

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representatives Gelber and Taylor offered the following:

2
3 **Amendment to Amendment (439287) (with title amendment)**

4 Between lines 2452 and 2453, insert:

5 Section 22. Effective June 1, 2009, paragraph (h) is added
6 to subsection (1) of section 215.555, Florida Statutes,
7 paragraphs (a), (c), and (e) of subsection (2), subsection (3),
8 paragraph (c) of subsection (4), and paragraphs (a) and (b) of
9 subsection (6) of that section are amended, and subsection (18)
10 is added to that section, to read:

11 215.555 Florida Hurricane Catastrophe Fund.--

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

14 (h)1. The Legislature further finds that, as of January
15 2008, more than 15 years of efforts to use state regulatory,
16 financial, and insurance mechanisms to ensure availability and

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17 affordability of residential property insurance coverage have
18 failed to satisfactorily achieve these goals.

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

21 3. The unsatisfactory performance of a system intended to
22 provide available, affordable coverage for windstorm losses in
23 this state indicates that, in light of this state's unique
24 exposure to windstorm losses, windstorm may be an uninsurable
25 peril in all or parts of this state as the concept of
26 insurability is commonly understood. Therefore, a restructured
27 system of protecting homeowners from windstorm losses is
28 necessary to maintain the viability of the economy of this
29 state.

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

31 (a) "Actuarially indicated" means, with respect to
32 premiums paid by insurers for reimbursement provided by the fund
33 under subsection (4) and premiums paid by insureds for windstorm
34 coverage provided under subsection (18), an amount determined
35 according to principles of actuarial science to be adequate, but
36 not excessive, in the aggregate, to pay current and future
37 obligations and expenses of the fund, including additional
38 amounts if needed to pay debt service on revenue bonds issued
39 under this section and to provide required debt service coverage
40 in excess of the amounts required to pay actual debt service on
41 revenue bonds issued under subsection (6), and:

42 1. With respect to premiums paid by insurers for
43 reimbursement under subsection (4), determined according to

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44 principles of actuarial science to reflect each insurer's
45 relative exposure to hurricane losses; or

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

50 (c) "Covered policy" means any insurance policy covering
51 residential property in this state, including, but not limited
52 to, any homeowner's, mobile home owner's, farm owner's,
53 condominium association, condominium unit owner's, tenant's, or
54 apartment building policy, or any other policy covering a
55 residential structure or its contents issued by any authorized
56 insurer, including a commercial self-insurance fund holding a
57 certificate of authority issued by the Office of Insurance
58 Regulation under s. 624.462, the Citizens Property Insurance
59 Corporation, and any joint underwriting association or similar
60 entity created under law. The term "covered policy" includes any
61 collateral protection insurance policy covering personal
62 residences which protects both the borrower's and the lender's
63 financial interests, in an amount at least equal to the coverage
64 for the dwelling in place under the lapsed homeowner's policy,
65 if such policy can be accurately reported as required in
66 subsection (5). Additionally, covered policies include policies
67 covering the peril of wind removed from the Florida Residential
68 Property and Casualty Joint Underwriting Association or from the
69 Citizens Property Insurance Corporation, created under s.
70 627.351(6), or from the Florida Windstorm Underwriting
71 Association, created under s. 627.351(2), by an authorized

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72 insurer under the terms and conditions of an executed assumption
73 agreement between the authorized insurer and such association or
74 Citizens Property Insurance Corporation. Each assumption
75 agreement between the association and such authorized insurer or
76 Citizens Property Insurance Corporation must be approved by the
77 Office of Insurance Regulation before the effective date of the
78 assumption, and the Office of Insurance Regulation must provide
79 written notification to the board within 15 working days after
80 such approval. "Covered policy" does not include any policy that
81 excludes wind coverage or hurricane coverage or any reinsurance
82 agreement and does not include any policy otherwise meeting this
83 definition which is issued by a surplus lines insurer or a
84 reinsurer. All commercial residential excess policies and all
85 deductible buy-back policies that, based on sound actuarial
86 principles, require individual ratemaking shall be excluded by
87 rule if the actuarial soundness of the fund is not jeopardized.
88 For this purpose, the term "excess policy" means a policy that
89 provides insurance protection for large commercial property
90 risks and that provides a layer of coverage above a primary
91 layer insured by another insurer. Effective June 1, 2010, the
92 term "covered policy" does not include any policy providing
93 personal lines residential property insurance coverage as
94 defined in subsection (18).

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

98 1. The board shall calculate and report to each insurer
99 the retention multiples for that year. For the contract year

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100 beginning June 1, 2005, the retention multiple shall be equal to
101 \$4.5 billion divided by the total estimated reimbursement
102 premium for the contract year; for the contract year beginning
103 June 1, 2006, through the contract year beginning June 1, 2009
104 ~~subsequent years~~, the retention multiple shall be equal to \$4.5
105 billion, adjusted based upon the reported exposure from the
106 prior contract year to reflect the percentage growth in exposure
107 to the fund for covered policies since 2004, divided by the
108 total estimated reimbursement premium for the contract year. For
109 the contract year beginning June 1, 2010, the retention multiple
110 shall be equal to \$1 billion divided by the total estimated
111 reimbursement premium for the contract year; for subsequent
112 years, the retention multiple shall be equal to \$1 billion,
113 adjusted based upon the reported exposure from the prior
114 contract year to reflect the percentage growth in exposure to
115 the fund for covered policies since 2009, divided by the total
116 estimated reimbursement premium for the contract year. Total
117 reimbursement premium for purposes of the calculation under this
118 subparagraph shall be estimated using the assumption that all
119 insurers have selected the 90-percent coverage level.

120 2. The retention multiple as determined under subparagraph
121 1. shall be adjusted to reflect the coverage level elected by
122 the insurer. For insurers electing the 90-percent coverage
123 level, the adjusted retention multiple is 100 percent of the
124 amount determined under subparagraph 1. For insurers electing
125 the 75-percent coverage level, the retention multiple is 120
126 percent of the amount determined under subparagraph 1. For
127 insurers electing the 45-percent coverage level, the adjusted

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128 retention multiple is 200 percent of the amount determined under
129 subparagraph 1.

130 3. An insurer shall determine its provisional retention by
131 multiplying its provisional reimbursement premium by the
132 applicable adjusted retention multiple and shall determine its
133 actual retention by multiplying its actual reimbursement premium
134 by the applicable adjusted retention multiple.

135 4. For insurers who experience multiple covered events
136 causing loss during the contract year, beginning June 1, 2005,
137 each insurer's full retention shall be applied to each of the
138 covered events causing the two largest losses for that insurer.
139 For each other covered event resulting in losses, the insurer's
140 retention shall be reduced to one-third of the full retention.
141 The reimbursement contract shall provide for the reimbursement
142 of losses for each covered event based on the full retention
143 with adjustments made to reflect the reduced retentions after
144 January 1 of the contract year provided the insurer reports its
145 losses as specified in the reimbursement contract.

146 (3) FLORIDA HURRICANE CATASTROPHE FUND CREATED.--There is
147 created the Florida Hurricane Catastrophe Fund to be
148 administered by the State Board of Administration. Moneys in the
149 fund may not be expended, loaned, or appropriated except to pay
150 obligations of the fund arising out of reimbursement contracts
151 entered into under subsection (4), payment of debt service on
152 revenue bonds issued under subsection (6), costs of the
153 mitigation program under subsection (7), costs of procuring
154 reinsurance, costs of the Florida Windstorm Insurance Program
155 under subsection (18), and costs of administration of the fund.

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156 The board shall invest the moneys in the fund pursuant to ss.
157 215.44-215.52. Except as otherwise provided in this section,
158 earnings from all investments shall be retained in the fund. The
159 board may employ or contract with such staff and professionals
160 as the board deems necessary for the administration of the fund.
161 The board may adopt such rules as are reasonable and necessary
162 to implement this section and shall specify interest due on any
163 delinquent remittances, which interest may not exceed the fund's
164 rate of return plus 5 percent. Such rules must conform to the
165 Legislature's specific intent in establishing the fund as
166 expressed in subsection (1), must enhance the fund's potential
167 ability to respond to claims for covered events, must contain
168 general provisions so that the rules can be applied with
169 reasonable flexibility so as to accommodate insurers in
170 situations of an unusual nature or where undue hardship may
171 result, except that such flexibility may not in any way impair,
172 override, supersede, or constrain the public purpose of the
173 fund, and must be consistent with sound insurance practices. The
174 board may, by rule, provide for the exemption from subsections
175 (4) and (5) of insurers writing covered policies with less than
176 \$10 million in aggregate exposure for covered policies if the
177 exemption does not affect the actuarial soundness of the fund.

178 (4) REIMBURSEMENT CONTRACTS.--

179 (c)1.a. The contract shall also provide that the
180 obligation of the board with respect to all contracts covering a
181 particular contract year shall not exceed the actual claims-
182 paying capacity of the fund up to a limit of \$15 billion for
183 that contract year adjusted based upon the reported exposure

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184 from the prior contract year to reflect the percentage growth in
185 exposure to the fund for covered policies since 2003, provided
186 the dollar growth in the limit may not increase in any year by
187 an amount greater than the dollar growth of the balance of the
188 fund as of December 31, less any premiums or interest
189 attributable to optional coverage, as defined by rule which
190 occurred over the prior calendar year. This sub-subparagraph
191 expires June 1, 2010.

192 b. For the contract year beginning June 1, 2010, and
193 subsequent contract years, the contract shall provide that the
194 obligation of the board with respect to all reimbursement
195 contracts covering a particular contract year shall not exceed
196 \$3 billion for that contract year plus an adjustment based upon
197 the reported exposure from the prior contract year to reflect
198 the percentage growth in exposure of the fund for commercial
199 lines residential policies since 2009.

200 2. In May before the start of the upcoming contract year
201 and in October during the contract year, the board shall publish
202 in the Florida Administrative Weekly a statement of the fund's
203 estimated borrowing capacity and the projected balance of the
204 fund as of December 31. After the end of each calendar year, the
205 board shall notify insurers of the estimated borrowing capacity
206 and the balance of the fund as of December 31 to provide
207 insurers with data necessary to assist them in determining their
208 retention and projected payout from the fund for loss
209 reimbursement purposes. In conjunction with the development of
210 the premium formula, as provided for in subsection (5), the
211 board shall publish factors or multiples that assist insurers in

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212 determining their retention and projected payout for the next
213 contract year. For all regulatory and reinsurance purposes, an
214 insurer may calculate its projected payout from the fund as its
215 share of the total fund premium for the current contract year
216 multiplied by the sum of the projected balance of the fund as of
217 December 31 and the estimated borrowing capacity for that
218 contract year as reported under this subparagraph.

219 (6) REVENUE BONDS.--

220 (a) General provisions.--

221 1. Upon the occurrence of a hurricane and a determination
222 that the moneys in the fund are or will be insufficient to pay
223 reimbursement at the levels promised in the reimbursement
224 contracts, the board may take the necessary steps under
225 paragraph (c) or paragraph (d) for the issuance of revenue bonds
226 for the benefit of the fund. The proceeds of such revenue bonds
227 may be used to make reimbursement payments under reimbursement
228 contracts; to refinance or replace previously existing
229 borrowings or financial arrangements; to pay interest on bonds;
230 to fund reserves for the bonds; to pay expenses incident to the
231 issuance or sale of any bond issued under this section,
232 including costs of validating, printing, and delivering the
233 bonds, costs of printing the official statement, costs of
234 publishing notices of sale of the bonds, and related
235 administrative expenses; or for such other purposes related to
236 the financial obligations of the fund as the board may
237 determine. The term of the bonds may not exceed 30 years. The
238 board may pledge or authorize the corporation to pledge all or a
239 portion of all revenues under subsection (5) and under paragraph

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240 (b) to secure such revenue bonds and the board may execute such
241 agreements between the board and the issuer of any revenue bonds
242 and providers of other financing arrangements under paragraph
243 (7) (b) as the board deems necessary to evidence, secure,
244 preserve, and protect such pledge. If reimbursement premiums
245 received under subsection (5) or earnings on such premiums are
246 used to pay debt service on revenue bonds, such premiums and
247 earnings shall be used only after the use of the moneys derived
248 from assessments under paragraph (b). The funds, credit,
249 property, or taxing power of the state or political subdivisions
250 of the state shall not be pledged for the payment of such bonds.
251 The board may also enter into agreements under paragraph (c) or
252 paragraph (d) for the purpose of issuing revenue bonds in the
253 absence of a hurricane upon a determination that such action
254 would maximize the ability of the fund to meet future
255 obligations.

256 2. The Legislature finds and declares that the issuance of
257 bonds under this subsection is for the public purpose of paying
258 the proceeds of the bonds to insurers as required by the
259 contracts entered into under subsection (4), thereby enabling
260 insurers to pay the claims of policyholders to assure that
261 policyholders are able to pay the cost of construction,
262 reconstruction, repair, and restoration, and other costs
263 associated with damage to property of policyholders of covered
264 policies after the occurrence of a hurricane, and for the public
265 purpose of paying claims of policyholders under subsection (18)
266 to ensure that policyholders are able to pay the costs of
267 construction, reconstruction, repair, and restoration and other

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268 costs associated with damage to their property after a hurricane
269 or other windstorm.

270 (b) Emergency assessments.--

271 1.a. If the board determines that the amount of revenue
272 produced under subsections ~~subsection~~ (5) and (18) is
273 insufficient to fund the obligations, costs, and expenses of the
274 fund and the corporation, including repayment of revenue bonds
275 and that portion of the debt service coverage not met by
276 reimbursement premiums, the board shall direct the Office of
277 Insurance Regulation to levy, by order, an emergency assessment
278 on direct premiums for all property and casualty lines of
279 business in this state, including property and casualty business
280 of surplus lines insurers regulated under part VIII of chapter
281 626, but not including any workers' compensation premiums or
282 medical malpractice premiums. As used in this subsection, the
283 term "property and casualty business" includes all lines of
284 business identified on Form 2, Exhibit of Premiums and Losses,
285 in the annual statement required of authorized insurers by s.
286 624.424 and any rule adopted under this section, except for
287 those lines identified as accident and health insurance and
288 except for policies written under the National Flood Insurance
289 Program. The assessment shall be specified as a percentage of
290 direct written premium and is subject to annual adjustments by
291 the board in order to meet debt obligations. The same percentage
292 shall apply to all policies in lines of business subject to the
293 assessment issued or renewed during the 12-month period
294 beginning on the effective date of the assessment. This sub-
295 subparagraph expires June 1, 2010; however, the expiration of

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296 this sub-subparagraph does not affect any assessments levied
297 under this sub-subparagraph prior to that date.

298 b. Effective June 1, 2010, if the board determines that
299 the amount of revenue produced under subsections (5) and (18) is
300 insufficient to fund the obligations, costs, and expenses of the
301 fund and the corporation, including repayment of revenue bonds
302 and that portion of the debt service coverage not met by
303 reimbursement premiums, the board shall direct the Office of
304 Insurance Regulation to levy, by order, an emergency assessment
305 on direct premiums for all personal lines and commercial lines
306 policies providing property insurance coverage, including
307 policies issued by the Florida Windstorm Insurance Program under
308 subsection (18). The assessment shall be specified as a
309 percentage of direct written premium and is subject to annual
310 adjustments by the board in order to meet debt obligations. The
311 same percentage shall apply to all policies in lines of business
312 subject to the assessment issued or renewed during the 12-month
313 period beginning on the effective date of the assessment. An
314 insurer that is not a participating insurer within the meaning
315 provided in subsection (18) may not be assessed under this sub-
316 paragraph to fund the obligations, costs, and expenses of the
317 Florida Windstorm Insurance Program.

318 2.a. A premium is not subject to an annual assessment
319 under this paragraph in excess of 6 percent of premium with
320 respect to obligations arising out of losses attributable to any
321 one contract year, and a premium is not subject to an aggregate
322 annual assessment under this paragraph in excess of 10 percent
323 of premium. This sub-subparagraph expires June 1, 2010; however,

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324 the expiration of this sub-subparagraph does not affect any
325 assessments levied under this sub-subparagraph prior to that
326 date.

327 b. Effective June 1, 2010, the total amount of emergency
328 assessments under this paragraph with respect to any year may
329 not exceed 10 percent of the statewide total gross written
330 premium for all insurers for personal lines and commercial lines
331 policies providing property insurance coverage, including
332 policies issued by the Florida Windstorm Insurance Program under
333 subsection (18), for the prior year. However, if the fund
334 deficit with respect to any year exceeds such amount and bonds
335 are issued to defray the deficit, the total amount of emergency
336 assessments with respect to such deficit may not in any year
337 exceed 10 percent of the deficit or such lesser percentage as is
338 sufficient to retire the bonds as determined by the board.

339 c. An annual assessment under this paragraph shall
340 continue as long as the revenue bonds issued with respect to
341 which the assessment was imposed are outstanding, including any
342 bonds the proceeds of which were used to refund the revenue
343 bonds, unless adequate provision has been made for the payment
344 of the bonds under the documents authorizing issuance of the
345 bonds.

346 3. Emergency assessments shall be collected from
347 policyholders. Emergency assessments shall be remitted by
348 insurers as a percentage of direct written premium for the
349 preceding calendar quarter as specified in the order from the
350 Office of Insurance Regulation. The office shall verify the
351 accurate and timely collection and remittance of emergency

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352 assessments and shall report the information to the board in a
353 form and at a time specified by the board. Each insurer
354 collecting assessments shall provide the information with
355 respect to premiums and collections as may be required by the
356 office to enable the office to monitor and verify compliance
357 with this paragraph.

358 4. With respect to assessments of surplus lines premiums,
359 each surplus lines agent shall collect the assessment at the
360 same time as the agent collects the surplus lines tax required
361 by s. 626.932, and the surplus lines agent shall remit the
362 assessment to the Florida Surplus Lines Service Office created
363 by s. 626.921 at the same time as the agent remits the surplus
364 lines tax to the Florida Surplus Lines Service Office. The
365 emergency assessment on each insured procuring coverage and
366 filing under s. 626.938 shall be remitted by the insured to the
367 Florida Surplus Lines Service Office at the time the insured
368 pays the surplus lines tax to the Florida Surplus Lines Service
369 Office. The Florida Surplus Lines Service Office shall remit the
370 collected assessments to the fund or corporation as provided in
371 the order levied by the Office of Insurance Regulation. The
372 Florida Surplus Lines Service Office shall verify the proper
373 application of such emergency assessments and shall assist the
374 board in ensuring the accurate and timely collection and
375 remittance of assessments as required by the board. The Florida
376 Surplus Lines Service Office shall annually calculate the
377 aggregate written premium on property and casualty business,
378 other than workers' compensation and medical malpractice,
379 procured through surplus lines agents and insureds procuring

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380 coverage and filing under s. 626.938 and shall report the
381 information to the board in a form and at a time specified by
382 the board.

383 5. Any assessment authority not used for a particular
384 contract year may be used for a subsequent contract year. If,
385 for a subsequent contract year, the board determines that the
386 amount of revenue produced under subsection (5) is insufficient
387 to fund the obligations, costs, and expenses of the fund and the
388 corporation, including repayment of revenue bonds and that
389 portion of the debt service coverage not met by reimbursement
390 premiums, the board shall direct the Office of Insurance
391 Regulation to levy an emergency assessment up to an amount not
392 exceeding the amount of unused assessment authority from a
393 previous contract year or years, plus an additional 4 percent
394 provided that the assessments in the aggregate do not exceed the
395 limits specified in subparagraph 2. This subparagraph expires
396 June 1, 2010; however, the expiration of this subparagraph does
397 not affect any assessments levied under this subparagraph prior
398 to that date.

399 6. The assessments otherwise payable to the corporation
400 under this paragraph shall be paid to the fund unless and until
401 the Office of Insurance Regulation and the Florida Surplus Lines
402 Service Office have received from the corporation and the fund a
403 notice, which shall be conclusive and upon which they may rely
404 without further inquiry, that the corporation has issued bonds
405 and the fund has no agreements in effect with local governments
406 under paragraph (c). On or after the date of the notice and
407 until the date the corporation has no bonds outstanding, the

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408 fund shall have no right, title, or interest in or to the
409 assessments, except as provided in the fund's agreement with the
410 corporation.

411 7. Emergency assessments are not premium and are not
412 subject to the premium tax, to the surplus lines tax, to any
413 fees, or to any commissions. An insurer is liable for all
414 assessments that it collects and must treat the failure of an
415 insured to pay an assessment as a failure to pay the premium. An
416 insurer is not liable for uncollectible assessments.

417 8. When an insurer is required to return an unearned
418 premium, it shall also return any collected assessment
419 attributable to the unearned premium. A credit adjustment to the
420 collected assessment may be made by the insurer with regard to
421 future remittances that are payable to the fund or corporation,
422 but the insurer is not entitled to a refund.

423 9. When a surplus lines insured or an insured who has
424 procured coverage and filed under s. 626.938 is entitled to the
425 return of an unearned premium, the Florida Surplus Lines Service
426 Office shall provide a credit or refund to the agent or such
427 insured for the collected assessment attributable to the
428 unearned premium prior to remitting the emergency assessment
429 collected to the fund or corporation.

430 10. The exemption of medical malpractice insurance
431 premiums from emergency assessments under this paragraph is
432 repealed May 31, 2010, and medical malpractice insurance
433 premiums shall be subject to emergency assessments attributable
434 to loss events occurring in the contract years commencing on
435 June 1, 2010.

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436 (18) FLORIDA WINDSTORM INSURANCE PROGRAM.--

437 (a) Creation; purpose.--The Florida Windstorm Insurance
438 Program is created within the Florida Hurricane Catastrophe
439 Fund. The purpose of the program is to provide personal lines
440 residential windstorm insurance coverage for properties
441 throughout the state.

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

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

446 2. "Participating insurer" means an insurer providing
447 personal lines residential property insurance coverage for
448 nonwindstorm perils that administers windstorm coverage on
449 behalf of the program.

450 3. "Personal lines residential property insurance
451 coverage" consists of the type of coverage provided by
452 homeowner's, mobile home owner's, dwelling, tenant's,
453 condominium unit owner's, cooperative unit owner's, and similar
454 policies. The term "personal lines residential property
455 insurance coverage" does not include the type of coverage
456 provided by condominium association, cooperative association,
457 apartment building, and similar policies, including policies
458 covering the common elements of a homeowners' association.

459 4. "Program" means the Florida Windstorm Insurance Program
460 created under this subsection.

461 5. "Windstorm coverage" means coverage for loss or damage
462 to personal lines residential property caused by wind, wind
463 gusts, hail, rain, tornadoes, cyclones, tropical storms, or

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464 hurricanes. The term "windstorm coverage" does not include
465 coverage for loss or damage to residential property caused by
466 flood, storm surge, or rising water.

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

468 1. The program shall issue a policy providing windstorm
469 coverage to each personal lines residential risk covered by a
470 participating insurer, except if inconsistent with the
471 underwriting standards adopted under the program. Coverage shall
472 include structure, contents, additional living expenses,
473 emergency debris removal, and temporary repairs after loss.

474 2. The board shall adopt by rule standards for the
475 program, including, but not limited to, standards relating to
476 underwriting, mitigation discounts, deductibles, cancellation
477 and nonrenewal, and recordkeeping.

478 3. The board shall adopt by rule policy forms to be used
479 for program policies. Program policies must comply with part X
480 of chapter 627. The board shall also adopt by rule such notices,
481 coverage summaries, and outlines of coverage as are required by
482 law or as the board deems appropriate, including a notice
483 informing an insured of the duties of the program and the duties
484 of the participating insurer.

485 4. The policy for coverage of a structure may not exceed
486 \$2 million. The board shall establish by rule policy limits for
487 coverage of contents, additional living expenses, emergency
488 debris removal, and temporary repairs after loss.

489 5. This subsection does not restrict an insured's ability
490 to exclude windstorm coverage, hurricane coverage, or contents
491 coverage under s. 627.712.

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

496 (d) Participating insurers.--

497 1. The board shall adopt by rule a form for the contract
498 between the program and a participating insurer specifying the
499 respective rights and duties of the program and the
500 participating insurer. The contract shall be effective for a
501 term of 5 years.

502 2. Any insurer writing personal lines residential property
503 insurance coverage may elect to, and Citizens Property Insurance
504 Corporation shall, enter into a contract with the program under
505 which the program agrees to issue a policy providing windstorm
506 coverage to each insured for which the participating insurer
507 provides a policy providing personal lines residential property
508 insurance coverage for other perils, except as provided in sub-
509 subparagraph 3.b., and under which the participating insurer
510 agrees to administer the program policy. In the case of a group
511 of two or more insurers under common ownership, all members of
512 the group writing personal lines residential property insurance
513 coverage must make the same election as to participation or
514 nonparticipation in the program.

515 3. The contract shall require the participating insurer
516 to:

517 a. Collect premiums for program coverage as established by
518 the program and apply deductibles, discounts, surcharges,
519 credits, and limits as established by the program.

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520 b. Administer the windstorm coverage under the program
521 policy and provide the program policy to each of its personal
522 lines residential property insureds, except to the extent
523 inconsistent with program underwriting standards or the property
524 owner's option to exclude coverage under s. 627.712(2) or (3).

525 c. Comply with program rules and standards relating to
526 program policies, including underwriting, and cancellation and
527 nonrenewal.

528 d. Provide application processing, premium processing,
529 claims processing, and adjusting services in accordance with
530 program rules and standards.

531 4. An insurer has a fiduciary duty to the program to
532 fairly adjust claims and allocate losses between windstorm and
533 nonwindstorm perils.

534 5. The program shall establish an annual audit process to
535 determine each participating insurer's compliance with the
536 requirements of the contract.

537 (e) Program powers and duties.--

538 1. The program shall make claims payments directly to
539 insureds based on the information provided to the program by the
540 participating insurer. The contract between the program and the
541 participating insurer may provide that the participating insurer
542 shall make claims payments to the insured on behalf of the
543 program, but only to the extent the program has advanced funds
544 to the participating insurer for the purpose of paying claims.

545 2. The contract between the program and the participating
546 insurer shall require the program to pay the participating
547 insurer's loss adjustment expense, reasonable acquisition costs

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548 not to exceed the usual and customary amount for each individual
549 component of such costs, litigation costs, and judgments
550 attributable to program policies, except to the extent that the
551 costs or expenses are the result of the participating insurer's
552 breach of the contract or breach of its fiduciary duty.

553 3. If a participating insurer fails to substantially
554 comply with its obligations under the program contract or
555 breaches its fiduciary duty to the program, the program may
556 impose any combination of the following sanctions: suspension of
557 the participating insurer's ability to participate in the
558 program for a period not to exceed 5 years, actual damages plus
559 a penalty of up to 50 percent, or liquidated damages as
560 specified in the program contract.

561 4. There shall be no liability on the part of, and no
562 cause of action of any nature shall arise against, any
563 participating insurer or its agents or employees, the program or
564 its employees, or members of the board for any action taken by
565 such persons or entities in the performance of their respective
566 duties or responsibilities under this subsection. Such immunity
567 does not apply to:

568 a. Any of the foregoing persons or entities for any
569 willful tort.

570 b. The program, a participating insurer, or a
571 participating insurer's producing agents for breach of any
572 written contract or written agreement pertaining to insurance
573 coverage.

574 c. The program or the fund with respect to issuance or
575 payment of debt.

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576 d. Any participating insurer with respect to any action by
577 the program to enforce a participating insurer's obligations to
578 the program under this subsection.

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

583 5. The termination of an insurer's participation in the
584 program terminates the program policies the insurer had been
585 administering, and such policies remain in effect until their
586 expiration date unless terminated for some other cause. The
587 insurer shall continue to have a duty to administer such
588 policies unless the program makes other arrangements for the
589 administration of such policies.

590 (f) Ratemaking.--

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

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

598 b. Except as otherwise provided in this paragraph, rates
599 may not be excessive, inadequate, or unfairly discriminatory
600 within the meaning provided in s. 627.062 and must provide the
601 mitigation discounts and other loss-prevention incentives
602 specified in s. 627.0629.

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603 c. In the aggregate, the rates must generate premium
604 revenue equal to or greater than the statewide average annual
605 insured windstorm loss, based on an average of all models
606 currently determined to meet the standards and guidelines of the
607 Florida Commission on Hurricane Loss Projection Methodology plus
608 expenses.

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

614 3. Annually, after a public hearing, the board shall adopt
615 a rate plan pursuant to this paragraph. A rate plan takes effect
616 upon its approval by the unanimous vote of all members of the
617 board or at a later date specified in the rate plan and remains
618 in effect until the effective date of a subsequently adopted
619 rate plan.

620 4. The rate plan recommended to or adopted by the board is
621 not subject to any other regulatory review or approval. The rate
622 plan as adopted is final agency action for purposes of chapter
623 120 and is subject to judicial review in the manner provided in
624 s. 120.68, except judicial review must be sought in the District
625 Court of Appeal, First District, regardless of where any party
626 resides.

627 (g) Reinsurance; annual report.--

628 1. The program may procure reinsurance or other financial
629 alternatives at any loss level.

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630 2. The program shall annually engage in negotiations to
631 procure reinsurance or other financial alternatives to transfer
632 some or all of the risk of loss in excess of the program's 100-
633 year probable maximum loss.

634 3.a. The program shall annually procure reinsurance or
635 other financial alternatives to transfer at least 50 percent of
636 the risk of loss between the program's 50-year probable maximum
637 loss and the program's 100-year probable maximum loss. The board
638 may structure such reinsurance and other financial alternatives
639 in such layer or layers, and with such percentages of retained
640 liability in a particular layer, as the board deems appropriate.

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

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

651 4. The board shall provide an annual report to the
652 President of the Senate and the Speaker of the House of
653 Representatives describing the state of the market for
654 reinsurance and other risk-transfer mechanisms, summarizing
655 negotiations for reinsurance and other financial alternatives to
656 transfer program risk, and explaining the program's actions with
657 regard to reinsurance and other financial alternatives.

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658 (h) Personal lines residential windstorm coverage issued
659 by nonparticipating insurers.--Windstorm coverage under a
660 personal lines residential property insurance policy issued by
661 an insurer that is not a participating insurer is subject to s.
662 627.062, except that the rates for such coverage may be
663 disapproved only if they are inadequate or unfairly
664 discriminatory.

665 (i) Transition.--It is the intent of the Legislature that
666 participating insurers continue to provide windstorm coverage to
667 their existing policyholders under policies providing personal
668 lines residential property insurance coverage until the first
669 renewal date on or after June 1, 2009, at which time the
670 windstorm coverage shall be provided under a program policy. For
671 that purpose, a participating insurer remains eligible for
672 coverage under subsection (4) during the contract year beginning
673 June 1, 2009, to the extent the participating insurer has in
674 force policies defined as covered policies under subsection (2).
675 The replacement of windstorm coverage under a participating
676 insurer's policy providing personal lines residential property
677 insurance coverage with windstorm coverage under a program
678 policy does not constitute a cancellation or nonrenewal for
679 purposes of s. 627.4133 or any other purposes under the
680 Insurance Code. With respect to noncommercial residential
681 property insurance policy renewals taking effect on or after
682 June 1, 2009, and before June 1, 2010, the notice of renewal
683 premium shall include a notice, in a form specified by the
684 board, that, as of the policy renewal date, windstorm coverage
685 will be provided under a program policy administered by the

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686 insurer and coverage for other perils will be provided under a
687 residential property insurance policy issued by the insurer.

688 Section 23. State Board of Administration; implementation
689 of the Florida Windstorm Insurance Program.--No later than
690 January 1, 2009, the State Board of Administration shall adopt
691 all contract forms, rules, standards, policy forms, mitigation
692 discounts, and rates required to implement the Florida Windstorm
693 Insurance Program created by s. 215.555, Florida Statutes, as
694 amended by this act.

695 Section 24. Paragraph (gg) is added to subsection (6) of
696 section 627.351, Florida Statutes, to read:

697 627.351 Insurance risk apportionment plans.--

698 (6) CITIZENS PROPERTY INSURANCE CORPORATION.--

699 (gg) Notwithstanding any provision of this subsection or
700 s. 627.3517:

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

704 2.a. In order to facilitate the transfer of policies of
705 the corporation from the corporation to the competitive market
706 and in order to provide a capital contribution to the Florida
707 Windstorm Insurance Program, the corporation shall offer
708 insurers the opportunity to bid on the right to provide
709 nonwindstorm coverage to current personal lines residential
710 policyholders of the corporation, to take effect on the
711 policyholder's first renewal date on or after June 1, 2009, or
712 through an assumption agreement effective on or after June 1,
713 2009.

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714 b. The corporation shall prepare blocks of business that
715 are balanced as to geographic location and insured value and
716 shall offer the blocks of business at auction beginning no later
717 than October 1, 2008. The insurer that prevails in the auction
718 shall have an exclusive right to enter into an assumption
719 agreement with the corporation under which the participating
720 insurer assumes the nonwindstorm coverage for the remainder of
721 the policy term and the Florida Windstorm Insurance Program
722 assumes the windstorm coverage for the remainder of the policy
723 term. If an assumption occurs, any renewal shall be at the
724 participating insurer's rates as to the nonwindstorm coverage
725 and the Florida Windstorm Insurance Program rates as to the
726 windstorm coverage. Any assumptions under this sub-subparagraph
727 must take effect no later than May 31, 2010.

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

733 d. The corporation shall transfer all proceeds of the
734 auctions to the Florida Hurricane Catastrophe Fund, which shall
735 treat the proceeds as a capital contribution for the benefit of
736 the Florida Windstorm Insurance Program.

737 3. Effective June 1, 2009, the corporation may not issue
738 or renew a policy providing personal lines residential property
739 insurance coverage if the owner of the property has received an
740 offer of coverage from a participating insurer as defined in s.
741 215.555(18), provided the participating insurer has provided the

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742 corporation with notice of the offer of coverage at least 30
743 days prior to the renewal date or expected issuance date of the
744 corporation's policy.

745 4. No later than December 31, 2010, the corporation shall
746 transfer to the Florida Hurricane Catastrophe Fund an additional
747 capital contribution for the benefit of the Florida Windstorm
748 Insurance Program. The contribution shall consist of the
749 corporation's surplus as to policyholders, multiplied by a
750 ratio:

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

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

757 Section 25. Effective June 1, 2009, subsection (1) of
758 section 627.712, Florida Statutes, is amended to read:

759 627.712 Residential windstorm coverage required;
760 availability of exclusions for windstorm or contents.--

761 (1) Effective upon the date of issuance of the policy or
762 the date of the first renewal on or after June 1, 2009, an
763 insurer issuing or renewing a residential property insurance
764 policy must provide windstorm coverage as part of the policy
765 issued by the insurer or under a separate policy issued by the
766 Florida Windstorm Insurance Program under s. 215.555 and
767 administered by the insurer. This subsection does not apply with
768 respect to risks that are eligible for wind-only coverage from
769 Citizens Property Insurance Corporation under s. 627.351(6).

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T I T L E A M E N D M E N T

Remove line 2652 and insert:

certain structures; amending s. 215.555, F.S.; providing additional legislative findings; revising certain definitions; providing for application of the Florida Hurricane Catastrophe Fund to costs of the Florida Windstorm Insurance Program; revising certain reimbursement contract board obligation limitations; providing for future expiration of certain limitations; revising legislative findings and declarations relating to revenue bonds; providing for application to coverage of costs of property damage under policies issued under the Florida Windstorm Insurance Program; revising emergency assessment requirement provisions to include application to policies issued under the Florida Windstorm Insurance Program; providing for future expiration of certain provisions; creating the Florida Windstorm Insurance Program within the Florida Hurricane Catastrophe Fund; providing a purpose; providing definitions; providing requirements for coverage, standards, and policy forms under the program; providing limitations; providing for administration of the program by the State Board of Administration; requiring the board to adopt rules; providing an eligibility limitation on certain properties' participation in the program; providing requirements for insurers participating in the program; providing contract requirements; providing for participating insurer compliance audits; specifying powers and duties of the program; providing claims payment requirements;

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798 providing for payment of certain insurer's costs and expenses;
799 providing for penalties for insurers for certain actions;
800 specifying absence of liability for certain actions; providing
801 for effect of termination of an insurer's participation;
802 specifying ratemaking requirements; authorizing the board to add
803 a rapid cash buildup premium surcharge to rates under certain
804 circumstances; requiring the board to adopt a rate plan;
805 providing requirements for procuring reinsurance; authorizing
806 the board to waive or modify certain reinsurance requirements;
807 requiring an annual report to the Legislature; requiring
808 windstorm coverage under certain insurance policies issued by
809 certain insurers to be subject to certain rate standards
810 requirements; providing transitional requirements; specifying
811 requirements for the board in implementing the program; amending
812 s. 627.351, F.S.; prohibiting the Citizens Property Insurance
813 Corporation from issuing or renewing certain windstorm-only
814 insurance policies after a certain date; providing requirements
815 for transfer of policies of the corporation to the program;
816 providing for transfer of certain proceeds and funds to the
817 Florida Hurricane Catastrophe Fund for certain purposes;
818 amending s. 627.712, F.S.; revising windstorm coverage
819 requirements for insurers; providing effective dates.

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