

1                                   A bill to be entitled  
 2           An act relating to the Insurance Capital Build-Up  
 3           Incentive Program; amending s. 215.5595, F.S.; revising  
 4           legislative findings; providing for appropriation of state  
 5           funds in exchange for surplus notes issued by residential  
 6           property insurers under the program; revising the  
 7           conditions and requirements for providing funds to  
 8           insurers under the program; requiring a commitment by the  
 9           insurer to meet minimum premium-to-surplus writing ratios  
 10          for residential property insurance and for taking policies  
 11          out of Citizens Property Insurance Corporation;  
 12          authorizing the State Board of Administration to charge a  
 13          fee for late payments; providing that amendments made by  
 14          the act do not affect the terms of surplus notes approved  
 15          prior to a specified date; authorizing the State Board of  
 16          Administration and an insurer to renegotiate such terms  
 17          consistent with such amendments; requiring Citizens  
 18          Property Insurance Corporation to transfer funds to the  
 19          General Revenue Fund for appropriation by the Legislature  
 20          for program purposes; requiring the board to transfer each  
 21          quarter certain funds to the corporation under certain  
 22          circumstances; providing an effective date.

23  
 24   Be It Enacted by the Legislature of the State of Florida:

25  
 26           Section 1.   Section 215.5595, Florida Statutes, is amended  
 27   to read:

28           215.5595   Insurance Capital Build-Up Incentive Program.--

29 (1) Upon entering the 2008 ~~2006~~ hurricane season, the  
 30 Legislature finds that:

31 (a) The losses in this state ~~Florida~~ from eight hurricanes  
 32 in 2004 and 2005 have seriously strained the resources of both  
 33 the voluntary insurance market and the public sector mechanisms  
 34 of Citizens Property Insurance Corporation and the Florida  
 35 Hurricane Catastrophe Fund.

36 ~~(b) Private reinsurance is much less available and at a~~  
 37 ~~significantly greater cost to residential property insurers as~~  
 38 ~~compared to 1 year ago, particularly for amounts below the~~  
 39 ~~insurer's retention or retained losses that must be paid before~~  
 40 ~~reimbursement is provided by the Florida Hurricane Catastrophe~~  
 41 ~~Fund.~~

42 ~~(c) The Office of Insurance Regulation has reported that~~  
 43 ~~the insolvency of certain insurers may be imminent.~~

44 ~~(d) Hurricane forecast experts predict that the 2006~~  
 45 ~~hurricane season will be an active hurricane season and that the~~  
 46 ~~Atlantic and Gulf Coast regions face an active hurricane cycle~~  
 47 ~~of 10 to 20 years or longer.~~

48 (b)(e) Citizens Property Insurance Corporation has over  
 49 1.2 million policies in force and has the largest market share  
 50 of any insurer writing residential property insurance in this  
 51 state, and faces the threat of a catastrophic loss that ~~The~~  
 52 ~~number of cancellations or nonrenewals of residential property~~  
 53 ~~insurance policies is expected to increase and the number of new~~  
 54 ~~residential policies written in the voluntary market are likely~~  
 55 ~~to decrease, causing increased policy growth and exposure to the~~  
 56 ~~state insurer of last resort, Citizens Property Insurance~~

57 ~~Corporation, and threatening to increase the deficit of the~~  
58 ~~corporation, currently estimated to be over \$1.7 billion. This~~  
59 ~~deficit~~ must be funded by assessments against insurers and  
60 policyholders, unless otherwise funded by the state. The program  
61 has a substantial positive effect on the depopulation efforts of  
62 Citizens Property Insurance Corporation since companies  
63 participating in the program have removed over 199,000 policies  
64 from the corporation. Companies participating in the program  
65 have issued a significant number of new policies thereby keeping  
66 an estimated 480,000 new policies out of the corporation.

67 (c) ~~(f)~~ Policyholders are subject to high ~~increased~~  
68 premiums and assessments that are increasingly making such  
69 coverage unaffordable and that may force policyholders to sell  
70 their homes and even leave the state.

71 (d) ~~(g)~~ The increased risk to the public sector and private  
72 sector continues to pose ~~poses~~ a serious threat to the economy  
73 of this state, particularly the building and financing of  
74 residential structures, and existing mortgages may be placed in  
75 default.

76 (h) ~~The losses from 2004 and 2005, combined with the~~  
77 ~~expectation that the increase in hurricane activity will~~  
78 ~~continue for the foreseeable future, have caused both insurers~~  
79 ~~and reinsurers to limit the capital they are willing to commit~~  
80 ~~to covering the hurricane risk in Florida; attracting new~~  
81 ~~capital to the Florida market is a critical priority; and~~  
82 ~~providing a low cost source of capital would enable insurers to~~  
83 ~~write additional residential property insurance coverage and act~~  
84 ~~to mitigate premium increases.~~

85            ~~(e)-(i)~~    Appropriating state funds to be exchanged for ~~used~~  
 86    ~~as~~ surplus notes issued by ~~for~~ residential property insurers,  
 87    under conditions requiring the insurer to contribute additional  
 88    private sector capital and to write a minimum level of premiums  
 89    for residential hurricane coverage, is a valid and important  
 90    public purpose.

91            (f)    Extending the program will provide an incentive for  
 92    investors to commit additional capital to the residential  
 93    insurance market in this state.

94            (2)    The purpose of this section is to provide funds in  
 95    exchange for surplus notes to be issued by new or existing  
 96    authorized residential property insurers under the Insurance  
 97    Capital Build-Up Incentive Program administered by the State  
 98    Board of Administration, under the following conditions:

99            (a)    The amount of state funds provided in exchange for a  
 100    ~~the~~ surplus note to ~~for~~ any insurer or insurer group, other than  
 101    an insurer writing only manufactured housing policies, may not  
 102    exceed \$25 million or 20 percent of the total amount of funds  
 103    appropriated for ~~available under~~ the program, whichever is  
 104    greater. The amount of the surplus note for any insurer or  
 105    insurer group writing residential property insurance covering  
 106    only manufactured housing may not exceed \$7 million.

107            (b)    The insurer must contribute an amount of new capital  
 108    to its surplus which is at least equal to the amount of the  
 109    surplus note and must apply to the board by September 1, 2008  
 110    ~~July 1, 2006~~. If an insurer applies after September 1, 2008 ~~July~~  
 111    ~~1, 2006~~, but before June 1, 2009 ~~2007~~, the amount of the surplus  
 112    note is limited to one-half of the new capital that the insurer

113 contributes to its surplus, except that an insurer writing only  
 114 manufactured housing policies is eligible to receive a surplus  
 115 note of up to \$7 million. For purposes of this section, new  
 116 capital must be in the form of cash or cash equivalents as  
 117 specified in s. 625.012(1).

118 (c) The insurer's surplus, new capital, and the surplus  
 119 note must total at least \$50 million, except for insurers  
 120 writing residential property insurance covering only  
 121 manufactured housing. The insurer's surplus, new capital, and  
 122 the surplus note must total at least \$14 million for insurers  
 123 writing only residential property insurance covering  
 124 manufactured housing policies as provided in paragraph (a).

125 (d) The insurer must commit to increase its writings of  
 126 residential property insurance, including the peril of wind, and  
 127 to meet ~~meeting~~ a minimum writing ratio of net written premium  
 128 to surplus of at least 1:1 for the first calendar year after  
 129 receiving the state funds or renegotiation of the surplus note,  
 130 1.5:1 for the second calendar year, and 2:1 for the remaining  
 131 term of the surplus note. Alternatively, the insurer must meet a  
 132 minimum writing ratio of gross written premium to surplus of at  
 133 least 3:1 for the first calendar year after receiving the state  
 134 funds or renegotiation of the surplus note, 4.5:1 for the second  
 135 calendar year, and 6:1 for the remaining term of the surplus  
 136 note. The writing ratios, ~~which~~ shall be determined by the  
 137 Office of Insurance Regulation and certified quarterly to the  
 138 board. For this purpose, the term "~~net written~~ premium" means  
 139 ~~net written~~ premium for residential property insurance in this  
 140 state Florida, including the peril of wind, and "surplus" means

141 the new capital and surplus note ~~refers to the entire surplus~~ of  
142 the insurer. An insurer who makes an initial application after  
143 July 1, 2008, must also commit to writing at least 10 percent of  
144 its net or gross written premium for new policies, not including  
145 renewal premiums, for policies taken out of Citizens Property  
146 Insurance Corporation, during each of the first 3 years after  
147 receiving the state funds in exchange for the surplus note,  
148 which shall be determined by the Office of Insurance Regulation  
149 and certified annually to the board. The office may determine  
150 that an insurer meets the requirement for taking policies out of  
151 the corporation, by written notice to the board, upon a finding  
152 that the insurer made offers of coverage to policyholders of the  
153 corporation which would have resulted in meeting this  
154 requirement had the policyholders accepted the offer. If the  
155 required ratio or the required writings for policies taken out  
156 of the corporation is not maintained during the term of the  
157 surplus note, the board may increase the interest rate,  
158 accelerate the repayment of interest and principal, or shorten  
159 the term of the surplus note, subject to approval by the  
160 Commissioner of Insurance of payments by the insurer of  
161 principal and interest as provided in paragraph (f).

162 (e) If the requirements of this section are met, the board  
163 may approve an application by an insurer for funds in exchange  
164 for issuance of a surplus note, unless the board determines that  
165 the financial condition of the insurer and its business plan for  
166 writing residential property insurance in Florida places an  
167 unreasonably high level of financial risk to the state of  
168 nonpayment in full of the interest and principal. The board

169 shall consult with the Office of Insurance Regulation and may  
170 contract with independent financial and insurance consultants in  
171 making this determination.

172 (f) The surplus note must be repayable to the state with a  
173 term of 20 years. The surplus note shall accrue interest on the  
174 unpaid principal balance at a rate equivalent to the 10-year  
175 U.S. Treasury Bond rate, require the payment only of interest  
176 during the first 3 years, and include such other terms as  
177 approved by the board. The board may charge late fees up to 5  
178 percent for late payments or other late remittances. Payment of  
179 principal, ~~or interest,~~ or late fees by the insurer on the  
180 surplus note must be approved by the Commissioner of Insurance,  
181 who shall approve such payment unless the commissioner  
182 determines that such payment will substantially impair the  
183 financial condition of the insurer. If such a determination is  
184 made, the commissioner shall approve such payment that will not  
185 substantially impair the financial condition of the insurer.

186 (g) The total amount of funds available for the program is  
187 limited to the amount appropriated by the Legislature for this  
188 purpose. If the amount of surplus notes requested by insurers  
189 exceeds the amount of funds available, the board may prioritize  
190 insurers that are eligible and approved, with priority for  
191 funding given to insurers writing only manufactured housing  
192 policies, regardless of the date of application, based on the  
193 financial strength of the insurer, the viability of its proposed  
194 business plan for writing additional residential property  
195 insurance in the state, and the effect on competition in the  
196 residential property insurance market. Between insurers writing

197 residential property insurance covering manufactured housing,  
 198 priority shall be given to the insurer writing the highest  
 199 percentage of its policies covering manufactured housing.

200 ~~(h) The board may allocate portions of the funds available~~  
 201 ~~for the program and establish dates for insurers to apply for~~  
 202 ~~surplus notes from such allocation which are earlier than the~~  
 203 ~~dates established in paragraph (b).~~

204 (h)~~(i)~~ Notwithstanding paragraph (d), a newly formed  
 205 manufactured housing insurer that is eligible for a surplus note  
 206 under this section shall meet the premium to surplus ratio  
 207 provisions of s. 624.4095.

208 (i)~~(j)~~ As used in this section, "an insurer writing only  
 209 manufactured housing policies" includes:

210 1. A Florida domiciled insurer that begins writing  
 211 personal lines residential manufactured housing policies in  
 212 Florida after March 1, 2007, and that removes a minimum of  
 213 50,000 policies from Citizens Property Insurance Corporation  
 214 without accepting a bonus, provided at least 25 percent of its  
 215 policies cover manufactured housing. Such an insurer may count  
 216 any funds above the minimum capital and surplus requirement that  
 217 were contributed into the insurer after March 1, 2007, as new  
 218 capital under this section.

219 2. A Florida domiciled insurer that writes at least 40  
 220 percent of its policies covering manufactured housing in  
 221 Florida.

222 (3) As used in this section, the term:

223 (a) "Board" means the State Board of Administration.

224 (b) "Program" means the Insurance Capital Build-Up  
 225 Incentive Program established by this section.

226 (4) The state funds provided to the insurer in exchange  
 227 for the A surplus note provided to an insurer pursuant to this  
 228 section are ~~is~~ considered borrowed surplus an asset of the  
 229 insurer pursuant to s. 628.401 ~~625.012~~.

230 (5) If an insurer that receives funds in exchange for the  
 231 issuance of a surplus note pursuant to this section is rendered  
 232 insolvent, the state is a class 3 creditor pursuant to s.  
 233 631.271 for the unpaid principal and interest on the surplus  
 234 note.

235 (6) The board shall adopt rules prescribing the  
 236 procedures, administration, and criteria for approving the  
 237 applications of insurers to receive funds in exchange for  
 238 issuance of surplus notes pursuant to this section, which may be  
 239 adopted pursuant to the procedures for emergency rules of  
 240 chapter 120. Otherwise, actions and determinations by the board  
 241 pursuant to this section are exempt from chapter 120.

242 (7) The board shall invest and reinvest the funds  
 243 appropriated for the program in accordance with s. 215.47 and  
 244 consistent with board policy.

245 (8) The amendments to this section enacted in 2008 do not  
 246 affect the terms or conditions of surplus notes that were  
 247 approved prior to January 1, 2008. However, the board may  
 248 renegotiate the terms of any surplus note issued by an insurer  
 249 prior to January 2008 under this program, upon the agreement of  
 250 the insurer and the board, consistent with the requirements of  
 251 this section as amended in 2008.

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252        (9) Citizens Property Insurance Corporation shall transfer  
253 \$250 million to the General Revenue Fund on or after December 1,  
254 2008, but before December 31, 2008, for appropriation by the  
255 Legislature to the program.

256        (10) Beginning July 1, 2009, the board shall transfer each  
257 quarter any interest and principle repaid to the state for any  
258 surplus notes issued by the program after December 1, 2008, to  
259 Citizens Property Insurance Corporation, provided such surplus  
260 notes were funded exclusively by an appropriation to the program  
261 by the Legislature for the 2008-2009 fiscal year.

262        Section 2. This act shall take effect July 1, 2008.