other sources, taken together with reimbursements under the
28 contract, may not exceed 100 percent of the insurer's losses
29 from covered events. If such recoveries and reimbursements
30 exceed 100 percent of the insurer's losses from covered
31 events, and if there is no agreement between the insurer and

1 the reinsurer to the contrary, any amount in excess of 100
2 percent of the insurer's losses shall be returned to the fund.

3 (c)1. The contract shall also provide that the
4 obligation of the board with respect to all contracts covering
5 a particular contract year shall not exceed the actual
6 claims-paying capacity of the fund up to a limit of \$11
7 billion for that contract year ~~balance of the fund as of~~
8 ~~December 31 of that year, together with the maximum amount~~
9 ~~that the board is able to raise through the issuance of~~
10 ~~revenue bonds under subsection (6).~~

11 2. The contract shall require the board to annually
12 notify insurers of the fund's estimated ~~anticipated~~ borrowing
13 capacity for the next contract year, the projected year-end
14 balance of the fund, and the insurer's estimated share of
15 total reimbursement premium to be paid to the fund. For all
16 regulatory and reinsurance purposes, an insurer may calculate
17 its projected payout from the fund as its share of the total
18 fund premium for the current contract year multiplied by the
19 sum of the projected year-end fund balance and the estimated
20 ~~anticipated~~ borrowing capacity for that contract year as
21 reported under this paragraph. In May and October of each
22 year, the board shall publish in the Florida Administrative
23 Weekly a statement of the fund's estimated ~~anticipated~~
24 borrowing capacity and the projected year-end balance of the
25 fund for the current contract year.

26 (d)1. For purposes of determining potential liability
27 and to aid in the sound administration of the fund, the
28 contract shall require each insurer to report such insurer's
29 losses from each covered event on an interim basis, as
30 directed by the board. The contract shall require the insurer
31 to report to the board, ~~as directed by the board, but no later~~

1 than December 31 of each year, and quarterly thereafter, its
2 reimbursable losses from covered events for the year. The
3 contract shall require the board to determine and pay, as soon
4 as practicable after receiving these reports of reimbursable
5 losses, the initial amount of reimbursement due and
6 adjustments to this amount based on later loss information.
7 The adjustments to reimbursement amounts shall require the
8 board to pay, or the insurer to return, amounts reflecting the
9 most recent calculation of losses.

10 2. If the board determines that the projected year-end
11 balance of the fund, together with the amount that the board
12 determines that it is possible to raise through revenue bonds
13 issued under subsection (6) and through other borrowing and
14 financing arrangements under paragraph (7)(b), are
15 insufficient to pay reimbursement to all insurers at the level
16 promised in the contract, the board shall:

17 a. First reimburse insurers writing covered policies,
18 which insurers are in full compliance with this section and
19 have petitioned the Department of Insurance and qualified as
20 limited apportionment companies under s. 627.351(2)(b)3. The
21 amount of such reimbursement shall be the lesser of \$10
22 million or an amount equal to 10 times the insurer's
23 reimbursement premium for the current year. The amount of
24 reimbursement paid under this sub-subparagraph may not exceed
25 the full amount of reimbursement promised in the reimbursement
26 contract. This sub-subparagraph does not apply with respect to
27 any contract year in which the year-end projected cash balance
28 of the fund, exclusive of any bonding capacity of the fund,
29 exceeds \$2 billion. Only one member of any insurer group may
30 receive reimbursement under this sub-subparagraph.

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1 b. ~~Next~~ Pay to each insurer such insurer's projected
2 payout, which is the amount of reimbursement it is owed, up to
3 an amount equal to the insurer's share of the actual premium
4 paid for that contract year, multiplied by the actual
5 claims-paying capacity available for that contract year,
6 provided, entities created pursuant to s. 627.351 shall be
7 further reimbursed in accordance with sub-subparagraph c.
8 ~~This determination shall be adjusted to reflect payments made~~
9 ~~under sub-subparagraph a.~~

10 c. Thereafter, establish, based on reimbursable
11 losses, the prorated reimbursement level at the highest level
12 for which any remaining fund balance or bond proceeds are
13 sufficient to reimburse entities created pursuant to s.
14 627.351 for losses exceeding the amounts payable pursuant to
15 sub-subparagraph a. for the current contract year.

16 (e)1. Except as provided in subparagraphs 2. and 3.,
17 the contract shall provide that if an insurer demonstrates to
18 the board that it is likely to qualify for reimbursement under
19 the contract, and demonstrates to the board that the immediate
20 receipt of moneys from the board is likely to prevent the
21 insurer from becoming insolvent, the board shall advance the
22 insurer, at market interest rates, the amounts necessary to
23 maintain the solvency of the insurer, up to 50 percent of the
24 board's estimate of the reimbursement due the insurer. The
25 insurer's reimbursement shall be reduced by an amount equal to
26 the amount of the advance loan and interest thereon.

27 2. With respect only to an entity created under s.
28 627.351, the contract shall also provide that the board may,
29 upon application by such entity, advance to such entity, at
30 market interest rates, up to 90 percent of the lesser of:

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

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

20 3. The contract shall also provide specifically and
21 solely with respect to any limited apportionment company under
22 s. 627.351(2)(b)3. that the board may, upon application by
23 such company, advance to such company the amount of the
24 estimated reimbursement payable to such company as calculated
25 pursuant to paragraph (d), at market interest rates, if the
26 board determines that the fund's assets are sufficient and are
27 sufficiently liquid to permit the board to make an advance to
28 such company and at the same time fulfill its reimbursement
29 obligations to the insurers that are participants in the fund.
30 Such company's final reimbursement for any contract year in
31 which an advance pursuant to this subparagraph has been made

1 shall be reduced by an amount equal to the amount of the
2 advance and interest thereon. In order to determine what
3 amounts, if any, are due to such company, the board may
4 require such company to report its exposure and its losses at
5 such times as may be required to determine retention levels
6 and loss reimbursements payable.

7 (f) In order to ensure that insurers have properly
8 reported the insured values on which the reimbursement premium
9 is based and to ensure that insurers have properly reported
10 the losses for which reimbursements have been made, the board
11 shall inspect, examine, and audit the records of each
12 insurer's covered policies at such times as the board deems
13 appropriate and in such manner as is consistent with generally
14 accepted auditing standards. The costs of the audits shall be
15 borne by the board. However, in order to remove any incentive
16 for an insurer to delay preparations for an audit, the board
17 shall be reimbursed by the insurer for any audit expenses
18 incurred in addition to the usual and customary costs of the
19 audit, which additional expenses were incurred as a result of
20 an insurer's failure, despite proper notice, to be prepared
21 for the audit or as a result of an insurer's failure to
22 provide requested information while the audit is in progress.
23 If the board finds any insurer's records or other necessary
24 information to be inadequate or inadequately posted, recorded,
25 or maintained, the board may employ experts to reconstruct,
26 rewrite, record, post, or maintain such records or
27 information, at the expense of the insurer being audited, if
28 such insurer has failed to maintain, complete, or correct such
29 records or deficiencies after the board has given the insurer
30 notice and a reasonable opportunity to do so. Any information
31 contained in an audit report, which information is described

1 in s. 215.557, is confidential and exempt from the provisions
2 of s. 119.07(1) and s. 24(a), Art. I of the State
3 Constitution, as provided in s. 215.557. Nothing in this
4 paragraph expands the exemption in s. 215.557.

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

25 (5) REIMBURSEMENT PREMIUMS.--

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

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

9 (6) REVENUE BONDS.--

10 (a) General provisions.--

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

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

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

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

1 corporation, including repayment of revenue bonds, the board
2 shall direct the Department of Insurance to levy an emergency
3 assessment on each insurer writing property and casualty
4 business in this state at a percentage sufficient to meet the
5 obligations of the board for the current contract year as
6 described in subsection (4). Pursuant to the emergency
7 assessment, each such insurer shall pay to the corporation
8 ~~fund~~ by July 1 of each year an amount set by the board not
9 exceeding 2 percent of its gross direct written premium for
10 the prior year from all property and casualty business in this
11 state except for workers' compensation, except that, if the
12 Governor has declared a state of emergency under s. 252.36 due
13 to the occurrence of a covered event, the amount of the
14 assessment may be increased to an amount not exceeding 8 4
15 percent of such premium, provided, however, that no more than
16 4 percent may be assessed for any one contract year. As used
17 in this subsection, the term "property and casualty business"
18 includes all lines of business identified on Form 2, Exhibit
19 of Premiums and Losses, in the annual statement required by s.
20 624.424 and any rules adopted under such section, except for
21 those lines identified as accident and health insurance. The
22 annual assessments under this subparagraph shall continue as
23 long as the revenue bonds issued with respect to which the
24 assessment was imposed are outstanding, unless adequate
25 provision has been made for the payment of such bonds pursuant
26 to the documents authorizing issuance of the bonds. An
27 insurer shall not at any time be subject to aggregate annual
28 assessments under this subparagraph of more than 2 percent of
29 premium, except that in the case of a declared emergency, an
30 insurer shall not at any time be subject to aggregate annual
31 assessments under this subparagraph of more than 8 4 percent

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

21 (b) Revenue bond issuance through counties or
22 municipalities.--

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

1 Fund, for the purposes set forth in this section or for the
2 purpose of paying the costs of construction, reconstruction,
3 repair, restoration, and other costs associated with damage to
4 properties of policyholders of covered policies due to the
5 occurrence of a hurricane by assuring that policyholders
6 located in this state are able to recover claims under
7 property insurance policies after a covered event.

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

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

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

28 (c) Florida Hurricane Catastrophe Fund Finance
29 Corporation.--

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

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

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

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

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

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

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

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

4 e. The corporation may invest in any of the
5 investments authorized under s. 215.47.

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

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

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

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

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

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

27 6. The corporation and its corporate existence shall
28 continue until terminated by law; however, no such law shall
29 take effect as long as the corporation has bonds outstanding
30 unless adequate provision has been made for the payment of
31 such bonds pursuant to the documents authorizing the issuance

1 of such bonds. Upon termination of the existence of the
2 corporation, all of its rights and properties in excess of its
3 obligations shall pass to and be vested in the state.

4 (d) Protection of bondholders.--

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

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

24 3. Notwithstanding any other provision of law, any
25 pledge of or other security interest in revenue, money,
26 accounts, contract rights, general intangibles, or other
27 personal property made or created by the fund or the
28 corporation shall be valid, binding, and perfected from the
29 time such pledge is made or other security interest attaches
30 without any physical delivery of the collateral or further act
31 and the lien of any such pledge or other security interest

1 shall be valid, binding, and perfected against all parties
2 having claims of any kind in tort, contract, or otherwise
3 against the fund or the corporation irrespective of whether or
4 not such parties have notice of such claims. No instrument by
5 which such a pledge or security interest is created nor any
6 financing statement need be recorded or filed.

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

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

19 Section 2. This act shall take effect October 1, 1999.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 The Bill 1790

4 The committee substitute maintains the bill's \$11 billion
5 limit on annual reimbursement to all insurers from the Florida
6 Hurricane Catastrophe (Cat) Fund, but deletes the provisions
7 for future growth of this limit. Senate Bill 1790 provided for
8 increasing the \$11 billion cap when the State Board of
9 Administration (board) determined that there was claims-paying
10 capacity to provide \$11 billion for the current contract year
11 and an additional \$11 billion of capacity for subsequent
12 contract years. The committee substitute deletes this
13 provision and keeps constant the bill's \$11 billion cap on
14 annual payments.

15 The committee substitute limits the maximum assessment on
16 property and casualty insurance premiums for any one contract
17 year to 4 percent, but retains the provisions of the bill that
18 increases the maximum assessment from 4 percent to 8 percent
19 in any one year for covering losses of the Cat Fund.
20 Assessments in excess of 4 percent (up to 8 percent) would be
21 authorized only if a second (or subsequent) bond issue or
22 other debt financing is necessary to fund losses for a
23 contract year after bonds were issued to fund losses for a
24 prior contract year.

25 Deletes the change in the bill that would have annually
26 adjusted the insurers' retention (the amount insurers must pay
27 before Cat Fund coverage is triggered), based on the
28 percentage growth in exposure rather than premium for covered
29 policies. The committee substitute returns to current law
30 which sets the retention at \$3 billion in 1995, adjusted
31 annually to reflect the percentage growth in premium for
covered policies since 1995, except that it specifies that the
reference is to growth in premium to the fund for covered
policies, which has been the interpretation by the board.

Deletes the requirement in current law that the board charge
an actuarially appropriate equalization charge for insurers
increasing their coverage level, which the board has not yet
imposed based on a determination that it was not actuarially
appropriate. The original bill authorizes the board to charge
an equalization charge, if the board determined it was
appropriate.

Other technical and conforming changes.