

By Senator Baker

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1 A bill to be entitled
2 An act relating to windstorm insurance coverage; amending
3 s. 215.555, F.S.; providing additional legislative
4 findings; revising certain definitions; providing for
5 application of the Florida Hurricane Catastrophe Fund to
6 costs of the Florida Windstorm Insurance Program; revising
7 certain reimbursement contract board obligation
8 limitations; providing for future expiration of certain
9 limitations; revising legislative findings and
10 declarations relating to revenue bonds; providing for
11 application to coverage of costs of property damage under
12 policies issued under the Florida Windstorm Insurance
13 Program; revising emergency assessment requirement
14 provisions to include application to policies issued under
15 the Florida Windstorm Insurance Program; providing for
16 future expiration of certain provisions; creating the
17 Florida Windstorm Insurance Program within the Florida
18 Hurricane Catastrophe Fund; providing a purpose; providing
19 definitions; providing requirements for coverage,
20 standards, and policy forms under the program; providing
21 limitations; providing for administration of the program
22 by the State Board of Administration; requiring the board
23 to adopt rules; providing an eligibility limitation on
24 certain properties' participation in the program;
25 providing requirements for insurers participating in the
26 program; providing contract requirements; providing for
27 participating insurer compliance audits; specifying powers
28 and duties of the program; providing claims payment
29 requirements; providing for payment of certain insurer's

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30 costs and expenses; providing for penalties for insurers
31 for certain actions; specifying absence of liability for
32 certain actions; providing for effect of termination of an
33 insurer's participation; specifying ratemaking
34 requirements; authorizing the board to add a rapid cash
35 buildup premium surcharge to rates under certain
36 circumstances; requiring the board to adopt a rate plan;
37 providing requirements for procuring reinsurance;
38 authorizing the board to waive or modify certain
39 reinsurance requirements; requiring an annual report to
40 the Legislature; requiring windstorm coverage under
41 certain insurance policies issued by certain insurers to
42 be subject to certain rate standards requirements;
43 providing transitional requirements; specifying
44 requirements for the board in implementing the program;
45 amending s. 627.351, F.S.; prohibiting the Citizens
46 Property Insurance Corporation from issuing or renewing
47 certain windstorm-only insurance policies after a certain
48 date; providing requirements for transfer of policies of
49 the corporation to the program; providing for transfer of
50 certain proceeds and funds to the Florida Hurricane
51 Catastrophe Fund for certain purposes; amending s.
52 627.712, F.S.; revising windstorm coverage requirements
53 for insurers; providing an effective dates.

54
55 Be It Enacted by the Legislature of the State of Florida:

56
57 Section 1. Effective June 1, 2009, paragraph (h) is added
58 to subsection (1) of section 215.555, Florida Statutes,

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59 paragraphs (a), (c), and (e) of subsection (2), subsection (3),
60 paragraph (c) of subsection (4), and paragraphs (a) and (b) of
61 subsection (6) of that section are amended, and subsection (18)
62 is added to that section, to read:

63 215.555 Florida Hurricane Catastrophe Fund.--

64 (1) FINDINGS AND PURPOSE.--The Legislature finds and
65 declares as follows:

66 (h)1. The Legislature further finds that, as of January
67 2008, more than 15 years of efforts to use state regulatory,
68 financial, and insurance mechanisms to ensure availability and
69 affordability of residential property insurance coverage have
70 failed to satisfactorily achieve these goals.

71 2. The continuing lack of available, affordable coverage
72 creates a substantial burden on the state's economy.

73 3. The unsatisfactory performance of a system intended to
74 provide available, affordable coverage for windstorm losses in
75 this state indicates that, in light of this state's unique
76 exposure to windstorm losses, windstorm may be an uninsurable
77 peril in all or parts of this state as the concept of
78 insurability is commonly understood. Therefore, a restructured
79 system of protecting homeowners from windstorm losses is
80 necessary to maintain the viability of the economy of this state.

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

82 (a) "Actuarially indicated" means, with respect to premiums
83 paid by insurers for reimbursement provided by the fund under
84 subsection (4) and premiums paid by insureds for windstorm
85 coverage provided under subsection (18), an amount determined
86 according to principles of actuarial science to be adequate, but
87 not excessive, in the aggregate, to pay current and future

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88 obligations and expenses of the fund, including additional
89 amounts if needed to pay debt service on revenue bonds issued
90 under this section and to provide required debt service coverage
91 in excess of the amounts required to pay actual debt service on
92 revenue bonds issued under subsection (6), and:

93 1. With respect to premiums paid by insurers for
94 reimbursement under subsection (4), determined according to
95 principles of actuarial science to reflect each insurer's
96 relative exposure to hurricane losses; or

97 2. With respect to premiums paid by insureds for windstorm
98 coverage under subsection (18), determined according to
99 principles of actuarial science to reflect each insured's
100 relative exposure to windstorm losses.

101 (c) "Covered policy" means any insurance policy covering
102 residential property in this state, including, but not limited
103 to, any homeowner's, mobile home owner's, farm owner's,
104 condominium association, condominium unit owner's, tenant's, or
105 apartment building policy, or any other policy covering a
106 residential structure or its contents issued by any authorized
107 insurer, including a commercial self-insurance fund holding a
108 certificate of authority issued by the Office of Insurance
109 Regulation under s. 624.462, the Citizens Property Insurance
110 Corporation, and any joint underwriting association or similar
111 entity created under law. The term "covered policy" includes any
112 collateral protection insurance policy covering personal
113 residences which protects both the borrower's and the lender's
114 financial interests, in an amount at least equal to the coverage
115 for the dwelling in place under the lapsed homeowner's policy, if
116 such policy can be accurately reported as required in subsection

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117 (5). Additionally, covered policies include policies covering the
118 peril of wind removed from the Florida Residential Property and
119 Casualty Joint Underwriting Association or from the Citizens
120 Property Insurance Corporation, created under s. 627.351(6), or
121 from the Florida Windstorm Underwriting Association, created
122 under s. 627.351(2), by an authorized insurer under the terms and
123 conditions of an executed assumption agreement between the
124 authorized insurer and such association or Citizens Property
125 Insurance Corporation. Each assumption agreement between the
126 association and such authorized insurer or Citizens Property
127 Insurance Corporation must be approved by the Office of Insurance
128 Regulation before the effective date of the assumption, and the
129 Office of Insurance Regulation must provide written notification
130 to the board within 15 working days after such approval. "Covered
131 policy" does not include any policy that excludes wind coverage
132 or hurricane coverage or any reinsurance agreement and does not
133 include any policy otherwise meeting this definition which is
134 issued by a surplus lines insurer or a reinsurer. All commercial
135 residential excess policies and all deductible buy-back policies
136 that, based on sound actuarial principles, require individual
137 ratemaking shall be excluded by rule if the actuarial soundness
138 of the fund is not jeopardized. For this purpose, the term
139 "excess policy" means a policy that provides insurance protection
140 for large commercial property risks and that provides a layer of
141 coverage above a primary layer insured by another insurer.
142 Effective June 1, 2010, the term "covered policy" does not
143 include any policy providing personal lines residential property
144 insurance coverage as defined in subsection (18).

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

148 1. The board shall calculate and report to each insurer the
149 retention multiples for that year. For the contract year
150 beginning June 1, 2005, the retention multiple shall be equal to
151 \$4.5 billion divided by the total estimated reimbursement premium
152 for the contract year; for the contract year beginning June 1,
153 2006, through the contract year beginning June 1, 2009 ~~subsequent~~
154 ~~years~~, the retention multiple shall be equal to \$4.5 billion,
155 adjusted based upon the reported exposure from the prior contract
156 year to reflect the percentage growth in exposure to the fund for
157 covered policies since 2004, divided by the total estimated
158 reimbursement premium for the contract year. For the contract
159 year beginning June 1, 2010, the retention multiple shall be
160 equal to \$1 billion divided by the total estimated reimbursement
161 premium for the contract year; for subsequent years, the
162 retention multiple shall be equal to \$1 billion, adjusted based
163 upon the reported exposure from the prior contract year to
164 reflect the percentage growth in exposure to the fund for covered
165 policies since 2009, divided by the total estimated reimbursement
166 premium for the contract year. Total reimbursement premium for
167 purposes of the calculation under this subparagraph shall be
168 estimated using the assumption that all insurers have selected
169 the 90-percent coverage level.

170 2. The retention multiple as determined under subparagraph
171 1. shall be adjusted to reflect the coverage level elected by the
172 insurer. For insurers electing the 90-percent coverage level, the
173 adjusted retention multiple is 100 percent of the amount

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174 determined under subparagraph 1. For insurers electing the 75-
175 percent coverage level, the retention multiple is 120 percent of
176 the amount determined under subparagraph 1. For insurers electing
177 the 45-percent coverage level, the adjusted retention multiple is
178 200 percent of the amount determined under subparagraph 1.

179 3. An insurer shall determine its provisional retention by
180 multiplying its provisional reimbursement premium by the
181 applicable adjusted retention multiple and shall determine its
182 actual retention by multiplying its actual reimbursement premium
183 by the applicable adjusted retention multiple.

184 4. For insurers who experience multiple covered events
185 causing loss during the contract year, beginning June 1, 2005,
186 each insurer's full retention shall be applied to each of the
187 covered events causing the two largest losses for that insurer.
188 For each other covered event resulting in losses, the insurer's
189 retention shall be reduced to one-third of the full retention.
190 The reimbursement contract shall provide for the reimbursement of
191 losses for each covered event based on the full retention with
192 adjustments made to reflect the reduced retentions after January
193 1 of the contract year provided the insurer reports its losses as
194 specified in the reimbursement contract.

195 (3) FLORIDA HURRICANE CATASTROPHE FUND CREATED.--There is
196 created the Florida Hurricane Catastrophe Fund to be administered
197 by the State Board of Administration. Moneys in the fund may not
198 be expended, loaned, or appropriated except to pay obligations of
199 the fund arising out of reimbursement contracts entered into
200 under subsection (4), payment of debt service on revenue bonds
201 issued under subsection (6), costs of the mitigation program
202 under subsection (7), costs of procuring reinsurance, costs of

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203 the Florida Windstorm Insurance Program under subsection (18),
204 and costs of administration of the fund. The board shall invest
205 the moneys in the fund pursuant to ss. 215.44-215.52. Except as
206 otherwise provided in this section, earnings from all investments
207 shall be retained in the fund. The board may employ or contract
208 with such staff and professionals as the board deems necessary
209 for the administration of the fund. The board may adopt such
210 rules as are reasonable and necessary to implement this section
211 and shall specify interest due on any delinquent remittances,
212 which interest may not exceed the fund's rate of return plus 5
213 percent. Such rules must conform to the Legislature's specific
214 intent in establishing the fund as expressed in subsection (1),
215 must enhance the fund's potential ability to respond to claims
216 for covered events, must contain general provisions so that the
217 rules can be applied with reasonable flexibility so as to
218 accommodate insurers in situations of an unusual nature or where
219 undue hardship may result, except that such flexibility may not
220 in any way impair, override, supersede, or constrain the public
221 purpose of the fund, and must be consistent with sound insurance
222 practices. The board may, by rule, provide for the exemption from
223 subsections (4) and (5) of insurers writing covered policies with
224 less than \$10 million in aggregate exposure for covered policies
225 if the exemption does not affect the actuarial soundness of the
226 fund.

227 (4) REIMBURSEMENT CONTRACTS.--

228 (c)1.a. The contract shall also provide that the obligation
229 of the board with respect to all contracts covering a particular
230 contract year shall not exceed the actual claims-paying capacity
231 of the fund up to a limit of \$15 billion for that contract year

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232 adjusted based upon the reported exposure from the prior contract
233 year to reflect the percentage growth in exposure to the fund for
234 covered policies since 2003, provided the dollar growth in the
235 limit may not increase in any year by an amount greater than the
236 dollar growth of the balance of the fund as of December 31, less
237 any premiums or interest attributable to optional coverage, as
238 defined by rule which occurred over the prior calendar year. This
239 sub-subparagraph expires June 1, 2010.

240 b. For the contract year beginning June 1, 2010, and
241 subsequent contract years, the contract shall provide that the
242 obligation of the board with respect to all reimbursement
243 contracts covering a particular contract year shall not exceed \$3
244 billion for that contract year plus an adjustment based upon the
245 reported exposure from the prior contract year to reflect the
246 percentage growth in exposure of the fund for commercial lines
247 residential policies since 2009.

248 2. In May before the start of the upcoming contract year
249 and in October during the contract year, the board shall publish
250 in the Florida Administrative Weekly a statement of the fund's
251 estimated borrowing capacity and the projected balance of the
252 fund as of December 31. After the end of each calendar year, the
253 board shall notify insurers of the estimated borrowing capacity
254 and the balance of the fund as of December 31 to provide insurers
255 with data necessary to assist them in determining their retention
256 and projected payout from the fund for loss reimbursement
257 purposes. In conjunction with the development of the premium
258 formula, as provided for in subsection (5), the board shall
259 publish factors or multiples that assist insurers in determining
260 their retention and projected payout for the next contract year.

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261 For all regulatory and reinsurance purposes, an insurer may
262 calculate its projected payout from the fund as its share of the
263 total fund premium for the current contract year multiplied by
264 the sum of the projected balance of the fund as of December 31
265 and the estimated borrowing capacity for that contract year as
266 reported under this subparagraph.

267 (6) REVENUE BONDS.--

268 (a) General provisions.--

269 1. Upon the occurrence of a hurricane and a determination
270 that the moneys in the fund are or will be insufficient to pay
271 reimbursement at the levels promised in the reimbursement
272 contracts, the board may take the necessary steps under paragraph
273 (c) or paragraph (d) for the issuance of revenue bonds for the
274 benefit of the fund. The proceeds of such revenue bonds may be
275 used to make reimbursement payments under reimbursement
276 contracts; to refinance or replace previously existing borrowings
277 or financial arrangements; to pay interest on bonds; to fund
278 reserves for the bonds; to pay expenses incident to the issuance
279 or sale of any bond issued under this section, including costs of
280 validating, printing, and delivering the bonds, costs of printing
281 the official statement, costs of publishing notices of sale of
282 the bonds, and related administrative expenses; or for such other
283 purposes related to the financial obligations of the fund as the
284 board may determine. The term of the bonds may not exceed 30
285 years. The board may pledge or authorize the corporation to
286 pledge all or a portion of all revenues under subsection (5) and
287 under paragraph (b) to secure such revenue bonds and the board
288 may execute such agreements between the board and the issuer of
289 any revenue bonds and providers of other financing arrangements

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290 | under paragraph (7)(b) as the board deems necessary to evidence,
291 | secure, preserve, and protect such pledge. If reimbursement
292 | premiums received under subsection (5) or earnings on such
293 | premiums are used to pay debt service on revenue bonds, such
294 | premiums and earnings shall be used only after the use of the
295 | moneys derived from assessments under paragraph (b). The funds,
296 | credit, property, or taxing power of the state or political
297 | subdivisions of the state shall not be pledged for the payment of
298 | such bonds. The board may also enter into agreements under
299 | paragraph (c) or paragraph (d) for the purpose of issuing revenue
300 | bonds in the absence of a hurricane upon a determination that
301 | such action would maximize the ability of the fund to meet future
302 | obligations.

303 | 2. The Legislature finds and declares that the issuance of
304 | bonds under this subsection is for the public purpose of paying
305 | the proceeds of the bonds to insurers as required by the
306 | contracts entered into under subsection (4), thereby enabling
307 | insurers to pay the claims of policyholders to assure that
308 | policyholders are able to pay the cost of construction,
309 | reconstruction, repair, and restoration, and other costs
310 | associated with damage to property of policyholders of covered
311 | policies after the occurrence of a hurricane, and for the public
312 | purpose of paying claims of policyholders under subsection (18)
313 | to ensure that policyholders are able to pay the costs of
314 | construction, reconstruction, repair, and restoration and other
315 | costs associated with damage to their property after a hurricane
316 | or other windstorm.

317 | (b) Emergency assessments.--

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318 1.a. If the board determines that the amount of revenue
319 produced under subsections ~~subsection~~ (5) and (18) is
320 insufficient to fund the obligations, costs, and expenses of the
321 fund and the corporation, including repayment of revenue bonds
322 and that portion of the debt service coverage not met by
323 reimbursement premiums, the board shall direct the Office of
324 Insurance Regulation to levy, by order, an emergency assessment
325 on direct premiums for all property and casualty lines of
326 business in this state, including property and casualty business
327 of surplus lines insurers regulated under part VIII of chapter
328 626, but not including any workers' compensation premiums or
329 medical malpractice premiums. As used in this subsection, the
330 term "property and casualty business" includes all lines of
331 business identified on Form 2, Exhibit of Premiums and Losses, in
332 the annual statement required of authorized insurers by s.
333 624.424 and any rule adopted under this section, except for those
334 lines identified as accident and health insurance and except for
335 policies written under the National Flood Insurance Program. The
336 assessment shall be specified as a percentage of direct written
337 premium and is subject to annual adjustments by the board in
338 order to meet debt obligations. The same percentage shall apply
339 to all policies in lines of business subject to the assessment
340 issued or renewed during the 12-month period beginning on the
341 effective date of the assessment. This sub-subparagraph expires
342 June 1, 2010; however, the expiration of this sub-subparagraph
343 does not affect any assessments levied under this sub-
344 subparagraph prior to that date.

345 b. Effective June 1, 2010, if the board determines that the
346 amount of revenue produced under subsections (5) and (18) is

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347 insufficient to fund the obligations, costs, and expenses of the
348 fund and the corporation, including repayment of revenue bonds
349 and that portion of the debt service coverage not met by
350 reimbursement premiums, the board shall direct the Office of
351 Insurance Regulation to levy, by order, an emergency assessment
352 on direct premiums for all personal lines and commercial lines
353 policies providing property insurance coverage, including
354 policies issued by the Florida Windstorm Insurance Program under
355 subsection (18). The assessment shall be specified as a
356 percentage of direct written premium and is subject to annual
357 adjustments by the board in order to meet debt obligations. The
358 same percentage shall apply to all policies in lines of business
359 subject to the assessment issued or renewed during the 12-month
360 period beginning on the effective date of the assessment.
361 Assessments under this sub-subparagraph do not apply to policies
362 providing personal lines residential property insurance coverage
363 issued by an insurer that is not a participating insurer within
364 the meaning provided in subsection (18).

365 2.a. A premium is not subject to an annual assessment under
366 this paragraph in excess of 6 percent of premium with respect to
367 obligations arising out of losses attributable to any one
368 contract year, and a premium is not subject to an aggregate
369 annual assessment under this paragraph in excess of 10 percent of
370 premium. This sub-subparagraph expires June 1, 2010; however, the
371 expiration of this sub-subparagraph does not affect any
372 assessments levied under this sub-subparagraph prior to that
373 date.

374 b. Effective June 1, 2010, the total amount of emergency
375 assessments under this paragraph with respect to any year may not

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376 exceed 10 percent of the statewide total gross written premium
377 for all insurers for personal lines and commercial lines policies
378 providing property insurance coverage, including policies issued
379 by the Florida Windstorm Insurance Program under subsection (18),
380 for the prior year. However, if the fund deficit with respect to
381 any year exceeds such amount and bonds are issued to defray the
382 deficit, the total amount of emergency assessments with respect
383 to such deficit may not in any year exceed 10 percent of the
384 deficit or such lesser percentage as is sufficient to retire the
385 bonds as determined by the board.

386 c. An annual assessment under this paragraph shall continue
387 as long as the revenue bonds issued with respect to which the
388 assessment was imposed are outstanding, including any bonds the
389 proceeds of which were used to refund the revenue bonds, unless
390 adequate provision has been made for the payment of the bonds
391 under the documents authorizing issuance of the bonds.

392 3. Emergency assessments shall be collected from
393 policyholders. Emergency assessments shall be remitted by
394 insurers as a percentage of direct written premium for the
395 preceding calendar quarter as specified in the order from the
396 Office of Insurance Regulation. The office shall verify the
397 accurate and timely collection and remittance of emergency
398 assessments and shall report the information to the board in a
399 form and at a time specified by the board. Each insurer
400 collecting assessments shall provide the information with respect
401 to premiums and collections as may be required by the office to
402 enable the office to monitor and verify compliance with this
403 paragraph.

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404 4. With respect to assessments of surplus lines premiums,
405 each surplus lines agent shall collect the assessment at the same
406 time as the agent collects the surplus lines tax required by s.
407 626.932, and the surplus lines agent shall remit the assessment
408 to the Florida Surplus Lines Service Office created by s. 626.921
409 at the same time as the agent remits the surplus lines tax to the
410 Florida Surplus Lines Service Office. The emergency assessment on
411 each insured procuring coverage and filing under s. 626.938 shall
412 be remitted by the insured to the Florida Surplus Lines Service
413 Office at the time the insured pays the surplus lines tax to the
414 Florida Surplus Lines Service Office. The Florida Surplus Lines
415 Service Office shall remit the collected assessments to the fund
416 or corporation as provided in the order levied by the Office of
417 Insurance Regulation. The Florida Surplus Lines Service Office
418 shall verify the proper application of such emergency assessments
419 and shall assist the board in ensuring the accurate and timely
420 collection and remittance of assessments as required by the
421 board. The Florida Surplus Lines Service Office shall annually
422 calculate the aggregate written premium on property and casualty
423 business, other than workers' compensation and medical
424 malpractice, procured through surplus lines agents and insureds
425 procuring coverage and filing under s. 626.938 and shall report
426 the information to the board in a form and at a time specified by
427 the board.

428 5. Any assessment authority not used for a particular
429 contract year may be used for a subsequent contract year. If, for
430 a subsequent contract year, the board determines that the amount
431 of revenue produced under subsection (5) is insufficient to fund
432 the obligations, costs, and expenses of the fund and the

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433 corporation, including repayment of revenue bonds and that
434 portion of the debt service coverage not met by reimbursement
435 premiums, the board shall direct the Office of Insurance
436 Regulation to levy an emergency assessment up to an amount not
437 exceeding the amount of unused assessment authority from a
438 previous contract year or years, plus an additional 4 percent
439 provided that the assessments in the aggregate do not exceed the
440 limits specified in subparagraph 2. This subparagraph expires
441 June 1, 2010; however, the expiration of this subparagraph does
442 not affect any assessments levied under this subparagraph prior
443 to that date.

444 6. The assessments otherwise payable to the corporation
445 under this paragraph shall be paid to the fund unless and until
446 the Office of Insurance Regulation and the Florida Surplus Lines
447 Service Office have received from the corporation and the fund a
448 notice, which shall be conclusive and upon which they may rely
449 without further inquiry, that the corporation has issued bonds
450 and the fund has no agreements in effect with local governments
451 under paragraph (c). On or after the date of the notice and until
452 the date the corporation has no bonds outstanding, the fund shall
453 have no right, title, or interest in or to the assessments,
454 except as provided in the fund's agreement with the corporation.

455 7. Emergency assessments are not premium and are not
456 subject to the premium tax, to the surplus lines tax, to any
457 fees, or to any commissions. An insurer is liable for all
458 assessments that it collects and must treat the failure of an
459 insured to pay an assessment as a failure to pay the premium. An
460 insurer is not liable for uncollectible assessments.

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461 8. When an insurer is required to return an unearned
462 premium, it shall also return any collected assessment
463 attributable to the unearned premium. A credit adjustment to the
464 collected assessment may be made by the insurer with regard to
465 future remittances that are payable to the fund or corporation,
466 but the insurer is not entitled to a refund.

467 9. When a surplus lines insured or an insured who has
468 procured coverage and filed under s. 626.938 is entitled to the
469 return of an unearned premium, the Florida Surplus Lines Service
470 Office shall provide a credit or refund to the agent or such
471 insured for the collected assessment attributable to the unearned
472 premium prior to remitting the emergency assessment collected to
473 the fund or corporation.

474 10. The exemption of medical malpractice insurance premiums
475 from emergency assessments under this paragraph is repealed May
476 31, 2010, and medical malpractice insurance premiums shall be
477 subject to emergency assessments attributable to loss events
478 occurring in the contract years commencing on June 1, 2010.

479 (18) FLORIDA WINDSTORM INSURANCE PROGRAM.--

480 (a) Creation; purpose.--The Florida Windstorm Insurance
481 Program is created within the Florida Hurricane Catastrophe Fund.
482 The purpose of the program is to provide personal lines
483 residential windstorm insurance coverage for properties
484 throughout the state.

485 (b) Definitions.--The definitions in subsection (2) apply
486 to the program, except as modified by this paragraph. As used in
487 this subsection:

488 1. "Board" means the State Board of Administration.

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489 2. "Participating insurer" means an insurer providing
490 personal lines residential property insurance coverage for
491 nonwindstorm perils that administers windstorm coverage on behalf
492 of the program.

493 3. "Personal lines residential property insurance coverage"
494 consists of the type of coverage provided by homeowner's, mobile
495 home owner's, dwelling, tenant's, condominium unit owner's,
496 cooperative unit owner's, and similar policies. The term
497 "personal lines residential property insurance coverage" does not
498 include the type of coverage provided by condominium association,
499 cooperative association, apartment building, and similar
500 policies, including policies covering the common elements of a
501 homeowners' association.

502 4. "Program" means the Florida Windstorm Insurance Program
503 created under this subsection.

504 5. "Windstorm coverage" means coverage for loss or damage
505 to personal lines residential property caused by wind, wind
506 gusts, hail, rain, tornadoes, cyclones, tropical storms, or
507 hurricanes. The term "windstorm coverage" does not include
508 coverage for loss or damage to residential property caused by
509 flood, storm surge, or rising water.

510 (c) Coverage provided; standards; policy forms.--

511 1. The program shall issue a policy providing windstorm
512 coverage to each personal lines residential risk covered by a
513 participating insurer, except if inconsistent with the
514 underwriting standards adopted under the program. Coverage shall
515 include structure, contents, additional living expenses,
516 emergency debris removal, and temporary repairs after loss.

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517 2. The board shall adopt by rule standards for the program,
518 including, but not limited to, standards relating to
519 underwriting, mitigation discounts, deductibles, cancellation and
520 nonrenewal, agent compensation, and recordkeeping.

521 3. The board shall adopt by rule policy forms to be used
522 for program policies. Program policies must comply with part X of
523 chapter 627. The board shall also adopt by rule such notices,
524 coverage summaries, and outlines of coverage as are required by
525 law or as the board deems appropriate, including a notice
526 informing an insured of the duties of the program and the duties
527 of the participating insurer.

528 4. The policy for coverage of a structure may not exceed \$2
529 million. The board shall establish by rule policy limits for
530 coverage of contents, additional living expenses, emergency
531 debris removal, and temporary repairs after loss.

532 5. This subsection does not restrict an insured's ability
533 to exclude windstorm coverage, hurricane coverage, or contents
534 coverage under s. 627.712.

535 6. Any residential property covered by the program that
536 sustains a total loss for windstorm coverage more than three
537 times in any given 10-year period shall no longer be eligible for
538 coverage under the program.

539 (d) Participating insurers.--

540 1. The board shall adopt by rule a form for the contract
541 between the program and a participating insurer specifying the
542 respective rights and duties of the program and the participating
543 insurer. The contract shall be effective for a term of 5 years.

544 2. Any insurer writing personal lines residential property
545 insurance coverage may elect to, and Citizens Property Insurance

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546 Corporation shall, enter into a contract with the program under
547 which the program agrees to issue a policy providing windstorm
548 coverage to each insured for which the participating insurer
549 provides a policy providing personal lines residential property
550 insurance coverage for other perils, except as provided in sub-
551 subparagraph 3.b., and under which the participating insurer
552 agrees to administer the program policy. In the case of a group
553 of two or more insurers under common ownership, all members of
554 the group writing personal lines residential property insurance
555 coverage must make the same election as to participation or
556 nonparticipation in the program.

557 3. The contract shall require the participating insurer to:

558 a. Collect premiums for program coverage as established by
559 the program and apply deductibles, discounts, surcharges,
560 credits, and limits as established by the program.

561 b. Administer the windstorm coverage under the program
562 policy and provide the program policy to each of its personal
563 lines residential property insureds, except to the extent
564 inconsistent with program underwriting standards or the property
565 owner's option to exclude coverage under s. 627.712(2) or (3).

566 c. Comply with program rules and standards relating to
567 program policies, including underwriting, cancellation and
568 nonrenewal, and agent compensation.

569 d. Provide application processing, premium processing,
570 claims processing, and adjusting services in accordance with
571 program rules and standards.

572 4. An insurer has a fiduciary duty to the program to fairly
573 adjust claims and allocate losses between windstorm and
574 nonwindstorm perils.

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575 5. The program shall establish an annual audit process to
576 determine each participating insurer's compliance with the
577 requirements of the contract.

578 (e) Program powers and duties.--

579 1. The program shall make claims payments directly to
580 insureds based on the information provided to the program by the
581 participating insurer. The contract between the program and the
582 participating insurer may provide that the participating insurer
583 shall make claims payments to the insured on behalf of the
584 program, but only to the extent the program has advanced funds to
585 the participating insurer for the purpose of paying claims.

586 2. The contract between the program and the participating
587 insurer shall require the program to pay the participating
588 insurer's loss adjustment expense, acquisition cost, litigation
589 costs, and judgments attributable to program policies, except to
590 the extent that the costs or expenses are the result of the
591 participating insurer's breach of the contract or breach of its
592 fiduciary duty.

593 3. If a participating insurer fails to substantially comply
594 with its obligations under the program contract or breaches its
595 fiduciary duty to the program, the program may impose any
596 combination of the following sanctions: suspension of the
597 participating insurer's ability to participate in the program for
598 a period not to exceed 5 years, actual damages plus a penalty of
599 up to 50 percent, or liquidated damages as specified in the
600 program contract.

601 4. There shall be no liability on the part of, and no cause
602 of action of any nature shall arise against, any participating
603 insurer or its agents or employees, the program or its employees,

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604 or members of the board for any action taken by such persons or
605 entities in the performance of their respective duties or
606 responsibilities under this subsection. Such immunity does not
607 apply to:

608 a. Any of the foregoing persons or entities for any willful
609 tort.

610 b. The program, a participating insurer, or a participating
611 insurer's producing agents for breach of any written contract or
612 written agreement pertaining to insurance coverage.

613 c. The program or the fund with respect to issuance or
614 payment of debt.

615 d. Any participating insurer with respect to any action by
616 the program to enforce a participating insurer's obligations to
617 the program under this subsection.

618 e. The program in any action for breach of contract or for
619 benefits under a policy issued by the program. In any such
620 action, the program shall be liable to the policyholders and
621 beneficiaries for attorney's fees as provided in s. 627.428.

622 5. The termination of an insurer's participation in the
623 program terminates the program policies the insurer had been
624 administering, and such policies remain in effect until their
625 expiration date unless terminated for some other cause. The
626 insurer shall continue to have a duty to administer such policies
627 unless the program makes other arrangements for the
628 administration of such policies.

629 (f) Ratemaking.--

630 1. The board shall select an independent consultant to
631 recommend to the board a rate plan for program coverage.

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632 2.a. Program rates must be as close as possible to
633 actuarially indicated rates, taking into account the state's need
634 to restore or maintain affordability of property insurance
635 coverage for property owners and the cost of reinsurance and
636 other risk-transfer mechanisms.

637 b. Except as otherwise provided in this paragraph, rates
638 may not be excessive, inadequate, or unfairly discriminatory
639 within the meaning provided in s. 627.062 and must provide the
640 mitigation discounts and other loss-prevention incentives
641 specified in s. 627.0629.

642 c. In the aggregate, the rates must generate premium
643 revenue equal to or greater than the statewide average annual
644 insured windstorm loss, based on an average of all models
645 currently determined to meet the standards and guidelines of the
646 Florida Commission on Hurricane Loss Projection Methodology plus
647 expenses.

648 d. If the board determines that the cash balance of the
649 fund, net of the proceeds of any pre-event debt instruments, is
650 less than \$1 billion, the board may add to the rates determined
651 under this subparagraph a rapid cash buildup premium surcharge of
652 not more than 25 percent.

653 3. Annually, after a public hearing, the board shall adopt
654 a rate plan pursuant to this paragraph. A rate plan takes effect
655 upon its approval by the unanimous vote of all members of the
656 board or at a later date specified in the rate plan and remains
657 in effect until the effective date of a subsequently adopted rate
658 plan.

659 4. The rate plan recommended to or adopted by the board is
660 not subject to any other regulatory review or approval. The rate

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661 plan as adopted is final agency action for purposes of chapter
662 120 and is subject to judicial review in the manner provided in
663 s. 120.68, except judicial review must be sought in the District
664 Court of Appeal, First District, regardless of where any party
665 resides.

666 (g) Reinsurance; annual report.--

667 1. The program may procure reinsurance or other financial
668 alternatives at any loss level.

669 2. The program shall annually engage in negotiations to
670 procure reinsurance or other financial alternatives to transfer
671 some or all of the risk of loss in excess of the program's 100-
672 year probable maximum loss.

673 3.a. The program shall annually procure reinsurance or
674 other financial alternatives to transfer at least 50 percent of
675 the risk of loss between the program's 50-year probable maximum
676 loss and the program's 100-year probable maximum loss. The board
677 may structure such reinsurance and other financial alternatives
678 in such layer or layers, and with such percentages of retained
679 liability in a particular layer, as the board deems appropriate.

680 b. The program shall annually procure reinsurance or other
681 financial alternatives to transfer at least the first 50 percent
682 of the risk of loss between the program's 100-year probable
683 maximum loss and the program's 250-year probable maximum loss.

684 c. The board may, with respect to any year, waive or modify
685 the requirements of this subparagraph only if the board finds,
686 after a public hearing and by a unanimous vote of all members of
687 the board, that transferring risk as required by this
688 subparagraph would not be a cost-effective means of reducing the
689 potential assessment liability of property owners.

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690 4. The board shall provide an annual report to the
691 President of the Senate and the Speaker of the House of
692 Representatives describing the state of the market for
693 reinsurance and other risk-transfer mechanisms, summarizing
694 negotiations for reinsurance and other financial alternatives to
695 transfer program risk, and explaining the program's actions with
696 regard to reinsurance and other financial alternatives.

697 (h) Personal lines residential windstorm coverage issued by
698 nonparticipating insurers.--Windstorm coverage under a personal
699 lines residential property insurance policy issued by an insurer
700 that is not a participating insurer is subject to s. 627.062,
701 except that the rates for such coverage may be disapproved only
702 if they are inadequate or unfairly discriminatory.

703 (i) Transition.--It is the intent of the Legislature that
704 participating insurers continue to provide windstorm coverage to
705 their existing policyholders under policies providing personal
706 lines residential property insurance coverage until the first
707 renewal date on or after June 1, 2009, at which time the
708 windstorm coverage shall be provided under a program policy. For
709 that purpose, a participating insurer remains eligible for
710 coverage under subsection (4) during the contract year beginning
711 June 1, 2009, to the extent the participating insurer has in
712 force policies defined as covered policies under subsection (2).
713 The replacement of windstorm coverage under a participating
714 insurer's policy providing personal lines residential property
715 insurance coverage with windstorm coverage under a program policy
716 does not constitute a cancellation or nonrenewal for purposes of
717 s. 627.4133 or any other purposes under the Insurance Code. With
718 respect to noncommercial residential property insurance policy

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719 renewals taking effect on or after June 1, 2009, and before June
720 1, 2010, the notice of renewal premium shall include a notice, in
721 a form specified by the board, that, as of the policy renewal
722 date, windstorm coverage will be provided under a program policy
723 administered by the insurer and coverage for other perils will be
724 provided under a residential property insurance policy issued by
725 the insurer.

726 Section 2. State Board of Administration; implementation of
727 the Florida Windstorm Insurance Program.--No later than January
728 1, 2009, the State Board of Administration shall adopt all
729 contract forms, rules, standards, policy forms, mitigation
730 discounts, and rates required to implement the Florida Windstorm
731 Insurance Program created by s. 215.555, Florida Statutes, as
732 amended by this act.

733 Section 3. Paragraph (gg) is added to subsection (6) of
734 section 627.351, Florida Statutes, to read:

735 627.351 Insurance risk apportionment plans.--

736 (6) CITIZENS PROPERTY INSURANCE CORPORATION.--

737 (gg) Notwithstanding any provision of this subsection or s.
738 627.3517:

739 1. On or after June 1, 2009, the corporation may not issue
740 or renew any personal lines residential property insurance policy
741 providing windstorm-only coverage.

742 2.a. In order to facilitate the transfer of policies of the
743 corporation from the corporation to the competitive market and in
744 order to provide a capital contribution to the Florida Windstorm
745 Insurance Program, the corporation shall offer insurers the
746 opportunity to bid on the right to provide nonwindstorm coverage
747 to current policyholders of the corporation, to take effect on

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748 the policyholder's first renewal date on or after June 1, 2009,
749 or through an assumption agreement effective on or after June 1,
750 2009.

751 b. The corporation shall prepare blocks of business that
752 are balanced as to geographic location and insured value and
753 shall offer the blocks of business at auction beginning no later
754 than October 1, 2008. The insurer that prevails in the auction
755 shall have an exclusive right to enter into an assumption
756 agreement with the corporation under which the participating
757 insurer assumes the nonwindstorm coverage for the remainder of
758 the policy term and the Florida Windstorm Insurance Program
759 assumes the windstorm coverage for the remainder of the policy
760 term. If an assumption occurs, any renewal shall be at the
761 participating insurer's rates as to the nonwindstorm coverage and
762 the Florida Windstorm Insurance Program rates as to the windstorm
763 coverage. Any assumptions under this sub-subparagraph must take
764 effect no later than May 31, 2010.

765 c. The provisions of s. 627.3517 do not apply to any offer
766 to replace coverage by the corporation with personal lines
767 residential property insurance coverage provided by a
768 participating insurer as defined in s. 215.555(18), including any
769 assumption under this subparagraph.

770 d. The corporation shall transfer all proceeds of the
771 auctions to the Florida Hurricane Catastrophe Fund, which shall
772 treat the proceeds as a capital contribution for the benefit of
773 the Florida Windstorm Insurance Program.

774 3. Effective June 1, 2009, the corporation may not issue or
775 renew a policy providing personal lines residential property
776 insurance coverage if the owner of the property has received an

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777 offer of coverage from a participating insurer as defined in s.
778 215.555(18), provided the participating insurer has provided the
779 corporation with notice of the offer of coverage at least 30 days
780 prior to the renewal date or expected issuance date of the
781 corporation's policy.

782 4. No later than December 31, 2010, the corporation shall
783 transfer to the Florida Hurricane Catastrophe Fund an additional
784 capital contribution for the benefit of the Florida Windstorm
785 Insurance Program. The contribution shall consist of the
786 corporation's surplus as to policyholders, multiplied by a ratio:

787 a. The numerator of which is the total structural insured
788 value as of June 1, 2010, for risks covered by all policies
789 issued by the corporation; and

790 b. The denominator of which is the total structural insured
791 value as of June 1, 2009, for risks covered by all policies
792 issued by the corporation.

793 Section 4. Effective June 1, 2009, subsection (1) of
794 section 627.712, Florida Statutes, is amended to read:

795 627.712 Residential windstorm coverage required;
796 availability of exclusions for windstorm or contents.--

797 (1) Effective upon the date of issuance of the policy or
798 the date of the first renewal on or after June 1, 2009, an
799 insurer issuing or renewing a residential property insurance
800 policy must provide windstorm coverage as part of the policy
801 issued by the insurer or under a separate policy issued by the
802 Florida Windstorm Insurance Program under s. 215.555 and
803 administered by the insurer. ~~This subsection does not apply with~~
804 ~~respect to risks that are eligible for wind-only coverage from~~
805 ~~Citizens Property Insurance Corporation under s. 627.351(6).~~

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806 | Section 5. Except as otherwise expressly provided in this
807 | act, this act shall take effect upon becoming a law.