A bill to be entitled

An act relating to the Insurance Capital Build-Up Incentive Program; amending s. 215.5595, F.S.; revising legislative findings; providing for an appropriation of state funds in exchange for surplus notes issued by residential property insurers under the program; revising the conditions and requirements for providing funds to insurers under the program; requiring a commitment by the insurer to meet minimum premium-to-surplus writing ratios for residential property insurance and for taking policies out of Citizens Property Insurance Corporation; requiring insurers to commit to maintaining certain levels of surplus and reinsurance; authorizing the State Board of Administration to charge a fee for late payments; providing for payment of costs and fees incurred by the board in administering the program from funds appropriated to the program, subject to a specified limit; requiring the board to submit an annual report to the Legislature on the program and insurer compliance with certain requirements; providing that amendments made by the act do not affect the terms of surplus notes approved prior to a specified date; authorizing the State Board of Administration and an insurer to renegotiate such terms consistent with such amendments; requiring Citizens Property Insurance Corporation to transfer certain funds to the General Revenue Fund if the combined surplus of certain accounts exceeds $1 billion; requiring the corporation to make certain reasonable estimates of such surplus funds; requiring the board to make quarterly transfers of funds to the corporation under certain circumstances; requiring the corporation to credit certain accounts for funds removed to make certain transfers; prohibiting Citizens Property Insurance Corporation from using certain statutory changes or authorized transfers of funds as justification or cause to seek any rate or assessment increase; providing an effective date.

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

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

215.5595 Insurance Capital Build-Up Incentive Program.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) The insurer must commit to increase its writings of residential property insurance, including the peril of wind, and to meet ~~meeting~~ a minimum writing ratio of net written premium to surplus of at least 1:1 for the first calendar year after receiving the state funds or renegotiation of the surplus note, 1.5:1 for the second calendar year, and 2:1 for the remaining term of the surplus note. Alternatively, the insurer must meet a minimum writing ratio of gross written premium to surplus of at least 3:1 for the first calendar year after receiving the state funds or renegotiation of the surplus note, 4.5:1 for the second calendar year, and 6:1 for the remaining term of the surplus note. The writing ratios~~, which~~ shall be determined by the Office of Insurance Regulation and certified quarterly to the board. For this purpose, the term "~~net written~~ premium" means ~~net written~~ premium for residential property insurance in this state ~~Florida~~, including the peril of wind, and "surplus" means the new capital and surplus note ~~refers to the entire surplus~~ of the insurer. An insurer who makes an initial application after July 1, 2008, must also commit to writing at least 15 percent of its net or gross written premium for new policies, not including renewal premiums, for policies taken out of Citizens Property Insurance Corporation, during each of the first 3 years after receiving the state funds in exchange for the surplus note, which shall be determined by the Office of Insurance Regulation and certified annually to the board. The office may determine that an insurer meets the requirement for taking policies out of the corporation, by written notice to the board, upon a finding that the insurer made offers of coverage to policyholders of the corporation which would have resulted in meeting this requirement had the policyholders accepted the offer. The insurer must also commit to maintaining a level of surplus and reinsurance sufficient to cover in excess of its 1-in-100 years probable maximum loss, as determined by a hurricane loss model accepted by the Florida Commission on Hurricane Loss Projection Methodology, which shall be determined by the Office of Insurance Regulation and certified annually to the board. If the board determines that the insurer has failed to meet any of the requirements of this paragraph ~~If the required ratio is not maintained~~ during the term of the surplus note, the board may increase the interest rate, accelerate the repayment of interest and principal, or shorten the term of the surplus note, subject to approval by the Commissioner of Insurance of payments by the insurer of principal and interest as provided in paragraph (f).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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