

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

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

54
55 Be It Enacted by the Legislature of the State of Florida:
56

57 Section 1. Effective June 1, 2009, paragraph (h) is added
58 to subsection (1) of section 215.555, Florida Statutes,
59 paragraphs (a), (c), and (e) of subsection (2), subsection (3),
60 paragraph (c) of subsection (4), and paragraphs (a) and (b) of
61 subsection (6) of that section are amended, and subsection (18)
62 is added to that section, to read:

63 215.555 Florida Hurricane Catastrophe Fund.--

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

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

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

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

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

83 (a) "Actuarially indicated" means, with respect to
84 premiums paid by insurers for reimbursement provided by the fund

85 under subsection (4) and premiums paid by insureds for windstorm
 86 coverage provided under subsection (18), an amount determined
 87 according to principles of actuarial science to be adequate, but
 88 not excessive, in the aggregate, to pay current and future
 89 obligations and expenses of the fund, including additional
 90 amounts if needed to pay debt service on revenue bonds issued
 91 under this section and to provide required debt service coverage
 92 in excess of the amounts required to pay actual debt service on
 93 revenue bonds issued under subsection (6), and:

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

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

102 (c) "Covered policy" means any insurance policy covering
 103 residential property in this state, including, but not limited
 104 to, any homeowner's, mobile home owner's, farm owner's,
 105 condominium association, condominium unit owner's, tenant's, or
 106 apartment building policy, or any other policy covering a
 107 residential structure or its contents issued by any authorized
 108 insurer, including a commercial self-insurance fund holding a
 109 certificate of authority issued by the Office of Insurance
 110 Regulation under s. 624.462, the Citizens Property Insurance
 111 Corporation, and any joint underwriting association or similar
 112 entity created under law. The term "covered policy" includes any

113 collateral protection insurance policy covering personal
114 residences which protects both the borrower's and the lender's
115 financial interests, in an amount at least equal to the coverage
116 for the dwelling in place under the lapsed homeowner's policy,
117 if such policy can be accurately reported as required in
118 subsection (5). Additionally, covered policies include policies
119 covering the peril of wind removed from the Florida Residential
120 Property and Casualty Joint Underwriting Association or from the
121 Citizens Property Insurance Corporation, created under s.
122 627.351(6), or from the Florida Windstorm Underwriting
123 Association, created under s. 627.351(2), by an authorized
124 insurer under the terms and conditions of an executed assumption
125 agreement between the authorized insurer and such association or
126 Citizens Property Insurance Corporation. Each assumption
127 agreement between the association and such authorized insurer or
128 Citizens Property Insurance Corporation must be approved by the
129 Office of Insurance Regulation before the effective date of the
130 assumption, and the Office of Insurance Regulation must provide
131 written notification to the board within 15 working days after
132 such approval. "Covered policy" does not include any policy that
133 excludes wind coverage or hurricane coverage or any reinsurance
134 agreement and does not include any policy otherwise meeting this
135 definition which is issued by a surplus lines insurer or a
136 reinsurer. All commercial residential excess policies and all
137 deductible buy-back policies that, based on sound actuarial
138 principles, require individual ratemaking shall be excluded by
139 rule if the actuarial soundness of the fund is not jeopardized.
140 For this purpose, the term "excess policy" means a policy that

141 provides insurance protection for large commercial property
142 risks and that provides a layer of coverage above a primary
143 layer insured by another insurer. Effective June 1, 2010, the
144 term "covered policy" does not include any policy providing
145 personal lines residential property insurance coverage as
146 defined in subsection (18).

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

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

169 reimbursement premium for purposes of the calculation under this
170 subparagraph shall be estimated using the assumption that all
171 insurers have selected the 90-percent coverage level.

172 2. The retention multiple as determined under subparagraph
173 1. shall be adjusted to reflect the coverage level elected by
174 the insurer. For insurers electing the 90-percent coverage
175 level, the adjusted retention multiple is 100 percent of the
176 amount determined under subparagraph 1. For insurers electing
177 the 75-percent coverage level, the retention multiple is 120
178 percent of the amount determined under subparagraph 1. For
179 insurers electing the 45-percent coverage level, the adjusted
180 retention multiple is 200 percent of the amount determined under
181 subparagraph 1.

182 3. An insurer shall determine its provisional retention by
183 multiplying its provisional reimbursement premium by the
184 applicable adjusted retention multiple and shall determine its
185 actual retention by multiplying its actual reimbursement premium
186 by the applicable adjusted retention multiple.

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

196 January 1 of the contract year provided the insurer reports its
 197 losses as specified in the reimbursement contract.

198 (3) FLORIDA HURRICANE CATASTROPHE FUND CREATED.--There is
 199 created the Florida Hurricane Catastrophe Fund to be
 200 administered by the State Board of Administration. Moneys in the
 201 fund may not be expended, loaned, or appropriated except to pay
 202 obligations of the fund arising out of reimbursement contracts
 203 entered into under subsection (4), payment of debt service on
 204 revenue bonds issued under subsection (6), costs of the
 205 mitigation program under subsection (7), costs of procuring
 206 reinsurance, costs of the Florida Windstorm Insurance Program
 207 under subsection (18), and costs of administration of the fund.
 208 The board shall invest the moneys in the fund pursuant to ss.
 209 215.44-215.52. Except as otherwise provided in this section,
 210 earnings from all investments shall be retained in the fund. The
 211 board may employ or contract with such staff and professionals
 212 as the board deems necessary for the administration of the fund.
 213 The board may adopt such rules as are reasonable and necessary
 214 to implement this section and shall specify interest due on any
 215 delinquent remittances, which interest may not exceed the fund's
 216 rate of return plus 5 percent. Such rules must conform to the
 217 Legislature's specific intent in establishing the fund as
 218 expressed in subsection (1), must enhance the fund's potential
 219 ability to respond to claims for covered events, must contain
 220 general provisions so that the rules can be applied with
 221 reasonable flexibility so as to accommodate insurers in
 222 situations of an unusual nature or where undue hardship may
 223 result, except that such flexibility may not in any way impair,

224 | override, supersede, or constrain the public purpose of the
225 | fund, and must be consistent with sound insurance practices. The
226 | board may, by rule, provide for the exemption from subsections
227 | (4) and (5) of insurers writing covered policies with less than
228 | \$10 million in aggregate exposure for covered policies if the
229 | exemption does not affect the actuarial soundness of the fund.

230 | (4) REIMBURSEMENT CONTRACTS.--

231 | (c)1.a. The contract shall also provide that the
232 | obligation of the board with respect to all contracts covering a
233 | particular contract year shall not exceed the actual claims-
234 | paying capacity of the fund up to a limit of \$15 billion for
235 | that contract year adjusted based upon the reported exposure
236 | from the prior contract year to reflect the percentage growth in
237 | exposure to the fund for covered policies since 2003, provided
238 | the dollar growth in the limit may not increase in any year by
239 | an amount greater than the dollar growth of the balance of the
240 | fund as of December 31, less any premiums or interest
241 | attributable to optional coverage, as defined by rule which
242 | occurred over the prior calendar year. This sub-subparagraph
243 | expires June 1, 2010.

244 | b. For the contract year beginning June 1, 2010, and
245 | subsequent contract years, the contract shall provide that the
246 | obligation of the board with respect to all reimbursement
247 | contracts covering a particular contract year shall not exceed
248 | \$3 billion for that contract year plus an adjustment based upon
249 | the reported exposure from the prior contract year to reflect
250 | the percentage growth in exposure of the fund for commercial
251 | lines residential policies since 2009.

252 2. In May before the start of the upcoming contract year
 253 and in October during the contract year, the board shall publish
 254 in the Florida Administrative Weekly a statement of the fund's
 255 estimated borrowing capacity and the projected balance of the
 256 fund as of December 31. After the end of each calendar year, the
 257 board shall notify insurers of the estimated borrowing capacity
 258 and the balance of the fund as of December 31 to provide
 259 insurers with data necessary to assist them in determining their
 260 retention and projected payout from the fund for loss
 261 reimbursement purposes. In conjunction with the development of
 262 the premium formula, as provided for in subsection (5), the
 263 board shall publish factors or multiples that assist insurers in
 264 determining their retention and projected payout for the next
 265 contract year. For all regulatory and reinsurance purposes, an
 266 insurer may calculate its projected payout from the fund as its
 267 share of the total fund premium for the current contract year
 268 multiplied by the sum of the projected balance of the fund as of
 269 December 31 and the estimated borrowing capacity for that
 270 contract year as reported under this subparagraph.

271 (6) REVENUE BONDS.--

272 (a) General provisions.--

273 1. Upon the occurrence of a hurricane and a determination
 274 that the moneys in the fund are or will be insufficient to pay
 275 reimbursement at the levels promised in the reimbursement
 276 contracts, the board may take the necessary steps under
 277 paragraph (c) or paragraph (d) for the issuance of revenue bonds
 278 for the benefit of the fund. The proceeds of such revenue bonds
 279 may be used to make reimbursement payments under reimbursement

280 contracts; to refinance or replace previously existing
281 borrowings or financial arrangements; to pay interest on bonds;
282 to fund reserves for the bonds; to pay expenses incident to the
283 issuance or sale of any bond issued under this section,
284 including costs of validating, printing, and delivering the
285 bonds, costs of printing the official statement, costs of
286 publishing notices of sale of the bonds, and related
287 administrative expenses; or for such other purposes related to
288 the financial obligations of the fund as the board may
289 determine. The term of the bonds may not exceed 30 years. The
290 board may pledge or authorize the corporation to pledge all or a
291 portion of all revenues under subsection (5) and under paragraph
292 (b) to secure such revenue bonds and the board may execute such
293 agreements between the board and the issuer of any revenue bonds
294 and providers of other financing arrangements under paragraph
295 (7) (b) as the board deems necessary to evidence, secure,
296 preserve, and protect such pledge. If reimbursement premiums
297 received under subsection (5) or earnings on such premiums are
298 used to pay debt service on revenue bonds, such premiums and
299 earnings shall be used only after the use of the moneys derived
300 from assessments under paragraph (b). The funds, credit,
301 property, or taxing power of the state or political subdivisions
302 of the state shall not be pledged for the payment of such bonds.
303 The board may also enter into agreements under paragraph (c) or
304 paragraph (d) for the purpose of issuing revenue bonds in the
305 absence of a hurricane upon a determination that such action
306 would maximize the ability of the fund to meet future
307 obligations.

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

322 (b) Emergency assessments.--

323 1.a. If the board determines that the amount of revenue
 324 produced under subsections ~~subsection~~ (5) and (18) is
 325 insufficient to fund the obligations, costs, and expenses of the
 326 fund and the corporation, including repayment of revenue bonds
 327 and that portion of the debt service coverage not met by
 328 reimbursement premiums, the board shall direct the Office of
 329 Insurance Regulation to levy, by order, an emergency assessment
 330 on direct premiums for all property and casualty lines of
 331 business in this state, including property and casualty business
 332 of surplus lines insurers regulated under part VIII of chapter
 333 626, but not including any workers' compensation premiums or
 334 medical malpractice premiums. As used in this subsection, the
 335 term "property and casualty business" includes all lines of

336 business identified on Form 2, Exhibit of Premiums and Losses,
337 in the annual statement required of authorized insurers by s.
338 624.424 and any rule adopted under this section, except for
339 those lines identified as accident and health insurance and
340 except for policies written under the National Flood Insurance
341 Program. The assessment shall be specified as a percentage of
342 direct written premium and is subject to annual adjustments by
343 the board in order to meet debt obligations. The same percentage
344 shall apply to all policies in lines of business subject to the
345 assessment issued or renewed during the 12-month period
346 beginning on the effective date of the assessment. This sub-
347 subparagraph expires June 1, 2010; however, the expiration of
348 this sub-subparagraph does not affect any assessments levied
349 under this sub-subparagraph prior to that date.

350 b. Effective June 1, 2010, if the board determines that
351 the amount of revenue produced under subsections (5) and (18) is
352 insufficient to fund the obligations, costs, and expenses of the
353 fund and the corporation, including repayment of revenue bonds
354 and that portion of the debt service coverage not met by
355 reimbursement premiums, the board shall direct the Office of
356 Insurance Regulation to levy, by order, an emergency assessment
357 on direct premiums for all personal lines and commercial lines
358 policies providing property insurance coverage, including
359 policies issued by the Florida Windstorm Insurance Program under
360 subsection (18). The assessment shall be specified as a
361 percentage of direct written premium and is subject to annual
362 adjustments by the board in order to meet debt obligations. The
363 same percentage shall apply to all policies in lines of business

364 subject to the assessment issued or renewed during the 12-month
365 period beginning on the effective date of the assessment. An
366 insurer that is not a participating insurer within the meaning
367 provided in subsection (18) may not be assessed under this sub-
368 subparagraph to fund the obligations, costs, and expenses of the
369 Florida Windstorm Insurance Program.

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

379 b. Effective June 1, 2010, the total amount of emergency
380 assessments under this paragraph with respect to any year may
381 not exceed 10 percent of the statewide total gross written
382 premium for all insurers for personal lines and commercial lines
383 policies providing property insurance coverage, including
384 policies issued by the Florida Windstorm Insurance Program under
385 subsection (18), for the prior year. However, if the fund
386 deficit with respect to any year exceeds such amount and bonds
387 are issued to defray the deficit, the total amount of emergency
388 assessments with respect to such deficit may not in any year
389 exceed 10 percent of the deficit or such lesser percentage as is
390 sufficient to retire the bonds as determined by the board.

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

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

410 4. With respect to assessments of surplus lines premiums,
411 each surplus lines agent shall collect the assessment at the
412 same time as the agent collects the surplus lines tax required
413 by s. 626.932, and the surplus lines agent shall remit the
414 assessment to the Florida Surplus Lines Service Office created
415 by s. 626.921 at the same time as the agent remits the surplus
416 lines tax to the Florida Surplus Lines Service Office. The
417 emergency assessment on each insured procuring coverage and
418 filing under s. 626.938 shall be remitted by the insured to the

419 Florida Surplus Lines Service Office at the time the insured
420 pays the surplus lines tax to the Florida Surplus Lines Service
421 Office. The Florida Surplus Lines Service Office shall remit the
422 collected assessments to the fund or corporation as provided in
423 the order levied by the Office of Insurance Regulation. The
424 Florida Surplus Lines Service Office shall verify the proper
425 application of such emergency assessments and shall assist the
426 board in ensuring the accurate and timely collection and
427 remittance of assessments as required by the board. The Florida
428 Surplus Lines Service Office shall annually calculate the
429 aggregate written premium on property and casualty business,
430 other than workers' compensation and medical malpractice,
431 procured through surplus lines agents and insureds procuring
432 coverage and filing under s. 626.938 and shall report the
433 information to the board in a form and at a time specified by
434 the board.

435 5. Any assessment authority not used for a particular
436 contract year may be used for a subsequent contract year. If,
437 for a subsequent contract year, the board determines that the
438 amount of revenue produced under subsection (5) is insufficient
439 to fund the obligations, costs, and expenses of the fund and the
440 corporation, including repayment of revenue bonds and that
441 portion of the debt service coverage not met by reimbursement
442 premiums, the board shall direct the Office of Insurance
443 Regulation to levy an emergency assessment up to an amount not
444 exceeding the amount of unused assessment authority from a
445 previous contract year or years, plus an additional 4 percent
446 provided that the assessments in the aggregate do not exceed the

447 limits specified in subparagraph 2. This subparagraph expires
448 June 1, 2010; however, the expiration of this subparagraph does
449 not affect any assessments levied under this subparagraph prior
450 to that date.

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

463 7. Emergency assessments are not premium and are not
464 subject to the premium tax, to the surplus lines tax, to any
465 fees, or to any commissions. An insurer is liable for all
466 assessments that it collects and must treat the failure of an
467 insured to pay an assessment as a failure to pay the premium. An
468 insurer is not liable for uncollectible assessments.

469 8. When an insurer is required to return an unearned
470 premium, it shall also return any collected assessment
471 attributable to the unearned premium. A credit adjustment to the
472 collected assessment may be made by the insurer with regard to
473 future remittances that are payable to the fund or corporation,
474 but the insurer is not entitled to a refund.

475 9. When a surplus lines insured or an insured who has
 476 procured coverage and filed under s. 626.938 is entitled to the
 477 return of an unearned premium, the Florida Surplus Lines Service
 478 Office shall provide a credit or refund to the agent or such
 479 insured for the collected assessment attributable to the
 480 unearned premium prior to remitting the emergency assessment
 481 collected to the fund or corporation.

482 10. The exemption of medical malpractice insurance
 483 premiums from emergency assessments under this paragraph is
 484 repealed May 31, 2010, and medical malpractice insurance
 485 premiums shall be subject to emergency assessments attributable
 486 to loss events occurring in the contract years commencing on
 487 June 1, 2010.

488 (18) FLORIDA WINDSTORM INSURANCE PROGRAM.--

489 (a) Creation; purpose.--The Florida Windstorm Insurance
 490 Program is created within the Florida Hurricane Catastrophe
 491 Fund. The purpose of the program is to provide personal lines
 492 residential windstorm insurance coverage for properties
 493 throughout the state.

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

- 497 1. "Board" means the State Board of Administration.
 498 2. "Participating insurer" means an insurer providing
 499 personal lines residential property insurance coverage for
 500 nonwindstorm perils that administers windstorm coverage on
 501 behalf of the program.

502 3. "Personal lines residential property insurance
 503 coverage" consists of the type of coverage provided by
 504 homeowner's, mobile home owner's, dwelling, tenant's,
 505 condominium unit owner's, cooperative unit owner's, and similar
 506 policies. The term "personal lines residential property
 507 insurance coverage" does not include the type of coverage
 508 provided by condominium association, cooperative association,
 509 apartment building, and similar policies, including policies
 510 covering the common elements of a homeowners' association.

511 4. "Program" means the Florida Windstorm Insurance Program
 512 created under this subsection.

513 5. "Windstorm coverage" means coverage for loss or damage
 514 to personal lines residential property caused by wind, wind
 515 gusts, hail, rain, tornadoes, cyclones, tropical storms, or
 516 hurricanes. The term "windstorm coverage" does not include
 517 coverage for loss or damage to residential property caused by
 518 flood, storm surge, or rising water.

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

520 1. The program shall issue a policy providing windstorm
 521 coverage to each personal lines residential risk covered by a
 522 participating insurer, except if inconsistent with the
 523 underwriting standards adopted under the program. Coverage shall
 524 include structure, contents, additional living expenses,
 525 emergency debris removal, and temporary repairs after loss.

526 2. The board shall adopt by rule standards for the
 527 program, including, but not limited to, standards relating to
 528 underwriting, mitigation discounts, deductibles, cancellation
 529 and nonrenewal, and recordkeeping.

530 3. The board shall adopt by rule policy forms to be used
531 for program policies. Program policies must comply with part X
532 of chapter 627. The board shall also adopt by rule such notices,
533 coverage summaries, and outlines of coverage as are required by
534 law or as the board deems appropriate, including a notice
535 informing an insured of the duties of the program and the duties
536 of the participating insurer.

537 4. The policy for coverage of a structure may not exceed
538 \$2 million. The board shall establish by rule policy limits for
539 coverage of contents, additional living expenses, emergency
540 debris removal, and temporary repairs after loss.

541 5. This subsection does not restrict an insured's ability
542 to exclude windstorm coverage, hurricane coverage, or contents
543 coverage under s. 627.712.

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

548 (d) Participating insurers.--

549 1. The board shall adopt by rule a form for the contract
550 between the program and a participating insurer specifying the
551 respective rights and duties of the program and the
552 participating insurer. The contract shall be effective for a
553 term of 5 years.

554 2. Any insurer writing personal lines residential property
555 insurance coverage may elect to, and Citizens Property Insurance
556 Corporation shall, enter into a contract with the program under
557 which the program agrees to issue a policy providing windstorm

558 coverage to each insured for which the participating insurer
559 provides a policy providing personal lines residential property
560 insurance coverage for other perils, except as provided in sub-
561 subparagraph 3.b., and under which the participating insurer
562 agrees to administer the program policy. In the case of a group
563 of two or more insurers under common ownership, all members of
564 the group writing personal lines residential property insurance
565 coverage must make the same election as to participation or
566 nonparticipation in the program.

567 3. The contract shall require the participating insurer
568 to:

569 a. Collect premiums for program coverage as established by
570 the program and apply deductibles, discounts, surcharges,
571 credits, and limits as established by the program.

572 b. Administer the windstorm coverage under the program
573 policy and provide the program policy to each of its personal
574 lines residential property insureds, except to the extent
575 inconsistent with program underwriting standards or the property
576 owner's option to exclude coverage under s. 627.712(2) or (3).

577 c. Comply with program rules and standards relating to
578 program policies, including underwriting, and cancellation and
579 nonrenewal.

580 d. Provide application processing, premium processing,
581 claims processing, and adjusting services in accordance with
582 program rules and standards.

583 4. An insurer has a fiduciary duty to the program to
584 fairly adjust claims and allocate losses between windstorm and
585 nonwindstorm perils.

586 5. The program shall establish an annual audit process to
587 determine each participating insurer's compliance with the
588 requirements of the contract.

589 (e) Program powers and duties.--

590 1. The program shall make claims payments directly to
591 insureds based on the information provided to the program by the
592 participating insurer. The contract between the program and the
593 participating insurer may provide that the participating insurer
594 shall make claims payments to the insured on behalf of the
595 program, but only to the extent the program has advanced funds
596 to the participating insurer for the purpose of paying claims.

597 2. The contract between the program and the participating
598 insurer shall require the program to pay the participating
599 insurer's loss adjustment expense, reasonable acquisition costs
600 not to exceed the usual and customary amount for each individual
601 component of such costs, litigation costs, and judgments
602 attributable to program policies, except to the extent that the
603 costs or expenses are the result of the participating insurer's
604 breach of the contract or breach of its fiduciary duty.

605 3. If a participating insurer fails to substantially
606 comply with its obligations under the program contract or
607 breaches its fiduciary duty to the program, the program may
608 impose any combination of the following sanctions: suspension of
609 the participating insurer's ability to participate in the
610 program for a period not to exceed 5 years, actual damages plus
611 a penalty of up to 50 percent, or liquidated damages as
612 specified in the program contract.

613 4. There shall be no liability on the part of, and no
614 cause of action of any nature shall arise against, any
615 participating insurer or its agents or employees, the program or
616 its employees, or members of the board for any action taken by
617 such persons or entities in the performance of their respective
618 duties or responsibilities under this subsection. Such immunity
619 does not apply to:

620 a. Any of the foregoing persons or entities for any
621 willful tort.

622 b. The program, a participating insurer, or a
623 participating insurer's producing agents for breach of any
624 written contract or written agreement pertaining to insurance
625 coverage.

626 c. The program or the fund with respect to issuance or
627 payment of debt.

628 d. Any participating insurer with respect to any action by
629 the program to enforce a participating insurer's obligations to
630 the program under this subsection.

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

635 5. The termination of an insurer's participation in the
636 program terminates the program policies the insurer had been
637 administering, and such policies remain in effect until their
638 expiration date unless terminated for some other cause. The
639 insurer shall continue to have a duty to administer such

640 policies unless the program makes other arrangements for the
641 administration of such policies.

642 (f) Ratemaking.--

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

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

650 b. Except as otherwise provided in this paragraph, rates
651 may not be excessive, inadequate, or unfairly discriminatory
652 within the meaning provided in s. 627.062 and must provide the
653 mitigation discounts and other loss-prevention incentives
654 specified in s. 627.0629.

655 c. In the aggregate, the rates must generate premium
656 revenue equal to or greater than the statewide average annual
657 insured windstorm loss, based on an average of all models
658 currently determined to meet the standards and guidelines of the
659 Florida Commission on Hurricane Loss Projection Methodology plus
660 expenses.

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

666 3. Annually, after a public hearing, the board shall adopt
667 a rate plan pursuant to this paragraph. A rate plan takes effect

668 upon its approval by the unanimous vote of all members of the
669 board or at a later date specified in the rate plan and remains
670 in effect until the effective date of a subsequently adopted
671 rate plan.

672 4. The rate plan recommended to or adopted by the board is
673 not subject to any other regulatory review or approval. The rate
674 plan as adopted is final agency action for purposes of chapter
675 120 and is subject to judicial review in the manner provided in
676 s. 120.68, except judicial review must be sought in the District
677 Court of Appeal, First District, regardless of where any party
678 resides.

679 (g) Reinsurance; annual report.--

680 1. The program may procure reinsurance or other financial
681 alternatives at any loss level.

682 2. The program shall annually engage in negotiations to
683 procure reinsurance or other financial alternatives to transfer
684 some or all of the risk of loss in excess of the program's 100-
685 year probable maximum loss.

686 3.a. The program shall annually procure reinsurance or
687 other financial alternatives to transfer at least 50 percent of
688 the risk of loss between the program's 50-year probable maximum
689 loss and the program's 100-year probable maximum loss. The board
690 may structure such reinsurance and other financial alternatives
691 in such layer or layers, and with such percentages of retained
692 liability in a particular layer, as the board deems appropriate.

693 b. The program shall annually procure reinsurance or other
694 financial alternatives to transfer at least the first 50 percent

695 of the risk of loss between the program's 100-year probable
 696 maximum loss and the program's 250-year probable maximum loss.

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

703 4. The board shall provide an annual report to the
 704 President of the Senate and the Speaker of the House of
 705 Representatives describing the state of the market for
 706 reinsurance and other risk-transfer mechanisms, summarizing
 707 negotiations for reinsurance and other financial alternatives to
 708 transfer program risk, and explaining the program's actions with
 709 regard to reinsurance and other financial alternatives.

710 (h) Personal lines residential windstorm coverage issued
 711 by nonparticipating insurers.--Windstorm coverage under a
 712 personal lines residential property insurance policy issued by
 713 an insurer that is not a participating insurer is subject to s.
 714 627.062, except that the rates for such coverage may be
 715 disapproved only if they are inadequate or unfairly
 716 discriminatory.

717 (i) Transition.--It is the intent of the Legislature that
 718 participating insurers continue to provide windstorm coverage to
 719 their existing policyholders under policies providing personal
 720 lines residential property insurance coverage until the first
 721 renewal date on or after June 1, 2009, at which time the
 722 windstorm coverage shall be provided under a program policy. For

723 that purpose, a participating insurer remains eligible for
724 coverage under subsection (4) during the contract year beginning
725 June 1, 2009, to the extent the participating insurer has in
726 force policies defined as covered policies under subsection (2).
727 The replacement of windstorm coverage under a participating
728 insurer's policy providing personal lines residential property
729 insurance coverage with windstorm coverage under a program
730 policy does not constitute a cancellation or nonrenewal for
731 purposes of s. 627.4133 or any other purposes under the
732 Insurance Code. With respect to noncommercial residential
733 property insurance policy renewals taking effect on or after
734 June 1, 2009, and before June 1, 2010, the notice of renewal
735 premium shall include a notice, in a form specified by the
736 board, that, as of the policy renewal date, windstorm coverage
737 will be provided under a program policy administered by the
738 insurer and coverage for other perils will be provided under a
739 residential property insurance policy issued by the insurer.

740 Section 2. State Board of Administration; implementation
741 of the Florida Windstorm Insurance Program.--No later than
742 January 1, 2009, the State Board of Administration shall adopt
743 all contract forms, rules, standards, policy forms, mitigation
744 discounts, and rates required to implement the Florida Windstorm
745 Insurance Program created by s. 215.555, Florida Statutes, as
746 amended by this act.

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

749 627.351 Insurance risk apportionment plans.--

750 (6) CITIZENS PROPERTY INSURANCE CORPORATION.--

751 (gg) Notwithstanding any provision of this subsection or
752 s. 627.3517:

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

756 2.a. In order to facilitate the transfer of policies of
757 the corporation from the corporation to the competitive market
758 and in order to provide a capital contribution to the Florida
759 Windstorm Insurance Program, the corporation shall offer
760 insurers the opportunity to bid on the right to provide
761 nonwindstorm coverage to current personal lines residential
762 policyholders of the corporation, to take effect on the
763 policyholder's first renewal date on or after June 1, 2009, or
764 through an assumption agreement effective on or after June 1,
765 2009.

766 b. The corporation shall prepare blocks of business that
767 are balanced as to geographic location and insured value and
768 shall offer the blocks of business at auction beginning no later
769 than October 1, 2008. The insurer that prevails in the auction
770 shall have an exclusive right to enter into an assumption
771 agreement with the corporation under which the participating
772 insurer assumes the nonwindstorm coverage for the remainder of
773 the policy term and the Florida Windstorm Insurance Program
774 assumes the windstorm coverage for the remainder of the policy
775 term. If an assumption occurs, any renewal shall be at the
776 participating insurer's rates as to the nonwindstorm coverage
777 and the Florida Windstorm Insurance Program rates as to the

778 windstorm coverage. Any assumptions under this sub-subparagraph
779 must take effect no later than May 31, 2010.

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

785 d. The corporation shall transfer all proceeds of the
786 auctions to the Florida Hurricane Catastrophe Fund, which shall
787 treat the proceeds as a capital contribution for the benefit of
788 the Florida Windstorm Insurance Program.

789 3. Effective June 1, 2009, the corporation may not issue
790 or renew a policy providing personal lines residential property
791 insurance coverage if the owner of the property has received an
792 offer of coverage from a participating insurer as defined in s.
793 215.555(18), provided the participating insurer has provided the
794 corporation with notice of the offer of coverage at least 30
795 days prior to the renewal date or expected issuance date of the
796 corporation's policy.

797 4. No later than December 31, 2010, the corporation shall
798 transfer to the Florida Hurricane Catastrophe Fund an additional
799 capital contribution for the benefit of the Florida Windstorm
800 Insurance Program. The contribution shall consist of the
801 corporation's surplus as to policyholders, multiplied by a
802 ratio:

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

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

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

811 627.712 Residential windstorm coverage required;
 812 availability of exclusions for windstorm or contents.--

813 (1) Effective upon the date of issuance of the policy or
 814 the date of the first renewal on or after June 1, 2009, an
 815 insurer issuing or renewing a residential property insurance
 816 policy must provide windstorm coverage as part of the policy
 817 issued by the insurer or under a separate policy issued by the
 818 Florida Windstorm Insurance Program under s. 215.555 and
 819 administered by the insurer. ~~This subsection does not apply with~~
 820 ~~respect to risks that are eligible for wind only coverage from~~
 821 ~~Citizens Property Insurance Corporation under s. 627.351(6).~~

822 Section 5. Except as otherwise expressly provided in this
 823 act, this act shall take effect upon becoming a law.