

By the Committees on Governmental Oversight and Productivity;
Banking and Insurance; and Senator Alexander

302-2558-04

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, procedures relating
10 | to, and types of insurance subject to emergency
11 | assessments; revising provisions relating to
12 | reinsurance; deleting expired provisions;
13 | requiring insurers writing a covered policy to
14 | make a rate filing with the Office of Insurance
15 | Regulation; providing effective dates.
16 |
17 | Be It Enacted by the Legislature of the State of Florida:
18 |
19 | Section 1. Paragraphs (c), (d), (e), and (k) of
20 | subsection (2) and subsections (3), (4), (7), and (16) of
21 | section 215.555, Florida Statutes, are amended, and paragraph
22 | (n) is added to subsection (2) of that section, to read:
23 | 215.555 Florida Hurricane Catastrophe Fund.--
24 | (2) DEFINITIONS.--As used in this section:
25 | (c) "Covered policy" means any insurance policy
26 | covering residential property in this state, including, but
27 | not limited to, any homeowner's, mobile home owner's, farm
28 | owner's, condominium association, condominium unit owner's,
29 | tenant's, or apartment building policy, or any other policy
30 | covering a residential structure or its contents issued by any
31 | authorized insurer, including the Citizens Property Insurance

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

1 actuarial soundness of the fund is not jeopardized. For this
2 purpose, the term "excess policy" means a policy that provides
3 insurance protection for large commercial property risks and
4 that provides a layer of coverage above a primary layer
5 insured by another insurer.

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

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

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

1 | this subparagraph shall be estimated using the assumption that
2 | all insurers have selected the 90-percent coverage level.

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

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

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

23 | (n) "Corporation" means the Florida Hurricane
24 | Catastrophe Fund Finance Corporation created in paragraph
25 | (6)(d).

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

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

29 (4) REIMBURSEMENT CONTRACTS.--

30 (a) The board shall enter into a contract with each
31 insurer writing covered policies in this state to provide to

1 | the insurer the reimbursement described in paragraphs (b) and
2 | (d), in exchange for the reimbursement premium paid into the
3 | fund under subsection (5). As a condition of doing business in
4 | this state, each such insurer shall enter into such a
5 | contract.

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

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

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

1 (c)1. The contract shall also provide that the
2 obligation of the board with respect to all contracts covering
3 a particular contract year shall not exceed the actual
4 claims-paying capacity of the fund up to a limit of \$11
5 billion for that contract year, unless the board determines
6 that there is sufficient estimated claims-paying capacity to
7 provide \$11 billion of capacity for the current contract year
8 and an additional \$11 billion of capacity for subsequent
9 contract years. Upon such determination being made, the
10 estimated claims-paying capacity for the current contract year
11 shall be determined by adding to the \$11 billion limit
12 one-half of the fund's estimated claims-paying capacity in
13 excess of \$22 billion.

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

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

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

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

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

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

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

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

12 2. With respect only to an entity created under s.
13 627.351, the contract shall also provide that the board may,
14 upon application by such entity, advance to such entity, at
15 market interest rates, up to 90 percent of the lesser of:

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

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

1 due the entity, the board may require the entity to report its
2 exposure and its losses at any time to determine retention
3 levels and reimbursements payable.

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

22 (f) In order to ensure that insurers have properly
23 reported the insured values on which the reimbursement premium
24 is based and to ensure that insurers have properly reported
25 the losses for which reimbursements have been made, the board
26 shall inspect, examine, and verify ~~audit~~ the records of each
27 insurer's covered policies at such times as the board deems
28 appropriate and according to standards established by rule for
29 the specific purpose of validating the accuracy of exposures
30 and losses required to be reported under the terms and
31 conditions of the reimbursement contract in such manner as is

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

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

1 1. Preliminary or duplicate payments owed to private
2 reinsurers or other inuring reinsurance payments to private
3 reinsurers that satisfy statutory or contractual obligations
4 of the insolvent insurer attributable to covered events to
5 such reinsurers; or

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

10
11 The ~~Such~~ private reinsurers, banks, or other financial
12 institutions shall be reimbursed or otherwise paid prior to
13 payment to the Florida Insurance Guaranty Association,
14 notwithstanding any law to the contrary. The guaranty
15 association shall pay all claims up to the maximum amount
16 permitted by chapter 631; thereafter, any remaining moneys
17 shall be paid pro rata to claims not fully satisfied. This
18 paragraph does not apply to a joint underwriting association,
19 risk apportionment plan, or other entity created under s.
20 627.351.

21 (7) ADDITIONAL POWERS AND DUTIES.--

22 (a) The board may procure reinsurance from reinsurers
23 acceptable to the Office of Insurance Regulation ~~approved~~
24 ~~under s. 624.610~~ for the purpose of maximizing the capacity of
25 the fund.

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

30 (c) Each fiscal year, the Legislature shall
31 appropriate from the investment income of the Florida

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

21 (d) The board may allow insurers to comply with
22 reporting requirements and reporting format requirements by
23 using alternative methods of reporting if the proper
24 administration of the fund is not thereby impaired and if the
25 alternative methods produce data which is consistent with the
26 purposes of this section.

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

31

1 ~~(16) For the 2002-2003 fiscal year only, the State~~
2 ~~Board of Administration shall disburse funds, by nonoperating~~
3 ~~transfer, from the Florida Hurricane Catastrophe Fund to the~~
4 ~~Ecosystem Management and Restoration Trust Fund of the~~
5 ~~Department of Environmental Protection in an amount equal to~~
6 ~~8.47 percent of the appropriation made from the Ecosystem~~
7 ~~Management and Restoration Trust Fund for "Grants and Aids to~~
8 ~~Local Governments and Non State Entities - Fixed Capital~~
9 ~~Outlay, Statewide Restoration Projects" in the 2002-2003~~
10 ~~General Appropriations Act. This subsection expires July 1,~~
11 ~~2003.~~

12 Section 2. Effective June 1, 2005, paragraph (e) of
13 subsection (2), paragraph (c) of subsection (4), and
14 subsection (6) of section 215.555, Florida Statutes, as
15 amended by this act, are amended to read:

16 215.555 Florida Hurricane Catastrophe Fund.--

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

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

21 1. The board shall calculate and report to each
22 insurer the retention multiples for that year. For the
23 contract year beginning June 1, 2005 ~~1995~~, the retention
24 multiple shall be equal to \$4~~\$3~~ billion divided by the total
25 estimated reimbursement premium for the contract year; for
26 subsequent years, the retention multiple shall be equal to \$4
27 ~~\$3~~ billion, adjusted based upon the reported exposure from the
28 prior contract year to reflect the percentage growth in
29 exposure to the fund for covered policies since 2004 ~~1998~~,
30 divided by the total estimated reimbursement premium for the
31 contract year. Total reimbursement premium for purposes of the

1 calculation under this subparagraph shall be estimated using
2 the assumption that all insurers have selected the 90-percent
3 coverage level.

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

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

20 (4) REIMBURSEMENT CONTRACTS.--

21 (c)1. The contract shall also provide that the
22 obligation of the board with respect to all contracts covering
23 a particular contract year shall not exceed the actual
24 claims-paying capacity of the fund up to a limit of ~~\$15\$11~~
25 billion for that contract year adjusted based upon the
26 reported exposure from the prior contract year to reflect the
27 percentage growth in exposure to the fund for covered policies
28 since 2004, provided that the dollar growth in the limit may
29 not increase in any year by an amount greater than the dollar
30 growth of the cash balance which occurred over the prior
31 calendar year, ~~unless the board determines that there is~~

1 ~~sufficient estimated claims paying capacity to provide \$11~~
2 ~~billion of capacity for the current contract year and an~~
3 ~~additional \$11 billion of capacity for subsequent contract~~
4 ~~years. Upon such determination being made, the estimated~~
5 ~~claims paying capacity for the current contract year shall be~~
6 ~~determined by adding to the \$11 billion limit one half of the~~
7 ~~fund's estimated claims paying capacity in excess of \$22~~
8 ~~billion.~~

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

29 (6) REVENUE BONDS.--

30 (a) General provisions.--

31

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

1 subdivisions of the state shall not be pledged for the payment
2 of such bonds. The board may also enter into agreements under
3 paragraph~~(c)~~~~(b)~~ or paragraph~~(d)~~~~(e)~~ for the purpose of
4 issuing revenue bonds in the absence of a hurricane upon a
5 determination that such action would maximize the ability of
6 the fund to meet future obligations.

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

20 **(b) Emergency assessments.--**

21 **1. If the board determines that the amount of revenue**
22 **produced under subsection (5) is insufficient to fund the**
23 **obligations, costs, and expenses of the fund and the**
24 **corporation, including repayment of revenue bonds and that**
25 **portion of the debt service coverage not met by reimbursement**
26 **premiums, the board shall direct the Office of Insurance**
27 **Regulation to levy, by order, an emergency assessment on**
28 **direct premiums for all property and casualty lines of**
29 **business in this state, including property and casualty**
30 **business of surplus lines insurers regulated under part VIII**
31 **of chapter 626, but not including any workers' compensation**

1 premiums or medical malpractice premiums. As used in this
2 subsection, the term "property and casualty business" includes
3 all lines of business identified on Form 2, Exhibit of
4 Premiums and Losses, in the annual statement required of
5 authorized insurers by s. 624.424 and any rule adopted under
6 this section, except for those lines identified as accident
7 and health insurance and except for policies written under the
8 National Flood Insurance Program. The assessment shall be
9 specified as a percentage of future premium collections and is
10 subject to annual adjustments by the board to reflect changes
11 in premiums subject to assessments collected under this
12 subparagraph in order to meet debt obligations. The same
13 percentage shall apply to all policies in lines of business
14 subject to the assessment issued or renewed during the
15 12-month period beginning on the effective date of the
16 assessment.

17 2. A premium is not subject to an annual assessment
18 under this paragraph in excess of 6 percent of premium with
19 respect to obligations arising out of losses attributable to
20 any one contract year and a premium is not subject to an
21 aggregate annual assessment under this paragraph in excess of
22 10 percent of premium. An annual assessment under this
23 paragraph shall continue until the revenue bonds issued with
24 respect to which the assessment was imposed are outstanding,
25 including any bonds the proceeds of which were used to refund
26 the revenue bonds, unless adequate provision has been made for
27 the payment of the bonds under the documents authorizing
28 issuance of the bonds.

29 3. With respect to each insurer collecting premiums
30 that are subject to the assessment, the insurer shall collect
31 the assessment at the same time as it collects the premium

1 payment for each policy and shall remit the assessment
2 collected to the fund or corporation as provided in the order
3 issued by the Office of Insurance Regulation. The office shall
4 verify the accurate and timely collection and remittance of
5 emergency assessments and shall report the information to the
6 board in a form and at a time specified by the board. Each
7 insurer collecting assessments shall provide the information
8 with respect to premiums and collections as may be required by
9 the office to enable the office to monitor and verify
10 compliance with this paragraph.

11 4. With respect to assessments of surplus lines
12 premiums, each surplus lines agent shall collect the
13 assessment at the same time as the agent collects the surplus
14 lines tax required by s. 626.932, and the surplus lines agent
15 shall remit the assessment to the Florida Surplus Lines
16 Service Office created by s. 626.921 at the same time as the
17 agent remits the surplus lines tax to the Florida Surplus
18 Lines Service Office. The emergency assessment on each insured
19 procuring coverage and filing under s. 626.938 shall be
20 remitted by the insured to the Florida Surplus Lines Service
21 Office at the time the insured pays the surplus lines tax to
22 the Florida Surplus Lines Service Office. The Florida Surplus
23 Lines Office shall remit the collected assessments to the fund
24 or corporation as provided in the order levied by the Office
25 of Insurance Regulation. The Florida Surplus Lines Service
26 Office shall verify the proper application of such emergency
27 assessments and shall assist the board in ensuring the
28 accurate and timely collection and remittance of assessments
29 as required by the board. The Florida Surplus Lines Service
30 Office shall annually calculate the aggregate written premium
31 on property and casualty business, other than workers'

1 compensation and medical malpractice, procured through surplus
2 lines agents and insureds procuring coverage and filing under
3 s. 626.938 and shall report the information to the board in a
4 form and at a time specified by the board.

5 5. Any assessment authority not used for a particular
6 contract year may be used for a subsequent contract year. If,
7 for a subsequent contract year, the board determines that the
8 amount of revenue produced under subsection (5) is
9 insufficient to fund the obligations, costs, and expenses of
10 the fund and the corporation, including repayment of revenue
11 bonds and that portion of the debt service coverage not met by
12 reimbursement premiums, the board shall direct the Office of
13 Insurance Regulation to levy an emergency assessment up to an
14 amount not exceeding the amount of unused assessment authority
15 from a previous contract year or years, plus an additional 4
16 percent provided that the assessments in the aggregate do not
17 exceed the limits specified in subparagraph 2.

18 6. The assessments otherwise payable to the
19 corporation under this paragraph shall be paid to the fund
20 unless and until the Office of Insurance Regulation and the
21 Florida Surplus Lines Service Office have received from the
22 corporation and the fund a notice, which shall be conclusive
23 and upon which they may rely without further inquiry, that the
24 corporation has issued bonds and the fund has no agreements in
25 effect with local governments under paragraph (c). On or after
26 the date of the notice and until the date the corporation has
27 no bonds outstanding, the fund shall have no right, title, or
28 interest in or to the assessments, except as provided in the
29 fund's agreement with the corporation.

30 7. Emergency assessments are not premium and are not
31 subject to the premium tax, to the surplus lines tax, to any

1 fees, or to any commissions. An insurer is liable for all
2 assessments that it collects and must treat the failure of an
3 insured to pay an assessment as a failure to pay the premium.
4 An insurer is not liable for uncollectible assessments.

5 8. When an insurer is required to return an unearned
6 premium, it shall also return any collected assessment
7 attributable to the unearned premium. A credit adjustment to
8 the collected assessment may be made by the insurer with
9 regard to future remittances that are payable to the fund or
10 corporation, but the insurer is not entitled to a refund.

11 9. When a surplus lines insured or an insured who has
12 procured coverage and filed under s. 626.938 is entitled to
13 the return of an unearned premium, the Florida Surplus Lines
14 Service Office shall provide a credit or refund to the agent
15 or such insured for the collected assessment attributable to
16 the unearned premium prior to remitting the emergency
17 assessment collected to the fund or corporation.

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

1 ~~for the contract year may be increased to an amount not~~
2 ~~exceeding 4 percent of such premium. Any assessment authority~~
3 ~~not used for the contract year may be used for a subsequent~~
4 ~~contract year. If, for a subsequent contract year, the board~~
5 ~~determines that the amount of revenue produced under~~
6 ~~subsection (5) is insufficient to fund the obligations, costs,~~
7 ~~and expenses of the fund and the corporation, including~~
8 ~~repayment of revenue bonds for that contract year, the board~~
9 ~~shall direct the Office of Insurance Regulation to levy an~~
10 ~~emergency assessment up to an amount not exceeding the amount~~
11 ~~of unused assessment authority from a previous contract year~~
12 ~~or years, plus an additional 2 percent if the Governor has~~
13 ~~declared a state of emergency under s. 252.36 due to the~~
14 ~~occurrence of a covered event. Any assessment authority not~~
15 ~~used for the contract year may be used for a subsequent~~
16 ~~contract year. As used in this subsection, the term "property~~
17 ~~and casualty business" includes all lines of business~~
18 ~~identified on Form 2, Exhibit of Premiums and Losses, in the~~
19 ~~annual statement required by s. 624.424 and any rules adopted~~
20 ~~under such section, except for those lines identified as~~
21 ~~accident and health insurance. The annual assessments under~~
22 ~~this subparagraph shall continue as long as the revenue bonds~~
23 ~~issued with respect to which the assessment was imposed are~~
24 ~~outstanding, unless adequate provision has been made for the~~
25 ~~payment of such bonds pursuant to the documents authorizing~~
26 ~~issuance of the bonds. An insurer shall not at any time be~~
27 ~~subject to aggregate annual assessments under this~~
28 ~~subparagraph of more than 2 percent of premium, except that in~~
29 ~~the case of a declared emergency, an insurer shall not at any~~
30 ~~time be subject to aggregate annual assessments under this~~
31 ~~subparagraph of more than 6 percent of premium; provided, no~~

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

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

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

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

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

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

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

30 ~~(d)(e)~~ Florida Hurricane Catastrophe Fund Finance
31 Corporation.--

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

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

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

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

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

24 b. The corporation shall operate under a five-member
25 board of directors consisting of the Governor or a designee,
26 the Chief Financial Officer or a designee, the Attorney
27 General or a designee, the director of the Division of Bond
28 Finance of the State Board of Administration, and the senior
29 employee of the State Board of Administration responsible for
30 operations of the Florida Hurricane Catastrophe Fund.

31

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

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

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

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

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

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

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

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

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

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

30 6. The corporation and its corporate existence shall
31 continue until terminated by law; however, no such law shall

1 take effect as long as the corporation has bonds outstanding
2 unless adequate provision has been made for the payment of
3 such bonds pursuant to the documents authorizing the issuance
4 of such bonds. Upon termination of the existence of the
5 corporation, all of its rights and properties in excess of its
6 obligations shall pass to and be vested in the state.

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

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

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

27 3. Notwithstanding any other provision of law, any
28 pledge of or other security interest in revenue, money,
29 accounts, contract rights, general intangibles, or other
30 personal property made or created by the fund or the
31 corporation shall be valid, binding, and perfected from the

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

10 | Section 3. No later than December 31, 2005, each
11 | insurer writing a covered policy as defined in section
12 | 215.555(2)(c), Florida Statutes, shall submit to the Office of
13 | Insurance Regulation a rate filing for the line of insurance
14 | insuring a covered policy under section 215.555, Florida
15 | Statutes, reflecting the overall rate reduction or increase
16 | due to the provisions of this act. Such rate reduction or
17 | increase shall apply retroactively to policies issued or
18 | renewed on or after the effective date of this act.

19 | Section 4. Except as otherwise expressly provided in
20 | this act, this act shall take effect upon becoming a law.

21 |
22 | STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
23 | COMMITTEE SUBSTITUTE FOR
24 | CS for SB 2488

25 | The CS for CS for SB 2488 clarifies that emergency assessments
26 | are levied on direct premiums only and it corrects the
27 | placement of a prior amendment to the text of existing law.