

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 an appropriation of
5 state funds in exchange for surplus notes issued by
6 residential property insurers under the program; revising
7 the 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; requiring
12 insurers to commit to maintaining certain levels of
13 surplus and reinsurance; authorizing the State Board of
14 Administration to charge a fee for late payments;
15 providing for payment of costs and fees incurred by the
16 board in administering the program from funds appropriated
17 to the program, subject to a specified limit; requiring
18 the board to submit an annual report to the Legislature on
19 the program and insurer compliance with certain
20 requirements; providing that amendments made by the act do
21 not affect the terms of surplus notes approved prior to a
22 specified date; authorizing the State Board of
23 Administration and an insurer to renegotiate such terms
24 consistent with such amendments; requiring Citizens
25 Property Insurance Corporation to transfer certain funds
26 to the General Revenue Fund if the combined surplus of
27 certain accounts exceeds \$1 billion; requiring the
28 corporation to make certain reasonable estimates of such

29 surplus funds; requiring the board to make quarterly
 30 transfers of funds to the corporation under certain
 31 circumstances; requiring the corporation to credit certain
 32 accounts for funds removed to make certain transfers;
 33 prohibiting Citizens Property Insurance Corporation from
 34 using certain statutory changes or authorized transfers of
 35 funds as justification or cause to seek any rate or
 36 assessment increase; providing an effective date.

37

38 Be It Enacted by the Legislature of the State of Florida:

39

40 Section 1. Section 215.5595, Florida Statutes, is amended
 41 to read:

42 215.5595 Insurance Capital Build-Up Incentive Program.--

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

45 (a) The losses in this state ~~Florida~~ from eight hurricanes
 46 in 2004 and 2005 have seriously strained the resources of both
 47 the voluntary insurance market and the public sector mechanisms
 48 of Citizens Property Insurance Corporation and the Florida
 49 Hurricane Catastrophe Fund.

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

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

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

62 (b)(e) Citizens Property Insurance Corporation has over
63 1.2 million policies in force and has the largest market share
64 of any insurer writing residential property insurance in this
65 state, and faces the threat of a catastrophic loss that The
66 ~~number of cancellations or nonrenewals of residential property~~
67 ~~insurance policies is expected to increase and the number of new~~
68 ~~residential policies written in the voluntary market are likely~~
69 ~~to decrease, causing increased policy growth and exposure to the~~
70 ~~state insurer of last resort, Citizens Property Insurance~~
71 ~~Corporation, and threatening to increase the deficit of the~~
72 ~~corporation, currently estimated to be over \$1.7 billion. This~~
73 ~~deficit~~ must be funded by assessments against insurers and
74 policyholders, unless otherwise funded by the state. The program
75 has a substantial positive effect on the depopulation efforts of
76 Citizens Property Insurance Corporation since companies
77 participating in the program have removed over 199,000 policies
78 from the corporation. Companies participating in the program
79 have issued a significant number of new policies, thereby
80 keeping an estimated 480,000 new policies out of the
81 corporation.

82 (c)(f) Policyholders are subject to high increased
83 premiums and assessments that are increasingly making such

84 coverage unaffordable and that may force policyholders to sell
85 their homes and even leave the state.

86 ~~(d)(g)~~ The increased risk to the public sector and private
87 sector continues to pose ~~poses~~ a serious threat to the economy
88 of this state, particularly the building and financing of
89 residential structures, and existing mortgages may be placed in
90 default.

91 ~~(h) The losses from 2004 and 2005, combined with the~~
92 ~~expectation that the increase in hurricane activity will~~
93 ~~continue for the foreseeable future, have caused both insurers~~
94 ~~and reinsurers to limit the capital they are willing to commit~~
95 ~~to covering the hurricane risk in Florida; attracting new~~
96 ~~capital to the Florida market is a critical priority; and~~
97 ~~providing a low cost source of capital would enable insurers to~~
98 ~~write additional residential property insurance coverage and act~~
99 ~~to mitigate premium increases.~~

100 ~~(e)(i)~~ Appropriating state funds to be exchanged for ~~used~~
101 ~~as~~ surplus notes issued by ~~for~~ residential property insurers,
102 under conditions requiring the insurer to contribute additional
103 private sector capital and to write a minimum level of premiums
104 for residential hurricane coverage, is a valid and important
105 public purpose.

106 ~~(f)~~ Extending the program will provide an incentive for
107 investors to commit additional capital to the residential
108 insurance market in this state.

109 (2) The purpose of this section is to provide funds in
110 exchange for surplus notes to be issued by new or existing
111 authorized residential property insurers under the Insurance

112 Capital Build-Up Incentive Program administered by the State
 113 Board of Administration, under the following conditions:

114 (a) The amount of state funds provided in exchange for a
 115 ~~the surplus note to for~~ any insurer ~~or insurer group~~, other than
 116 an insurer writing only manufactured housing policies, may not
 117 exceed \$25 million or 20 percent of the total amount of funds
 118 appropriated for ~~available under~~ the program, whichever is
 119 greater. The amount of the surplus note for any insurer or
 120 insurer group writing residential property insurance covering
 121 only manufactured housing may not exceed \$7 million.

122 (b) The insurer must contribute an amount of new capital
 123 to its surplus which is at least equal to the amount of the
 124 surplus note and must apply to the board by September 1, 2008
 125 ~~July 1, 2006~~. If an insurer applies after September 1, 2008 ~~July~~
 126 ~~1, 2006~~, but before June 1, 2009 ~~2007~~, the amount of the surplus
 127 note is limited to one-half of the new capital that the insurer
 128 contributes to its surplus, except that an insurer writing only
 129 manufactured housing policies is eligible to receive a surplus
 130 note of up to \$7 million. For purposes of this section, new
 131 capital must be in the form of cash or cash equivalents as
 132 specified in s. 625.012(1).

133 (c) The insurer's surplus, new capital, and the surplus
 134 note must total at least \$50 million, except for insurers
 135 writing residential property insurance covering only
 136 manufactured housing. The insurer's surplus, new capital, and
 137 the surplus note must total at least \$14 million for insurers
 138 writing only residential property insurance covering
 139 manufactured housing policies as provided in paragraph (a).

140 (d) The insurer must commit to increase its writings of
141 residential property insurance, including the peril of wind, and
142 to meet ~~meeting~~ a minimum writing ratio of net written premium
143 to surplus of at least 1:1 for the first calendar year after
144 receiving the state funds or renegotiation of the surplus note,
145 1.5:1 for the second calendar year, and 2:1 for the remaining
146 term of the surplus note. Alternatively, the insurer must meet a
147 minimum writing ratio of gross written premium to surplus of at
148 least 3:1 for the first calendar year after receiving the state
149 funds or renegotiation of the surplus note, 4.5:1 for the second
150 calendar year, and 6:1 for the remaining term of the surplus
151 note. The writing ratios, ~~which~~ shall be determined by the
152 Office of Insurance Regulation and certified quarterly to the
153 board. For this purpose, the term "~~net written~~ premium" means
154 ~~net written~~ premium for residential property insurance in this
155 state Florida, including the peril of wind, and "surplus" means
156 the new capital and surplus note ~~refers to the entire surplus~~ of
157 the insurer. An insurer who makes an initial application after
158 July 1, 2008, must also commit to writing at least 15 percent of
159 its net or gross written premium for new policies, not including
160 renewal premiums, for policies taken out of Citizens Property
161 Insurance Corporation, during each of the first 3 years after
162 receiving the state funds in exchange for the surplus note,
163 which shall be determined by the Office of Insurance Regulation
164 and certified annually to the board. The office may determine
165 that an insurer meets the requirement for taking policies out of
166 the corporation, by written notice to the board, upon a finding
167 that the insurer made offers of coverage to policyholders of the

168 corporation which would have resulted in meeting this
 169 requirement had the policyholders accepted the offer. The
 170 insurer must also commit to maintaining a level of surplus and
 171 reinsurance sufficient to cover in excess of its 1-in-100 years
 172 probable maximum loss, as determined by a hurricane loss model
 173 accepted by the Florida Commission on Hurricane Loss Projection
 174 Methodology, which shall be determined by the Office of
 175 Insurance Regulation and certified annually to the board. If the
 176 board determines that the insurer has failed to meet any of the
 177 requirements of this paragraph ~~If the required ratio is not~~
 178 ~~maintained~~ during the term of the surplus note, the board may
 179 increase the interest rate, accelerate the repayment of interest
 180 and principal, or shorten the term of the surplus note, subject
 181 to approval by the Commissioner of Insurance of payments by the
 182 insurer of principal and interest as provided in paragraph (f).

183 (e) If the requirements of this section are met, the board
 184 may approve an application by an insurer for funds in exchange
 185 for issuance of a surplus note, unless the board determines that
 186 the financial condition of the insurer and its business plan for
 187 writing residential property insurance in Florida places an
 188 unreasonably high level of financial risk to the state of
 189 nonpayment in full of the interest and principal. The board
 190 shall consult with the Office of Insurance Regulation and may
 191 contract with independent financial and insurance consultants in
 192 making this determination.

193 (f) The surplus note must be repayable to the state with a
 194 term of 20 years. The surplus note shall accrue interest on the
 195 unpaid principal balance at a rate equivalent to the 10-year

196 U.S. Treasury Bond rate, require the payment only of interest
 197 during the first 3 years, and include such other terms as
 198 approved by the board. The board may charge late fees up to 5
 199 percent for late payments or other late remittances. Payment of
 200 principal, ~~or~~ interest, or late fees by the insurer on the
 201 surplus note must be approved by the Commissioner of Insurance,
 202 who shall approve such payment unless the commissioner
 203 determines that such payment will substantially impair the
 204 financial condition of the insurer. If such a determination is
 205 made, the commissioner shall approve such payment that will not
 206 substantially impair the financial condition of the insurer.

207 (g) The total amount of funds available for the program is
 208 limited to the amount appropriated by the Legislature for this
 209 purpose. If the amount of surplus notes requested by insurers
 210 exceeds the amount of funds available, the board may prioritize
 211 insurers that are eligible and approved, with priority for
 212 funding given to insurers writing only manufactured housing
 213 policies, regardless of the date of application, based on the
 214 financial strength of the insurer, the viability of its proposed
 215 business plan for writing additional residential property
 216 insurance in the state, and the effect on competition in the
 217 residential property insurance market. Between insurers writing
 218 residential property insurance covering manufactured housing,
 219 priority shall be given to the insurer writing the highest
 220 percentage of its policies covering manufactured housing.

221 ~~(h) The board may allocate portions of the funds available~~
 222 ~~for the program and establish dates for insurers to apply for~~

223 ~~surplus notes from such allocation which are earlier than the~~
 224 ~~dates established in paragraph (b).~~

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

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

231 1. A Florida domiciled insurer that begins writing
 232 personal lines residential manufactured housing policies in
 233 Florida after March 1, 2007, and that removes a minimum of
 234 50,000 policies from Citizens Property Insurance Corporation
 235 without accepting a bonus, provided at least 25 percent of its
 236 policies cover manufactured housing. Such an insurer may count
 237 any funds above the minimum capital and surplus requirement that
 238 were contributed into the insurer after March 1, 2007, as new
 239 capital under this section.

240 2. A Florida domiciled insurer that writes at least 40
 241 percent of its policies covering manufactured housing in
 242 Florida.

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

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

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

247 (4) The state funds provided to the insurer in exchange
 248 for the ~~A~~ surplus note provided to an insurer pursuant to this
 249 section are ~~is~~ considered borrowed surplus ~~an asset~~ of the
 250 insurer pursuant to s. 628.401 ~~625.012~~.

251 (5) If an insurer that receives funds in exchange for the
252 issuance of a surplus note pursuant to this section is rendered
253 insolvent, the state is a class 3 creditor pursuant to s.
254 631.271 for the unpaid principal and interest on the surplus
255 note.

256 (6) The board shall adopt rules prescribing the
257 procedures, administration, and criteria for approving the
258 applications of insurers to receive funds in exchange for
259 issuance of surplus notes pursuant to this section, which may be
260 adopted pursuant to the procedures for emergency rules of
261 chapter 120. Otherwise, actions and determinations by the board
262 pursuant to this section are exempt from chapter 120.

263 (7) The board shall invest and reinvest the funds
264 appropriated for the program in accordance with s. 215.47 and
265 consistent with board policy.

266 (8) Costs and fees incurred by the board in administering
267 this program, including fees for investment services, shall be
268 paid from funds appropriated by the Legislature for this
269 program, but are limited to 1 percent of the amount
270 appropriated.

271 (9) The board shall submit a report to the President of
272 the Senate and the Speaker of the House of Representatives by
273 February 1 of each year as to the results of the program and
274 each insurer's compliance with the terms of its surplus note.

275 (10) The amendments to this section enacted in 2008 do not
276 affect the terms or conditions of surplus notes that were
277 approved prior to January 1, 2008. However, the board may
278 renegotiate the terms of any surplus note issued by an insurer

279 prior to January 2008 under this program, upon the agreement of
280 the insurer and the board, consistent with the requirements of
281 this section as amended in 2008.

282 (11) By December 15, 2008, Citizens Property Insurance
283 Corporation shall transfer \$250 million to the General Revenue
284 Fund if the combined surplus of each account as defined in s.
285 627.351(6) exceeds \$1 billion. The board of governors of the
286 corporation shall make a reasonable estimate of such surplus on
287 or after December 1, 2008, and no later than December 14, 2008,
288 using generally accepted actuarial and accounting practices,
289 recognizing that audited financial statements will not yet be
290 available.

291 (12) Beginning July 1, 2009, the board shall make
292 quarterly transfers of any interest earned prior to the issuance
293 of any surplus notes, interest paid, and principal repaid to the
294 state for any surplus notes issued by the program after December
295 1, 2008, to Citizens Property Insurance Corporation, provided
296 such surplus notes were funded exclusively by an appropriation
297 to the program by the Legislature for the 2008-2009 fiscal year.
298 The corporation shall credit each account as defined in s.
299 627.351(6) in a pro rata manner for the funds removed from each
300 account to make the transfer required by subsection (11).

301 Section 2. Citizens Property Insurance Corporation may not
302 use any amendments made to s. 215.5595, Florida Statutes, by
303 this act or any transfer of funds authorized by this act as
304 justification or cause in seeking any rate or assessment
305 increase.

306 Section 3. This act shall take effect July 1, 2008.