

By Senator Alexander

17-1638-04

1                                   A bill to be entitled  
 2           An act relating to the Florida Hurricane  
 3           Catastrophe Fund; amending s. 215.555, F.S.;  
 4           redefining and defining terms; providing for  
 5           the State Board of Administration to specify  
 6           interest due on delinquent remittances;  
 7           revising conditions of, amounts of, and  
 8           procedures relating to reimbursement contracts;  
 9           revising maximum rates of, and procedures  
 10          relating to, emergency assessments; revising  
 11          provisions relating to reinsurance; deleting  
 12          expired provisions; providing an effective  
 13          date.

14  
 15 Be It Enacted by the Legislature of the State of Florida:

16  
 17           Section 1. Paragraphs (c), (d), (e), and (k) of  
 18          subsection (2) and subsections (3), (4), (6), (7), and (16) of  
 19          section 215.555, Florida Statutes, are amended, and paragraph  
 20          (n) is added to subsection (2) of that section, to read:

21           215.555 Florida Hurricane Catastrophe Fund.--

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

23           (c) "Covered policy" means any insurance policy  
 24          covering residential property in this state, including, but  
 25          not limited to, any homeowner's, mobile home owner's, farm  
 26          owner's, condominium association, condominium unit owner's,  
 27          tenant's, or apartment building policy, or any other policy  
 28          covering a residential structure or its contents issued by any  
 29          authorized insurer, including the Citizens Property Insurance  
 30          Corporation and any joint underwriting association or similar  
 31          entity created pursuant to law. The term "covered policy"

1 includes any collateral protection insurance policy covering  
2 personal residences which protects both the borrower's and the  
3 lender's financial interests, in an amount at least equal to  
4 the coverage for the dwelling in place under the lapsed  
5 homeowner's policy, if such policy can be accurately reported  
6 as required in subsection (5). Additionally, covered policies  
7 include policies covering the peril of wind removed from the  
8 Florida Residential Property and Casualty Joint Underwriting  
9 Association or from the Citizens Property Insurance  
10 Corporation, created pursuant to s. 627.351(6), or from the  
11 Florida Windstorm Underwriting Association, created pursuant  
12 to s. 627.351(2), by an authorized insurer under the terms and  
13 conditions of an executed assumption agreement between the  
14 authorized insurer and such association or Citizens Property  
15 Insurance Corporation. Each assumption agreement between the  
16 association and such authorized insurer or Citizens Property  
17 Insurance Corporation must be approved by the Florida  
18 Department of Insurance or the Office of Insurance Regulation  
19 prior to the effective date of the assumption, and the  
20 Department of Insurance or the Office of Insurance Regulation  
21 must provide written notification to the board within 15  
22 working days after such approval. "Covered policy" does not  
23 include any policy that excludes wind coverage or hurricane  
24 coverage or any reinsurance agreement and does not include any  
25 policy otherwise meeting this definition which is issued by a  
26 surplus lines insurer or a reinsurer. All commercial  
27 residential excess policies and all deductible buy-back  
28 policies that, based on sound actuarial principles, require  
29 individual ratemaking shall be excluded by rule if the  
30 actuarial soundness of the fund is not jeopardized. For this  
31 purpose, the term "excess policy" means a policy that provides

1 insurance protection for large commercial property risks and  
2 that provides a layer of coverage above a primary layer  
3 insured by another insurer.

4 (d) "Losses" means direct incurred losses under  
5 covered policies, which shall include losses for additional  
6 living expenses not to exceed 40 ~~20~~ percent of the insured  
7 value of a mobile homes or personal residential structure or  
8 its structures and 40 percent of the insured value of contents  
9 covered under a tenant's policy or a condominium unit owner's  
10 policy and shall exclude loss adjustment expenses. "Losses"  
11 does not include losses for fair rental value, loss of use,  
12 ~~associated with personal and commercial residential exposures~~  
13 or business interruption losses ~~associated with commercial~~  
14 ~~residential exposures.~~

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

18 1. The board shall calculate and report to each  
19 insurer the retention multiples for that year. For the  
20 contract year beginning June 1, 2004 ~~1995~~, the retention  
21 multiple shall be equal to \$3 billion divided by the total  
22 estimated reimbursement premium for the contract year; for  
23 subsequent years, the retention multiple shall be equal to \$3  
24 billion, adjusted based upon the reported exposure from the  
25 prior contract year to reflect the percentage growth in  
26 exposure to the fund for covered policies since 2003 ~~1998~~,  
27 divided by the total estimated reimbursement premium for the  
28 contract year. Total reimbursement premium for purposes of the  
29 calculation under this subparagraph shall be estimated using  
30 the assumption that all insurers have selected the 90-percent  
31 coverage level.

1           2. The retention multiple as determined under  
2 subparagraph 1. shall be adjusted to reflect the coverage  
3 level elected by the insurer. For insurers electing the  
4 90-percent coverage level, the adjusted retention multiple is  
5 100 percent of the amount determined under subparagraph 1.  
6 For insurers electing the 75-percent coverage level, the  
7 retention multiple is 120 percent of the amount determined  
8 under subparagraph 1. For insurers electing the 45-percent  
9 coverage level, the adjusted retention multiple is 200 percent  
10 of the amount determined under subparagraph 1.

11           3. An insurer shall determine its provisional  
12 retention by multiplying its provisional reimbursement premium  
13 by the applicable adjusted retention multiple and shall  
14 determine its actual retention by multiplying its actual  
15 reimbursement premium by the applicable adjusted retention  
16 multiple.

17           (k) "Pledged revenues" means all or any portion of  
18 revenues to be derived from reimbursement premiums under  
19 subsection (5) or from emergency assessments under paragraph  
20 (6)(b)subparagraph (6)(a)3., as determined by the board.

21           (n) "Corporation" means the Florida Hurricane  
22 Catastrophe Fund Finance Corporation created in paragraph  
23 (6)(d).

24           (3) FLORIDA HURRICANE CATASTROPHE FUND CREATED.--There  
25 is created the Florida Hurricane Catastrophe Fund to be  
26 administered by the State Board of Administration. Moneys in  
27 the fund may not be expended, loaned, or appropriated except  
28 to pay obligations of the fund arising out of reimbursement  
29 contracts entered into under subsection (4), payment of debt  
30 service on revenue bonds issued under subsection (6), costs of  
31 the mitigation program under subsection (7), costs of

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

27 (4) REIMBURSEMENT CONTRACTS.--

28 (a) The board shall enter into a contract with each  
29 insurer writing covered policies in this state to provide to  
30 the insurer the reimbursement described in paragraphs (b) and  
31 (d), in exchange for the reimbursement premium paid into the

1 fund under subsection (5). As a condition of doing business in  
2 this state, each such insurer shall enter into such a  
3 contract.

4 (b)1. The contract shall contain a promise by the  
5 board to reimburse the insurer for 45 percent, 75 percent, or  
6 90 percent of its losses from each covered event in excess of  
7 the insurer's retention, plus 5 percent of the reimbursed  
8 losses to cover loss adjustment expenses.

9 2. The insurer must elect one of the percentage  
10 coverage levels specified in this paragraph and may, upon  
11 renewal of a reimbursement contract, elect a lower percentage  
12 coverage level if no revenue bonds issued under subsection (6)  
13 after a covered event are outstanding, or elect a higher  
14 percentage coverage level, regardless of whether or not  
15 revenue bonds are outstanding. All members of an insurer group  
16 must elect the same percentage coverage level. Any joint  
17 underwriting association, risk apportionment plan, or other  
18 entity created under s. 627.351 must elect the 90-percent  
19 coverage level.

20 3. The contract shall provide that reimbursement  
21 amounts shall not be reduced by reinsurance paid or payable to  
22 the insurer from other sources; ~~however, recoveries from such~~  
23 ~~other sources, taken together with reimbursements under the~~  
24 ~~contract, may not exceed 100 percent of the insurer's losses~~  
25 ~~from covered events. If such recoveries and reimbursements~~  
26 ~~exceed 100 percent of the insurer's losses from covered~~  
27 ~~events, and if there is no agreement between the insurer and~~  
28 ~~the reinsurer to the contrary, any amount in excess of 100~~  
29 ~~percent of the insurer's losses shall be returned to the fund.~~

30 (c)1. The contract shall also provide that the  
31 obligation of the board with respect to all contracts covering

1 a particular contract year shall not exceed the actual  
2 claims-paying capacity of the fund up to a limit of ~~\$15~~\$11  
3 billion for that contract year adjusted based upon the  
4 reported exposure from the prior contract year to reflect the  
5 percentage growth in exposure to the fund for covered policies  
6 since 2003, ~~unless the board determines that there is~~  
7 ~~sufficient estimated claims-paying capacity to provide \$11~~  
8 ~~billion of capacity for the current contract year and an~~  
9 ~~additional \$11 billion of capacity for subsequent contract~~  
10 ~~years. Upon such determination being made, the estimated~~  
11 ~~claims-paying capacity for the current contract year shall be~~  
12 ~~determined by adding to the \$11 billion limit one-half of the~~  
13 ~~fund's estimated claims-paying capacity in excess of \$22~~  
14 ~~billion.~~

15         2. In May before the start of the upcoming contract  
16 year and in October during the contract year, the board shall  
17 publish in the Florida Administrative Weekly a statement of  
18 the fund's estimated borrowing capacity and the projected  
19 balance of the fund as of December 31. After the end of each  
20 calendar year, the board shall notify insurers of the  
21 estimated borrowing capacity and the balance of the fund as of  
22 December 31 to provide insurers with data necessary to assist  
23 them in determining their retention and projected payout from  
24 the fund for loss reimbursement purposes. In conjunction with  
25 the development of the premium formula, as provided for in  
26 subsection (5), the board shall publish factors or multiples  
27 that assist insurers in determining their retention and  
28 projected payout for the next contract year. For all  
29 regulatory and reinsurance purposes, an insurer may calculate  
30 its projected payout from the fund as its share of the total  
31 fund premium for the current contract year multiplied by the

1 sum of the projected balance of the fund as of December 31 and  
2 the estimated borrowing capacity for that contract year as  
3 reported under this paragraph.~~The contract shall require the~~  
4 ~~board to annually notify insurers of the fund's estimated~~  
5 ~~borrowing capacity for the next contract year, the projected~~  
6 ~~year-end balance of the fund, and the insurer's estimated~~  
7 ~~share of total reimbursement premium to be paid to the fund.~~  
8 ~~For all regulatory and reinsurance purposes, an insurer may~~  
9 ~~calculate its projected payout from the fund as its share of~~  
10 ~~the total fund premium for the current contract year~~  
11 ~~multiplied by the sum of the projected year-end fund balance~~  
12 ~~and the estimated borrowing capacity for that contract year as~~  
13 ~~reported under this paragraph. In May and October of each~~  
14 ~~year, the board shall publish in the Florida Administrative~~  
15 ~~Weekly a statement of the fund's estimated borrowing capacity~~  
16 ~~and the projected year-end balance of the fund for the current~~  
17 ~~contract year.~~

18 (d)1. For purposes of determining potential liability  
19 and to aid in the sound administration of the fund, the  
20 contract shall require each insurer to report such insurer's  
21 losses from each covered event on an interim basis, as  
22 directed by the board. The contract shall require the insurer  
23 to report to the board no later than December 31 of each year,  
24 and quarterly thereafter, its reimbursable losses from covered  
25 events for the year. The contract shall require the board to  
26 determine and pay, as soon as practicable after receiving  
27 these reports of reimbursable losses, the initial amount of  
28 reimbursement due and adjustments to this amount based on  
29 later loss information. The adjustments to reimbursement  
30 amounts shall require the board to pay, or the insurer to  
31



1 return, amounts reflecting the most recent calculation of  
2 losses.

3 2. In determining reimbursements pursuant to this  
4 subsection, the contract shall provide that the board shall:

5 a. First reimburse insurers writing covered policies,  
6 which insurers are in full compliance with this section and  
7 have petitioned the Office of Insurance Regulation and  
8 qualified as limited apportionment companies under s.  
9 627.351(2)(b)3. The amount of such reimbursement shall be the  
10 lesser of \$10 million or an amount equal to 10 times the  
11 insurer's reimbursement premium for the current year. The  
12 amount of reimbursement paid under this sub-subparagraph may  
13 not exceed the full amount of reimbursement promised in the  
14 reimbursement contract. This sub-subparagraph does not apply  
15 with respect to any contract year in which the year-end  
16 projected cash balance of the fund, exclusive of any bonding  
17 capacity of the fund, exceeds \$2 billion. Only one member of  
18 any insurer group may receive reimbursement under this  
19 sub-subparagraph.

20 b. Next pay to each insurer such insurer's projected  
21 payout, which is the amount of reimbursement it is owed, up to  
22 an amount equal to the insurer's share of the actual premium  
23 paid for that contract year, multiplied by the actual  
24 claims-paying capacity available for that contract year;  
25 provided, entities created pursuant to s. 627.351 shall be  
26 further reimbursed in accordance with sub-subparagraph c.

27 c. Thereafter, establish, ~~based on reimbursable~~  
28 ~~losses~~, the prorated reimbursement level at the highest level  
29 for which any remaining fund balance or bond proceeds are  
30 sufficient to reimburse entities created pursuant to s.  
31 627.351 based on reimbursable ~~for~~ losses exceeding the amounts

1 payable pursuant to sub-subparagraph b. for the current  
2 contract year.

3 (e)1. Except as provided in subparagraphs 2. and 3.,  
4 the contract shall provide that if an insurer demonstrates to  
5 the board that it is likely to qualify for reimbursement under  
6 the contract, and demonstrates to the board that the immediate  
7 receipt of moneys from the board is likely to prevent the  
8 insurer from becoming insolvent, the board shall advance the  
9 insurer, at market interest rates, the amounts necessary to  
10 maintain the solvency of the insurer, up to 50 percent of the  
11 board's estimate of the reimbursement due the insurer. The  
12 insurer's reimbursement shall be reduced by an amount equal to  
13 the amount of the advance and interest thereon.

14 2. With respect only to an entity created under s.  
15 627.351, the contract shall also provide that the board may,  
16 upon application by such entity, advance to such entity, at  
17 market interest rates, up to 90 percent of the lesser of:

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

20 b. The entity's share of the actual reimbursement  
21 premium paid for that contract year, multiplied by the  
22 currently available liquid assets of the fund. In order for  
23 the entity to qualify for an advance under this subparagraph,  
24 the entity must demonstrate to the board that the advance is  
25 essential to allow the entity to pay claims for a covered  
26 event and the board must determine that the fund's assets are  
27 sufficient and are sufficiently liquid to allow the board to  
28 make an advance to the entity and still fulfill the board's  
29 reimbursement obligations to other insurers. The entity's  
30 final reimbursement for any contract year in which an advance  
31 has been made under this subparagraph must be reduced by an

1 amount equal to the amount of the advance and any interest on  
2 such advance. In order to determine what amounts, if any, are  
3 due the entity, the board may require the entity to report its  
4 exposure and its losses at any time to determine retention  
5 levels and reimbursements payable.

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

24           (f) In order to ensure that insurers have properly  
25 reported the insured values on which the reimbursement premium  
26 is based and to ensure that insurers have properly reported  
27 the losses for which reimbursements have been made, the board  
28 shall inspect, examine, and audit the records of each  
29 insurer's covered policies at such times as the board deems  
30 appropriate and in such manner as is consistent with generally  
31 accepted auditing standards. The costs of the audits shall be

1 borne by the board. However, in order to remove any incentive  
2 for an insurer to delay preparations for an audit, the board  
3 shall be reimbursed by the insurer for any audit expenses  
4 incurred in addition to the usual and customary costs of the  
5 audit, which additional expenses were incurred as a result of  
6 an insurer's failure, despite proper notice, to be prepared  
7 for the audit or as a result of an insurer's failure to  
8 provide requested information while the audit is in progress.  
9 If the board finds any insurer's records or other necessary  
10 information to be inadequate or inadequately posted, recorded,  
11 or maintained, the board may employ experts to reconstruct,  
12 rewrite, record, post, or maintain such records or  
13 information, at the expense of the insurer being audited, if  
14 such insurer has failed to maintain, complete, or correct such  
15 records or deficiencies after the board has given the insurer  
16 notice and a reasonable opportunity to do so. Any information  
17 contained in an audit report, which information is described  
18 in s. 215.557, is confidential and exempt from the provisions  
19 of s. 119.07(1) and s. 24(a), Art. I of the State  
20 Constitution, as provided in s. 215.557. Nothing in this  
21 paragraph expands the exemption in s. 215.557.

22 (g) The contract shall provide that in the event of  
23 the insolvency of an insurer, the fund shall pay directly to  
24 the Florida Insurance Guaranty Association for the benefit of  
25 Florida policyholders of the insurer the net amount of all  
26 reimbursement moneys owed to the insurer. As used in this  
27 paragraph, the term "net amount of all reimbursement moneys"  
28 means that amount which remains after reimbursement for:

29 1. Preliminary or duplicate payments owed to private  
30 reinsurers or other inuring reinsurance payments to private  
31 reinsurers that satisfy statutory or contractual obligations

1 of the insolvent insurer attributable to covered events to  
2 such reinsurers; or

3           2. Funds owed to a bank or other financial institution  
4 to cover obligations of the insolvent insurer under a credit  
5 agreement that assists the insolvent insurer in paying claims  
6 attributable to covered events.

7  
8 Such private reinsurers, banks, or other financial  
9 institutions shall be reimbursed or otherwise paid prior to  
10 payment to the Florida Insurance Guaranty Association,  
11 notwithstanding any law to the contrary. The guaranty  
12 association shall pay all claims up to the maximum amount  
13 permitted by chapter 631; thereafter, any remaining moneys  
14 shall be paid pro rata to claims not fully satisfied. This  
15 paragraph does not apply to a joint underwriting association,  
16 risk apportionment plan, or other entity created under s.  
17 627.351.

18           (6) REVENUE BONDS.--

19           (a) General provisions.--

20           1. Upon the occurrence of a hurricane and a  
21 determination that the moneys in the fund are or will be  
22 insufficient to pay reimbursement at the levels promised in  
23 the reimbursement contracts, the board may take the necessary  
24 steps under paragraph (c) ~~(b)~~ or paragraph (d) ~~(e)~~ for the  
25 issuance of revenue bonds for the benefit of the fund. The  
26 proceeds of such revenue bonds may be used to make  
27 reimbursement payments under reimbursement contracts; to  
28 refinance or replace previously existing borrowings or  
29 financial arrangements; to pay interest on bonds; to fund  
30 reserves for the bonds; to pay expenses incident to the  
31 issuance or sale of any bond issued under this section,

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

26         2. The Legislature finds and declares that the  
27 issuance of bonds under this subsection is for the public  
28 purpose of paying the proceeds of the bonds to insurers,  
29 thereby enabling insurers to pay the claims of policyholders  
30 to assure that policyholders are able to pay the cost of  
31 construction, reconstruction, repair, restoration, and other

1 costs associated with damage to property of policyholders of  
2 covered policies after the occurrence of a hurricane. Revenue  
3 bonds may not be issued under this subsection until validated  
4 under chapter 75. The validation of at least the first  
5 obligations incurred pursuant to this subsection shall be  
6 appealed to the Supreme Court, to be handled on an expedited  
7 basis.

8 (b) Emergency assessments.--

9 1.3. If the board determines that the amount of  
10 revenue produced under subsection (5) is insufficient to fund  
11 the obligations, costs, and expenses of the fund and the  
12 corporation, including repayment of revenue bonds and that  
13 portion of the debt service coverage not met by the  
14 reimbursement premiums, the board shall direct the Office of  
15 Insurance Regulation to levy an emergency assessment. Such  
16 assessment shall be on each insurer writing property and  
17 casualty business in this state, referred to in this  
18 subsection as assessable insurers, and upon those insureds  
19 procuring one or more lines of property and casualty business  
20 in this state pursuant to part VIII of chapter 626, referred  
21 to in this subsection as assessable insureds.

22 2. Pursuant to the emergency assessment, each such  
23 assessable insurer shall pay to the corporation by July 1 of  
24 each year an amount set by the board not exceeding 4 ~~2~~ percent  
25 of its gross direct written premium for the prior year from  
26 all property and casualty business in this state except for  
27 workers' compensation and medical malpractice, except that, if  
28 the Governor has declared a state of emergency under s. 252.36  
29 due to the occurrence of a covered event, the amount of the  
30 assessment for the contract year may be increased to an amount  
31 not exceeding 6 ~~4~~ percent of such premium.

1           3.a. Pursuant to the emergency assessment, each such  
2 assessable insured shall pay an amount set by the board not  
3 exceeding 4 percent of the gross written premium each year for  
4 all property and casualty business procured in this state  
5 except workers' compensation and medical malpractice, except  
6 that, if the Governor has declared a state of emergency under  
7 s. 252.36 due to the occurrence of a covered event, the amount  
8 of the assessment for the contract year may be increased to an  
9 amount not exceeding 6 percent of such premium.

10           b. The emergency assessment on each such assessable  
11 insured shall be collected by the surplus lines agent at the  
12 time such agent collects the surplus lines tax required by s.  
13 626.932 and remitted by the agent to the Florida Surplus Lines  
14 Service Office created pursuant to s. 626.921 at the time the  
15 agent pays the surplus lines tax to the Florida Surplus Lines  
16 Service Office. The emergency assessment on each assessable  
17 insured procuring coverage and filing under s. 626.938 shall  
18 be remitted by the insured to the Florida Surplus Lines  
19 Service Office at the time the insured pays the surplus lines  
20 tax to the Florida Surplus Lines Service Office. The emergency  
21 assessments collected shall be transferred to the corporation  
22 or to the fund pursuant to subparagraph 6. on a periodic basis  
23 as determined by the board. The Florida Surplus Lines Service  
24 Office shall verify the proper application by surplus lines  
25 agents of the emergency assessments and shall assist the board  
26 in ensuring the accurate, timely collection and payment of  
27 assessments by surplus lines agents as required by the board.  
28 The Florida Surplus Lines Service Office shall determine  
29 annually the aggregate written premium on property and  
30 casualty business, except workers' compensation and medical  
31 malpractice, procured by assessable insureds and shall report



1 such information to the board in a form and at a time  
2 specified by the board to ensure that the fund and the  
3 corporation can meet their financing obligations.

4 4. Any assessment authority not used for the contract  
5 year may be used for a subsequent contract year. If, for a  
6 subsequent contract year, the board determines that the amount  
7 of revenue produced under subsection (5) is insufficient to  
8 fund the obligations, costs, and expenses of the fund and the  
9 corporation, including repayment of revenue bonds and that  
10 portion of the debt service coverage not met by the  
11 reimbursement premiums for that contract year, the board shall  
12 direct the Office of Insurance Regulation to levy an emergency  
13 assessment up to an amount not exceeding the amount of unused  
14 assessment authority from a previous contract year or years,  
15 plus an additional 4 ~~2~~ percent if the Governor has declared a  
16 state of emergency under s. 252.36 due to the occurrence of a  
17 covered event. Any assessment authority not used for the  
18 contract year may be used for a subsequent contract year. As  
19 used in this subsection, the term "property and casualty  
20 business" includes all lines of business identified on Form 2,  
21 Exhibit of Premiums and Losses, in the annual statement  
22 required of authorized insurers by s. 624.424 and any rules  
23 adopted under such section, except for those lines identified  
24 as accident and health insurance, workers' compensation,  
25 medical malpractice, and policies written in conjunction with  
26 the National Flood Insurance Program. In addition, the term  
27 "property and casualty business" means all lines of business  
28 procured pursuant to part VIII of chapter 626, except those  
29 lines identified as accident and health, workers'  
30 compensation, and medical malpractice.The annual assessments  
31 under this subparagraph shall continue as long as the revenue

1 bonds issued with respect to which the assessment was imposed  
2 are outstanding, unless adequate provision has been made for  
3 the payment of such bonds pursuant to the documents  
4 authorizing issuance of the bonds. An assessable insurer or  
5 assessable insured shall not at any time be subject to  
6 ~~aggregate~~ annual assessments under this subparagraph of more  
7 than 4 ~~2~~ percent of premium, except that in the case of a  
8 declared emergency, an assessable insurer or assessable  
9 insured shall not at any time be subject to aggregate annual  
10 assessments under this subparagraph of more than 10 ~~6~~ percent  
11 of premium; provided, no more than 6 ~~4~~ percent may be assessed  
12 for obligations arising due to losses in any one contract  
13 year.

14 5. Any rate filing or portion of a rate filing  
15 reflecting a rate change attributable entirely to the  
16 assessment levied under this paragraph ~~subparagraph~~ shall be  
17 deemed approved when made, subject to the authority of the  
18 Office of Insurance Regulation to require actuarial  
19 justification as to the adequacy of any rate at any time. If  
20 the rate filing reflects only a rate change attributable to  
21 the assessment under this paragraph, the filing may consist of  
22 a certification so stating.

23 6. The assessments otherwise payable to the  
24 corporation pursuant to this paragraph ~~subparagraph~~ shall be  
25 paid instead to the fund unless and until the Office of  
26 Insurance Regulation and the Florida Surplus Lines Service  
27 Office have ~~has~~ received from the corporation and the fund a  
28 notice, which shall be conclusive and upon which they ~~the~~  
29 ~~Office of Insurance Regulation~~ may rely without further  
30 inquiry, that the corporation has issued bonds and the fund  
31 has no agreements in effect with local governments pursuant to

1 paragraph~~(c)(b)~~. On or after the date of such notice and  
2 until such date as the corporation has no bonds outstanding,  
3 the fund shall have no right, title, or interest in or to the  
4 assessments, except as provided in the fund's agreements with  
5 the corporation.

6 7. Emergency assessments are not premium and are not  
7 subject to premium or surplus lines tax, fees, or commissions;  
8 however, the failure by an assessable insured to pay an  
9 emergency assessment shall be treated as a failure to pay  
10 premium.

11 ~~(c)(b)~~ Revenue bond issuance through counties or  
12 municipalities.--

13 1. If the board elects to enter into agreements with  
14 local governments for the issuance of revenue bonds for the  
15 benefit of the fund, the board shall enter into such contracts  
16 with one or more local governments, including agreements  
17 providing for the pledge of revenues, as are necessary to  
18 effect such issuance. The governing body of a county or  
19 municipality is authorized to issue bonds as defined in s.  
20 125.013 or s. 166.101 from time to time to fund an assistance  
21 program, in conjunction with the Florida Hurricane Catastrophe  
22 Fund, for the purposes set forth in this section or for the  
23 purpose of paying the costs of construction, reconstruction,  
24 repair, restoration, and other costs associated with damage to  
25 properties of policyholders of covered policies due to the  
26 occurrence of a hurricane by assuring that policyholders  
27 located in this state are able to recover claims under  
28 property insurance policies after a covered event.

29 2. In order to avoid needless and indiscriminate  
30 proliferation, duplication, and fragmentation of such  
31 assistance programs, any local government may provide for the

1 payment of fund reimbursements, regardless of whether or not  
2 the losses for which reimbursement is made occurred within or  
3 outside of the territorial jurisdiction of the local  
4 government.

5           3. The state hereby covenants with holders of bonds  
6 issued under this paragraph that the state will not repeal or  
7 abrogate the power of the board to direct the Office of  
8 Insurance Regulation to levy the assessments and to collect  
9 the proceeds of the revenues pledged to the payment of such  
10 bonds as long as any such bonds remain outstanding unless  
11 adequate provision has been made for the payment of such bonds  
12 pursuant to the documents authorizing the issuance of such  
13 bonds.

14           4. There shall be no liability on the part of, and no  
15 cause of action shall arise against any members or employees  
16 of the governing body of a local government for any actions  
17 taken by them in the performance of their duties under this  
18 paragraph.

19           (d)~~(c)~~ Florida Hurricane Catastrophe Fund Finance  
20 Corporation.--

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

23           a. The public benefits corporation created under this  
24 paragraph will provide a mechanism necessary for the  
25 cost-effective and efficient issuance of bonds. This mechanism  
26 will eliminate unnecessary costs in the bond issuance process,  
27 thereby increasing the amounts available to pay reimbursement  
28 for losses to property sustained as a result of hurricane  
29 damage.

30           b. The purpose of such bonds is to fund reimbursements  
31 through the Florida Hurricane Catastrophe Fund to pay for the

1 costs of construction, reconstruction, repair, restoration,  
2 and other costs associated with damage to properties of  
3 policyholders of covered policies due to the occurrence of a  
4 hurricane.

5 c. The efficacy of the financing mechanism will be  
6 enhanced by the corporation's ownership of the assessments, by  
7 the insulation of the assessments from possible bankruptcy  
8 proceedings, and by covenants of the state with the  
9 corporation's bondholders.

10 2.a. There is created a public benefits corporation,  
11 which is an instrumentality of the state, to be known as the  
12 Florida Hurricane Catastrophe Fund Finance Corporation.

13 b. The corporation shall operate under a five-member  
14 board of directors consisting of the Governor or a designee,  
15 the Chief Financial Officer or a designee, the Attorney  
16 General or a designee, the director of the Division of Bond  
17 Finance of the State Board of Administration, and the senior  
18 employee of the State Board of Administration responsible for  
19 operations of the Florida Hurricane Catastrophe Fund.

20 c. The corporation has all of the powers of  
21 corporations under chapter 607 and under chapter 617, subject  
22 only to the provisions of this subsection.

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

26 e. The corporation may invest in any of the  
27 investments authorized under s. 215.47.

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

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

7           b. The state hereby covenants with holders of bonds of  
8 the corporation that the state will not repeal or abrogate the  
9 power of the board to direct the Office of Insurance  
10 Regulation to levy the assessments and to collect the proceeds  
11 of the revenues pledged to the payment of such bonds as long  
12 as any such bonds remain outstanding unless adequate provision  
13 has been made for the payment of such bonds pursuant to the  
14 documents authorizing the issuance of such bonds.

15           4. The bonds of the corporation are not a debt of the  
16 state or of any political subdivision, and neither the state  
17 nor any political subdivision is liable on such bonds. The  
18 corporation does not have the power to pledge the credit, the  
19 revenues, or the taxing power of the state or of any political  
20 subdivision. The credit, revenues, or taxing power of the  
21 state or of any political subdivision shall not be deemed to  
22 be pledged to the payment of any bonds of the corporation.

23           5.a. The property, revenues, and other assets of the  
24 corporation; the transactions and operations of the  
25 corporation and the income from such transactions and  
26 operations; and all bonds issued under this paragraph and  
27 interest on such bonds are exempt from taxation by the state  
28 and any political subdivision, including the intangibles tax  
29 under chapter 199 and the income tax under chapter 220. This  
30 exemption does not apply to any tax imposed by chapter 220 on  
31 interest, income, or profits on debt obligations owned by

1 corporations other than the Florida Hurricane Catastrophe Fund  
2 Finance Corporation.

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

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

26           (e)~~(d)~~ Protection of bondholders.--

27           1. As long as the corporation has any bonds  
28 outstanding, neither the fund nor the corporation shall have  
29 the authority to file a voluntary petition under chapter 9 of  
30 the federal Bankruptcy Code or such corresponding chapter or  
31 sections as may be in effect, from time to time, and neither

1 any public officer nor any organization, entity, or other  
2 person shall authorize the fund or the corporation to be or  
3 become a debtor under chapter 9 of the federal Bankruptcy Code  
4 or such corresponding chapter or sections as may be in effect,  
5 from time to time, during any such period.

6           2. The state hereby covenants with holders of bonds of  
7 the corporation that the state will not limit or alter the  
8 denial of authority under this paragraph or the rights under  
9 this section vested in the fund or the corporation to fulfill  
10 the terms of any agreements made with such bondholders or in  
11 any way impair the rights and remedies of such bondholders as  
12 long as any such bonds remain outstanding unless adequate  
13 provision has been made for the payment of such bonds pursuant  
14 to the documents authorizing the issuance of such bonds.

15           3. Notwithstanding any other provision of law, any  
16 pledge of or other security interest in revenue, money,  
17 accounts, contract rights, general intangibles, or other  
18 personal property made or created by the fund or the  
19 corporation shall be valid, binding, and perfected from the  
20 time such pledge is made or other security interest attaches  
21 without any physical delivery of the collateral or further act  
22 and the lien of any such pledge or other security interest  
23 shall be valid, binding, and perfected against all parties  
24 having claims of any kind in tort, contract, or otherwise  
25 against the fund or the corporation irrespective of whether or  
26 not such parties have notice of such claims. No instrument by  
27 which such a pledge or security interest is created nor any  
28 financing statement need be recorded or filed.

29           (7) ADDITIONAL POWERS AND DUTIES.--

30           (a) The board may procure reinsurance from reinsurers  
31 acceptable to the Office of Insurance Regulation ~~approved~~



1 ~~under s. 624.610~~ for the purpose of maximizing the capacity of  
2 the fund.

3 (b) In addition to borrowing under subsection (6), the  
4 board may also borrow from, or enter into other financing  
5 arrangements with, any market sources at prevailing interest  
6 rates.

7 (c) Each fiscal year, the Legislature shall  
8 appropriate from the investment income of the Florida  
9 Hurricane Catastrophe Fund an amount no less than \$10 million  
10 and no more than 35 percent of the investment income based  
11 upon the most recent fiscal year-end audited financial  
12 statements from the prior fiscal year for the purpose of  
13 providing funding for local governments, state agencies,  
14 public and private educational institutions, and nonprofit  
15 organizations to support programs intended to improve  
16 hurricane preparedness, reduce potential losses in the event  
17 of a hurricane, provide research into means to reduce such  
18 losses, educate or inform the public as to means to reduce  
19 hurricane losses, assist the public in determining the  
20 appropriateness of particular upgrades to structures or in the  
21 financing of such upgrades, or protect local infrastructure  
22 from potential damage from a hurricane. Moneys shall first be  
23 available for appropriation under this paragraph in fiscal  
24 year 1997-1998. Moneys in excess of the \$10 million specified  
25 in this paragraph shall not be available for appropriation  
26 under this paragraph if the State Board of Administration  
27 finds that an appropriation of investment income from the fund  
28 would jeopardize the actuarial soundness of the fund.

29 (d) The board may allow insurers to comply with  
30 reporting requirements and reporting format requirements by  
31 using alternative methods of reporting if the proper

1 administration of the fund is not thereby impaired and if the  
2 alternative methods produce data which is consistent with the  
3 purposes of this section.

4 (e) In order to assure the equitable operation of the  
5 fund, the board may impose a reasonable fee on an insurer to  
6 recover costs involved in reprocessing inaccurate, incomplete,  
7 or untimely exposure data submitted by the insurer.

8 ~~(16) For the 2002-2003 fiscal year only, the State~~  
9 ~~Board of Administration shall disburse funds, by nonoperating~~  
10 ~~transfer, from the Florida Hurricane Catastrophe Fund to the~~  
11 ~~Ecosystem Management and Restoration Trust Fund of the~~  
12 ~~Department of Environmental Protection in an amount equal to~~  
13 ~~8.47 percent of the appropriation made from the Ecosystem~~  
14 ~~Management and Restoration Trust Fund for "Grants and Aids to~~  
15 ~~Local Governments and Non-State Entities - Fixed Capital~~  
16 ~~Outlay, Statewide Restoration Projects" in the 2002-2003~~  
17 ~~General Appropriations Act. This subsection expires July 1,~~  
18 ~~2003.~~

19 Section 2. This act shall take effect July 1, 2004.

20 \*\*\*\*\*

21 SENATE SUMMARY

22  
23 Revises a variety of provisions relating to the Florida  
24 Hurricane Catastrophe Fund. Redefines terms and defines  
25 the term "corporation." Provides for interest on  
26 delinquent remittances. Increases the maximum payable  
27 under reimbursement contracts. Requires certain  
28 information to be given insurers. Revises proceedings  
29 relating to emergency assessments, including amounts  
30 assessed and method of collection. (See bill for  
31 details.)