

By the Committees on Fiscal Policy; Banking and Insurance; and  
Senator Holzendorf

309-2130-99

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:

21  
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), present subsections (11)  
27           and (12) of that section are renumbered as subsections (12)  
28           and (13), respectively, and new subsections (11) and (14) are  
29           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 to the

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

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

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

23         (l) "Estimated claims-paying capacity" means the sum  
24 of the projected year-end balance of the fund as of December  
25 31 of a contract year, plus any reinsurance purchased by the  
26 fund, plus the board's estimate of the board's borrowing  
27 capacity.

28         (m) "Actual claims-paying capacity" means the sum of  
29 the balance of the fund as of December 31 of a contract year,  
30 plus any reinsurance purchased by the fund, plus the amount  
31

1 the board is able to raise through the issuance of revenue  
2 bonds under subsection (6).

3 (4) REIMBURSEMENT CONTRACTS.--

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

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

15 2. The insurer must elect one of the percentage  
16 coverage levels specified in this paragraph and may, upon  
17 renewal of a reimbursement contract, elect a lower percentage  
18 coverage level if no revenue bonds issued under subsection (6)  
19 after a covered event are outstanding, or elect a higher  
20 percentage coverage level, regardless of whether or not  
21 revenue bonds are outstanding, ~~if it pays to the fund an~~  
22 ~~actuarially appropriate equalization charge as determined by~~  
23 ~~the board~~. All members of an insurer group must elect the same  
24 percentage coverage level. Any joint underwriting  
25 association, risk apportionment plan, or other entity created  
26 under s. 627.351 must elect the 90-percent 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 up to a limit of \$11  
10 billion for that contract year, unless the board determines  
11 that there is sufficient estimated claims-paying capacity to  
12 provide \$11 billion of capacity for the current contract year  
13 and an additional \$11 billion of capacity for subsequent  
14 contract years. Upon such determination being made, the  
15 estimated claims-paying capacity for the current contract year  
16 shall be determined by adding to the \$11 billion limit one  
17 half of the fund's estimated claims-paying capacity in excess  
18 of \$22 billion ~~balance of the fund as of December 31 of that~~  
19 ~~year, together with the maximum amount that the board is able~~  
20 ~~to raise through the issuance of revenue bonds under~~  
21 ~~subsection (6).~~

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

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

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

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

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

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

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

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

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

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

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

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



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

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

1 If the board finds any insurer's records or other necessary  
2 information to be inadequate or inadequately posted, recorded,  
3 or maintained, the board may employ experts to reconstruct,  
4 rewrite, record, post, or maintain such records or  
5 information, at the expense of the insurer being audited, if  
6 such insurer has failed to maintain, complete, or correct such  
7 records or deficiencies after the board has given the insurer  
8 notice and a reasonable opportunity to do so. Any information  
9 contained in an audit report, which information is described  
10 in s. 215.557, is confidential and exempt from the provisions  
11 of s. 119.07(1) and s. 24(a), Art. I of the State  
12 Constitution, as provided in s. 215.557. Nothing in this  
13 paragraph expands the exemption in s. 215.557.

14 (g)~~(f)~~ The contract shall provide that in the event of  
15 the insolvency of an insurer, the fund shall pay directly to  
16 the Florida Insurance Guaranty Association for the benefit of  
17 Florida policyholders of the insurer the net amount of all  
18 reimbursement moneys owed to the insurer. As used in this  
19 paragraph, the term "net amount of all reimbursement moneys"  
20 means that amount which remains after reimbursement for:

21 1. Preliminary or duplicate payments owed to private  
22 reinsurers or other inuring reinsurance payments to private  
23 reinsurers that satisfy statutory or contractual obligations  
24 of the insolvent insurer attributable to covered events to  
25 such reinsurers; or

26 2. Funds owed to a bank or other financial institution  
27 to cover obligations of the insolvent insurer under a credit  
28 agreement that assists the insolvent insurer in paying claims  
29 attributable to covered events.

30  
31

1 Such private reinsurers, banks, or other financial  
2 institutions shall be reimbursed or otherwise paid prior to  
3 payment to the Florida Insurance Guaranty Association,  
4 notwithstanding any law to the contrary. The guaranty  
5 association shall pay all claims up to the maximum amount  
6 permitted by chapter 631; thereafter, any remaining moneys  
7 shall be paid pro rata to claims not fully satisfied. This  
8 paragraph does not apply to a joint underwriting association,  
9 risk apportionment plan, or other entity created under s.  
10 627.351.

11 (5) REIMBURSEMENT PREMIUMS.--

12 (c) No later than September 1 of each year, each  
13 insurer shall notify the board of its insured values under  
14 covered policies by zip code, as of June 30 of that year. On  
15 the basis of these reports, the board shall calculate the  
16 premium due from the insurer, based on the formula adopted  
17 under paragraph (b). The insurer shall pay the required annual  
18 premium pursuant to a periodic payment plan specified in the  
19 contract. The board shall provide for payment of reimbursement  
20 premium in periodic installments and for the adjustment of  
21 provisional premium installments collected prior to submission  
22 of the exposure report to reflect data in the exposure report.  
23 The board shall collect interest on late reimbursement premium  
24 payments consistent with the assumptions made in developing  
25 the premium formula in accordance with paragraph (b).

26 (6) REVENUE BONDS.--

27 (a) General provisions.--

28 1. Upon the occurrence of a hurricane and a  
29 determination that the moneys in the fund are or will be  
30 insufficient to pay reimbursement at the levels promised in  
31 the reimbursement contracts, the board may take the necessary

1 steps under paragraph (b) or paragraph (c) for the issuance of  
2 revenue bonds for the benefit of the fund. The proceeds of  
3 such revenue bonds may be used to make reimbursement payments  
4 under reimbursement contracts; to refinance or replace  
5 previously existing borrowings or financial arrangements; to  
6 pay interest on bonds; to fund reserves for the bonds; to pay  
7 expenses incident to the issuance or sale of any bond issued  
8 under this section, including costs of validating, printing,  
9 and delivering the bonds, costs of printing the official  
10 statement, costs of publishing notices of sale of the bonds,  
11 and related administrative expenses; or for such other  
12 purposes related to the financial obligations of the fund as  
13 the board may determine. The term of the bonds may not exceed  
14 30 years. The board may pledge or authorize the corporation to  
15 pledge all or a portion of all revenues under subsection (5)  
16 and under subparagraph 3. to secure such revenue bonds and the  
17 board may execute such agreements between the board and the  
18 issuer of any revenue bonds and providers of other financing  
19 arrangements under paragraph (7)(b) as the board deems  
20 necessary to evidence, secure, preserve, and protect such  
21 pledge. If reimbursement premiums received under subsection  
22 (5) or earnings on such premiums are used to pay debt service  
23 on revenue bonds, such premiums and earnings shall be used  
24 only after the use of the moneys derived from assessments  
25 under subparagraph 3. The funds, credit, property, or taxing  
26 power of the state or political subdivisions of the state  
27 shall not be pledged for the payment of such bonds. The board  
28 may also enter into agreements under paragraph (b) or  
29 paragraph (c) for the purpose of issuing revenue bonds in the  
30 absence of a hurricane upon a determination that such action  
31

1 would maximize the ability of the fund to meet future  
2 obligations.

3           2. The Legislature finds and declares that the  
4 issuance of bonds under this subsection is for the public  
5 purpose of paying the proceeds of the bonds to insurers,  
6 thereby enabling insurers to pay the claims of policyholders  
7 to assure that policyholders are able to pay the cost of  
8 construction, reconstruction, repair, restoration, and other  
9 costs associated with damage to property of policyholders of  
10 covered policies after the occurrence of a hurricane. Revenue  
11 bonds may not be issued under this subsection until validated  
12 under chapter 75. The validation of at least the first  
13 obligations incurred pursuant to this subsection shall be  
14 appealed to the Supreme Court, to be handled on an expedited  
15 basis.

16           3. If the board determines that the amount of revenue  
17 produced under subsection (5) is insufficient to fund the  
18 obligations, costs, and expenses of the fund and the  
19 corporation, including repayment of revenue bonds, the board  
20 shall direct the Department of Insurance to levy an emergency  
21 assessment on each insurer writing property and casualty  
22 business in this state. Pursuant to the emergency assessment,  
23 each such insurer shall pay to the corporation ~~fund~~ by July 1  
24 of each year an amount set by the board not exceeding 2  
25 percent of its gross direct written premium for the prior year  
26 from all property and casualty business in this state except  
27 for workers' compensation, except that, if the Governor has  
28 declared a state of emergency under s. 252.36 due to the  
29 occurrence of a covered event, the amount of the assessment  
30 for the contract year may be increased to an amount not  
31 exceeding 4 percent of such premium. Any assessment authority

1 not used for the contract year may be used for a subsequent  
2 contract year. If, for a subsequent contract year, the board  
3 determines that the amount of revenue produced under  
4 subsection (5) is insufficient to fund the obligations, costs,  
5 and expenses of the fund and the corporation, including  
6 repayment of revenue bonds for that contract year, the board  
7 shall direct the Department of Insurance to levy an emergency  
8 assessment up to an amount not exceeding the amount of unused  
9 assessment authority from a previous contract year or years,  
10 plus an additional 2 percent if the Governor has declared a  
11 state of emergency under s. 252.36 due to the occurrence of a  
12 covered event. Any assessment authority not used for the  
13 contract year may be used for a subsequent contract year.As  
14 used in this subsection, the term "property and casualty  
15 business" includes all lines of business identified on Form 2,  
16 Exhibit of Premiums and Losses, in the annual statement  
17 required by s. 624.424 and any rules adopted under such  
18 section, except for those lines identified as accident and  
19 health insurance. The annual assessments under this  
20 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 6 ~~4~~ percent of premium, provided, no  
30 more than 4 percent may be assessed for any one contract year.  
31 Any rate filing or portion of a rate filing reflecting a rate

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

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

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

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

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

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

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

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

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

31



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 which 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.

31

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 provision of this section  
12 or its application to any person or circumstance is held  
13 invalid, the invalidity does not affect other provisions or  
14 applications of the section which can be given effect without  
15 the invalid provision or application, and to this end the  
16 provisions of this section are declared severable.

17 Section 2. This act shall take effect June 1, 1999.  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2   COMMITTEE SUBSTITUTE FOR  
3   CS/SB 1790

4     Increases the maximum assessment on property and casualty  
5     policies from 4% to 8% to fund Cat Fund bonds issued by the  
6     State Board of Administration (SBA) for multiple-year  
7     hurricanes, but limits the assessment to 4% to fund hurricanes  
8     losses for any one contract year. Lowers the maximum  
9     assessment from 8% to 6% to fund Cat Fund bonds for  
10    multiple-year hurricanes, but allows any assessment authority  
11    less than 4% not used for a contract year to be carried over  
12    for a subsequent contract year, up to the total maximum  
13    assessment of 6% for multiple-year storms.

14    Provides for future growth in the \$11 billion cap, when the  
15    Cat Fund has an estimated claims-paying capacity of \$22  
16    billion, at which time the \$11 billion cap would increase by  
17    one-half of the fund's estimated claims-paying capacity in  
18    excess of \$22 billion.

19    Provides for increasing the current \$3.2 billion retention for  
20    all insurers combined, indexed by the percentage growth in the  
21    exposure to the Cat Fund, rather than the percentage growth in  
22    premium to the fund.

23    Clarifies the definitions of "estimated claims paying  
24    capacity" and "actual claims paying capacity" to include any  
25    private reinsurance that the SBA may have purchased to  
26    reinsure Cat Fund obligations.

27    Revises the current law which requires the Cat Fund to pay  
28    reimbursement claims of an insolvent insurer to the Florida  
29    Insurance Guaranty Association (FIGA). Requires the Cat Fund  
30    to deduct any funds owed to a bank or other financial  
31    institution to cover obligations of the insolvent insurer  
32    under a credit agreement that assists the insolvent insurer in  
33    paying claims attributable to covered events.

34    Changes the effective date from October 1, 1999 to June 1,  
35    1999.

36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100