By the Committee on Banking and Insurance; and Senator Richter

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A bill to be entitled

An act relating to the contract year for the Florida Hurricane Catastrophe Fund; amending s. 215.555, F.S.; revising the method by which an insurer's retention is calculated; defining the term "contract year"; revising contract years relating to minimum retention levels; extending the expiration date of certain provisions of state law; increasing the maximum financial obligations of the State Board of Administration with respect to all contracts covering a particular contract year; providing an exception; providing for the determination of claims-paying capacity when such exception occurs; revising contract years with respect to the annual increase in the cash buildup factor used to determine the actuarially indicated premium to be paid to the fund; revising the contract years during which the board must offer certain optional coverage; conforming provisions to changes made by the act; revising contract years for which a TICL options addendum must provide for reimbursement of TICL insurers for covered events; providing additional legislative findings and intent; requiring that the board adopt the reimbursement contract for a particular year by a specified date of the immediately preceding contract year; requiring that insurers writing covered policies execute such contract by a specified date of the immediately preceding contract year; requiring that the effective date of such contract conform to specified provisions of state law; requiring that the board publish certain information in the Florida Administrative Weekly on or before a specified deadline; providing an effective date.

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

Section 1. Paragraph (e) of subsection (2), paragraphs (b), (c), and (d) of subsection (4), paragraph (b) of subsection (5), and paragraphs (c), (d), (e), (f), and (g) of subsection (17) of section 215.555, Florida Statutes, are amended, paragraph (o) is added to subsection (2) of that section, and subsection (18) is added to that section, to read:

215.555 Florida Hurricane Catastrophe Fund.—

(2) DEFINITIONS.—As used in this section:

(e) “Retention” means the amount of losses below which an insurer is not entitled to reimbursement from the fund. An insurer’s retention shall be calculated as follows:

1. The board shall calculate and report to each insurer the retention multiples for that year. For the contract year beginning June 1, 2005, the retention multiple shall be equal to $4.5 billion divided by the total estimated reimbursement premium for the contract year; for subsequent years, the retention multiple shall be equal to $4.5 billion, adjusted based upon the reported exposure for the contract year occurring 2 years before ~~from~~ the particular ~~prior~~ contract year to reflect the percentage growth in exposure to the fund for covered policies since 2004, divided by the total estimated reimbursement premium for the contract year. Total reimbursement

premium for purposes of the calculation under this subparagraph shall be estimated using the assumption that all insurers have selected the 90-percent coverage level. ~~In 2010, the contract year begins June 1, 2010, and ends December 31, 2010. In 2011 and thereafter, the contract year begins January 1 and ends December 31.~~

2. The retention multiple as determined under subparagraph 1. shall be adjusted to reflect the coverage level elected by the insurer. For insurers electing the 90-percent coverage level, the adjusted retention multiple is 100 percent of the amount determined under subparagraph 1. For insurers electing the 75-percent coverage level, the retention multiple is 120 percent of the amount determined under subparagraph 1. For insurers electing the 45-percent coverage level, the adjusted retention multiple is 200 percent of the amount determined under subparagraph 1.

3. An insurer shall determine its provisional retention by multiplying its provisional reimbursement premium by the applicable adjusted retention multiple and shall determine its actual retention by multiplying its actual reimbursement premium by the applicable adjusted retention multiple.

4. For insurers who experience multiple covered events causing loss during the contract year, beginning June 1, 2005, each insurer’s full retention shall be applied to each of the covered events causing the two largest losses for that insurer. For each other covered event resulting in losses, the insurer’s retention shall be reduced to one-third of the full retention. The reimbursement contract shall provide for the reimbursement of losses for each covered event based on the full retention

with adjustments made to reflect the reduced retentions on or after January 1 of the contract year provided the insurer reports its losses as specified in the reimbursement contract.

(o) “Contract year” means the period beginning on June 1 of a specified calendar year and ending on May 31 of the following calendar year.

(4) REIMBURSEMENT CONTRACTS.—

(b)1. The contract shall contain a promise by the board to reimburse the insurer for 45 percent, 75 percent, or 90 percent of its losses from each covered event in excess of the insurer’s retention, plus 5 percent of the reimbursed losses to cover loss adjustment expenses.

2. The insurer must elect one of the percentage coverage levels specified in this paragraph and may, upon renewal of a reimbursement contract, elect a lower percentage coverage level if no revenue bonds issued under subsection (6) after a covered event are outstanding, or elect a higher percentage coverage level, regardless of whether or not revenue bonds are outstanding. All members of an insurer group must elect the same percentage coverage level. Any joint underwriting association, risk apportionment plan, or other entity created under s. 627.351 must elect the 90-percent coverage level.

3. The contract shall provide that reimbursement amounts shall not be reduced by reinsurance paid or payable to the insurer from other sources.

4. Notwithstanding any other provision contained in this section, the board shall make available to insurers that purchased coverage provided by this subparagraph in 2008, insurers qualifying as limited apportionment companies under s.

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627.351(6)(c), and insurers that have been approved to participate in the Insurance Capital Build-Up Incentive Program pursuant to s. 215.5595 a contract or contract addendum that provides an additional amount of reimbursement coverage of up to $10 million. The premium to be charged for this additional reimbursement coverage shall be 50 percent of the additional reimbursement coverage provided, which shall include one prepaid reinstatement. The minimum retention level that an eligible participating insurer must retain associated with this additional coverage layer is 30 percent of the insurer’s surplus as of December 31, 2008, for the 2009-2010 contract year; as of December 31, 2009, for the 2010-2011 contract year ~~beginning June 1, 2010, and ending December 31, 2010~~; and as of December 31, 2010, for the 2011-2012 ~~2011~~ contract year. This coverage shall be in addition to all other coverage that may be provided under this section. The coverage provided by the fund under this subparagraph shall be in addition to the claims-paying capacity as defined in subparagraph (c)1., but only with respect to those insurers that select the additional coverage option and meet the requirements of this subparagraph. The claims-paying capacity with respect to all other participating insurers and limited apportionment companies that do not select the additional coverage option shall be limited to their reimbursement premium’s proportionate share of the actual claims-paying capacity otherwise defined in subparagraph (c)1. and as provided for under the terms of the reimbursement contract. The optional coverage retention as specified shall be accessed before the mandatory coverage under the reimbursement contract, but once the limit of coverage selected under this option is exhausted, the insurer's retention under the mandatory coverage will apply. This coverage will apply and be paid concurrently with mandatory coverage. This subparagraph expires on May 31, 2012 ~~December 31, 2011~~.

(c)1. The contract shall also provide that the obligation of the board with respect to all contracts covering a particular contract year shall not exceed the actual claims-paying capacity of the fund up to a limit of $17 billion for that contract year, unless the board determines that there is sufficient estimated claims-paying capacity to provide $17 billion of capacity for the current contract year and an additional $17 billion of capacity for subsequent contract years. If the board makes such a determination, the estimated claims-paying capacity for the particular contract year shall be determined by adding to the $17 billion limit one-half of the fund's estimated claims-paying capacity in excess of $34 billion. However, ~~$15 billion for that contract year adjusted based upon the reported exposure from the prior contract year to reflect the percentage growth in exposure to the fund for covered policies since 2003, provided~~ the dollar growth in the limit may not increase in any year by an amount greater than the dollar growth of the balance of the fund as of December 31, less any premiums or interest attributable to optional coverage, as defined by rule which occurred over the prior calendar year.

2. In May and October of the contract year, the board shall publish in the Florida Administrative Weekly a statement of the fund's estimated borrowing capacity, the fund's estimated claims-paying capacity, and the projected balance of the fund as of December 31. After the end of each calendar year, the board

shall notify insurers of the estimated borrowing capacity, estimated claims-paying capacity, and the balance of the fund as of December 31 to provide insurers with data necessary to assist them in determining their retention and projected payout from the fund for loss reimbursement purposes. In conjunction with the development of the premium formula, as provided for in subsection (5), the board shall publish factors or multiples that assist insurers in determining their retention and projected payout for the next contract year. For all regulatory and reinsurance purposes, an insurer may calculate its projected payout from the fund as its share of the total fund premium for the current contract year multiplied by the sum of the projected balance of the fund as of December 31 and the estimated borrowing capacity for that contract year as reported under this subparagraph.

(d)1. For purposes of determining potential liability and to aid in the sound administration of the fund, the contract shall require each insurer to report such insurer's losses from each covered event on an interim basis, as directed by the board. The contract shall require the insurer to report to the board no later than December 31 of each year, and quarterly thereafter, its reimbursable losses from covered events for the year. The contract shall require the board to determine and pay, as soon as practicable after receiving these reports of reimbursable losses, the initial amount of reimbursement due and adjustments to this amount based on later loss information. The adjustments to reimbursement amounts shall require the board to pay, or the insurer to return, amounts reflecting the most recent calculation of losses.

2. In determining reimbursements pursuant to this subsection, the contract shall provide that the board shall pay to each insurer such insurer’s projected payout, which is the amount of reimbursement it is owed, up to an amount equal to the insurer’s share of the actual premium paid for that contract year, multiplied by the actual claims-paying capacity available for that contract year.

3. The board may reimburse insurers for amounts up to the published factors or multiples for determining each participating insurer’s retention and projected payout derived as a result of the development of the premium formula in those situations in which the total reimbursement of losses to such insurers would not exceed the estimated claims-paying capacity of the fund. Otherwise, the projected payout ~~such~~ factors or multiples shall be reduced uniformly among all insurers to reflect the estimated claims-paying capacity.

(5) REIMBURSEMENT PREMIUMS.—

(b) The State Board of Administration shall select an independent consultant to develop a formula for determining the actuarially indicated premium to be paid to the fund. The formula shall specify, for each zip code or other limited geographical area, the amount of premium to be paid by an insurer for each $1,000 of insured value under covered policies in that zip code or other area. In establishing premiums, the board shall consider the coverage elected under paragraph (4)(b) and any factors that tend to enhance the actuarial sophistication of ratemaking for the fund, including deductibles, type of construction, type of coverage provided, relative concentration of risks, and other such factors deemed by the board to be appropriate. The formula must provide for a cash build-up factor. For the 2009-2010 contract year, the factor is 5 percent. For the 2010-2011 contract year ~~beginning June 1, 2010, and ending December 31, 2010~~, the factor is 10 percent. For the 2011-2012 ~~2011~~ contract year, the factor is 15 percent. For the 2012-2013 ~~2012~~ contract year, the factor is 20 percent. For the 2013-2014 ~~2013~~ contract year and thereafter, the factor is 25 percent. The formula may provide for a procedure to determine the premiums to be paid by new insurers that begin writing covered policies after the beginning of a contract year, taking into consideration when the insurer starts writing covered policies, the potential exposure of the insurer, the potential exposure of the fund, the administrative costs to the insurer and to the fund, and any other factors deemed appropriate by the board. The formula must be approved by unanimous vote of the board. The board may, at any time, revise the formula pursuant to the procedure provided in this paragraph.

(17) TEMPORARY INCREASE IN COVERAGE LIMIT OPTIONS.—

(c) *Optional coverage.*—For the 2009-2010, 2010-2011, 2011-2012, 2012-2013, and 2013-2014 contract years ~~year commencing June 1, 2007, and ending May 31, 2008, the contract year commencing June 1, 2008, and ending May 31, 2009, the contract year commencing June 1, 2009, and ending May 31, 2010, the contract year commencing June 1, 2010, and ending December 31, 2010, the contract year commencing January 1, 2011, and ending December 31, 2011, the contract year commencing January 1, 2012, and ending December 31, 2012, and the contract year commencing January 1, 2013, and ending December 31, 2013~~, the board shall offer, for each of such years, the optional coverage as provided in this subsection.

(d) *Additional definitions.*—As used in this subsection, the term:

1. "FHCF" means Florida Hurricane Catastrophe Fund.

2. "FHCF reimbursement premium" means the premium paid by an insurer for its coverage as a mandatory participant in the FHCF, but does not include additional premiums for optional coverages.

3. "Payout multiple" means the number or multiple created by dividing the statutorily defined claims-paying capacity as determined in subparagraph (4)(c)1. by the aggregate reimbursement premiums paid by all insurers estimated or projected as of calendar year-end.

4. "TICL" means the temporary increase in coverage limit.

5. "TICL options" means the temporary increase in coverage options created under this subsection.

6. "TICL insurer" means an insurer that has opted to obtain coverage under the TICL options addendum in addition to the coverage provided to the insurer under its FHCF reimbursement contract.

7. "TICL reimbursement premium" means the premium charged by the fund for coverage provided under the TICL option.

8. "TICL coverage multiple" means the coverage multiple when multiplied by an insurer's reimbursement premium that defines the temporary increase in coverage limit.

9. "TICL coverage" means the coverage for an insurer's losses above the insurer's statutorily determined claims-paying capacity based on the claims-paying limit in subparagraph

(4)(c)1., which an insurer selects as its temporary increase in coverage from the fund under the TICL options selected. A TICL insurer's increased coverage limit options shall be calculated as follows:

a. The board shall calculate and report to each TICL insurer the TICL coverage multiples based on 12 options for increasing the insurer's FHCF coverage limit. Each TICL coverage multiple shall be calculated by dividing $1 billion, $2 billion, $3 billion, $4 billion, $5 billion, $6 billion, $7 billion, $8 billion, $9 billion, $10 billion, $11 billion, or $12 billion by the total estimated aggregate FHCF reimbursement premiums for the 2007-2008 contract year, and the 2008-2009 contract year.

b. For the 2009-2010 contract year, the board shall calculate and report to each TICL insurer the TICL coverage multiples based on 10 options for increasing the insurer's FHCF coverage limit. Each TICL coverage multiple shall be calculated by dividing $1 billion, $2 billion, $3 billion, $4 billion, $5 billion, $6 billion, $7 billion, $8 billion, $9 billion, and $10 billion by the total estimated aggregate FHCF reimbursement premiums for the 2009-2010 contract year.

c. For the 2010-2011 contract year ~~beginning June 1, 2010, and ending December 31, 2010~~, the board shall calculate and report to each TICL insurer the TICL coverage multiples based on eight options for increasing the insurer's FHCF coverage limit. Each TICL coverage multiple shall be calculated by dividing $1 billion, $2 billion, $3 billion, $4 billion, $5 billion, $6 billion, $7 billion, and $8 billion by the total estimated aggregate FHCF reimbursement premiums for the contract year.

d. For the 2011-2012 ~~2011~~ contract year, the board shall

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calculate and report to each TICL insurer the TICL coverage multiples based on six options for increasing the insurer’s FHCF coverage limit. Each TICL coverage multiple shall be calculated by dividing $1 billion, $2 billion, $3 billion, $4 billion, $5 billion, and $6 billion by the total estimated aggregate FHCF reimbursement premiums for the 2011-2012 ~~2011~~ contract year.

e. For the 2012-2013 ~~2012~~ contract year, the board shall calculate and report to each TICL insurer the TICL coverage multiples based on four options for increasing the insurer’s FHCF coverage limit. Each TICL coverage multiple shall be calculated by dividing $1 billion, $2 billion, $3 billion, and $4 billion by the total estimated aggregate FHCF reimbursement premiums for the 2012-2013 ~~2012~~ contract year.

f. For the 2013-2014 ~~2013~~ contract year, the board shall calculate and report to each TICL insurer the TICL coverage multiples based on two options for increasing the insurer’s FHCF coverage limit. Each TICL coverage multiple shall be calculated by dividing $1 billion and $2 billion by the total estimated aggregate FHCF reimbursement premiums for the 2013-2014 ~~2013~~ contract year.

g. The TICL insurer’s increased coverage shall be the FHCF reimbursement premium multiplied by the TICL coverage multiple. In order to determine an insurer’s total limit of coverage, an insurer shall add its TICL coverage multiple to its payout multiple. The total shall represent a number that, when multiplied by an insurer’s FHCF reimbursement premium for a given reimbursement contract year, defines an insurer’s total limit of FHCF reimbursement coverage for that reimbursement contract year.

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10. “TICL options addendum” means an addendum to the reimbursement contract reflecting the obligations of the fund and insurers selecting an option to increase an insurer’s FHCF coverage limit.

(e) *TICL options addendum.*—

1. The TICL options addendum shall provide for reimbursement of TICL insurers for covered events occurring during the 2009-2010, 2010-2011, 2011-2012, 2012-2013, and 2013-2014 contract years ~~between June 1, 2007, and May 31, 2008, between June 1, 2008, and May 31, 2009, between June 1, 2009, and May 31, 2010, between June 1, 2010, and December 31, 2010, between January 1, 2011, and December 31, 2011, between January 1, 2012, and December 31, 2012, or between January 1, 2013, and December 31, 2013,~~ in exchange for the TICL reimbursement premium paid into the fund under paragraph (f) based on the TICL coverage available and selected for each respective contract year. Any insurer writing covered policies has the option of selecting an increased limit of coverage under the TICL options addendum and shall select such coverage at the time that it executes the FHCF reimbursement contract.

2. The TICL addendum shall contain a promise by the board to reimburse the TICL insurer for 45 percent, 75 percent, or 90 percent of its losses from each covered event in excess of the insurer’s retention, plus 5 percent of the reimbursed losses to cover loss adjustment expenses. The percentage shall be the same as the coverage level selected by the insurer under paragraph (4)(b).

3. The TICL addendum shall provide that reimbursement amounts shall not be reduced by reinsurance paid or payable to

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the insurer from other sources.

4. The priorities, schedule, and method of reimbursements under the TICL addendum shall be the same as provided under subsection (4).

(f) *TICL reimbursement premiums.*—Each TICL insurer shall pay to the fund, in the manner and at the time provided in the reimbursement contract for payment of reimbursement premiums, a TICL reimbursement premium determined as specified in subsection (5), except that a cash build-up factor does not apply to the TICL reimbursement premiums. However, the TICL reimbursement premium shall be increased in the 2009-2010 contract year ~~2009-2010~~ by a factor of two, in the 2010-2011 contract year ~~beginning June 1, 2010, and ending December 31, 2010,~~ by a factor of three, in the 2011-2012 ~~2011~~ contract year by a factor of four, in the 2012-2013 ~~2012~~ contract year by a factor of five, and in the 2013-2014 ~~2013~~ contract year by a factor of six.

(g) *Effect on claims-paying capacity of the fund.*—For the 2009-2010, 2010-2011, 2011-2012, 2012-2013, and 2013-2014 contract years ~~terms commencing June 1, 2007, June 1, 2008, June 1, 2009, June 1, 2010, January 1, 2011, January 1, 2012, and January 1, 2013~~, the program created by this subsection shall increase the claims-paying capacity of the fund as provided in subparagraph (4)(c)1. by an amount not to exceed $12 billion and shall depend on the TICL coverage options available and selected for the specified contract year and the number of insurers that select the TICL optional coverage. The additional capacity shall apply only to the additional coverage provided under the TICL options and shall not otherwise affect any insurer’s

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reimbursement from the fund if the insurer chooses not to select the temporary option to increase its limit of coverage under the FHCF.

(18) FACILITATION OF INSURERS' PRIVATE CONTRACT NEGOTIATIONS BEFORE THE START OF THE HURRICANE SEASON.—

(a) In addition to the legislative findings and intent provided elsewhere in this section, the Legislature finds that:

1.a. Because a regular session of the Legislature begins approximately 3 months before the start of a contract year and ends approximately 1 month before the start of a contract year, participants in the fund always face the possibility that legislative actions will change the coverage provided or offered by the fund with only a few days or weeks of advance notice.

b. The timing issues described in sub-subparagraph a. can create uncertainties and disadvantages for the residential property insurers that are required to participate in the fund when such insurers negotiate for the procurement of private reinsurance or other sources of capital.

c. Providing participating insurers with a greater degree of certainty regarding the coverage provided or offered by the fund and more time to negotiate for the procurement of private reinsurance or other sources of capital will enable the residential property insurance market to operate with greater stability.

d. Increased stability in the residential property insurance market serves a primary purpose of the fund and benefits Florida consumers by enabling insurers to operate more economically. In years when reinsurance and capital markets are experiencing a capital shortage, the last-minute rush by insurers only weeks before the start of the hurricane season to procure adequate coverage in order to meet their capital requirements can result in higher costs that are passed on to Florida consumers. However, if more time is available, residential property insurers should experience greater competition for their business with a corresponding beneficial effect for Florida consumers.

2. It is the intent of the Legislature to provide insurers with the terms and conditions of the reimbursement contract well in advance of the insurers' need to finalize their procurement of private reinsurance or other sources of capital, and thereby improve insurers' negotiating position with reinsurers and other sources of capital.

3. It is also the intent of the Legislature that the board publish the fund's maximum statutory limit of coverage and the fund's total retention early enough that residential property insurers can have the opportunity to better estimate their coverage from the fund.

(b) The board shall adopt the reimbursement contract for a particular contract year by February 1 of the immediately preceding contract year. However, the reimbursement contract shall be adopted as soon as possible in advance of the 2010-2011 contract year.

(c) Insurers writing covered policies shall execute the reimbursement contract by March 1 of the immediately preceding contract year and the contract shall have an effective date as defined in paragraph (2)(o).

(d) The board shall publish in the Florida Administrative Weekly the maximum statutory adjusted capacity for the mandatory

<u>coverage for a particular contract year, the maximum statutory coverage for any optional coverage for the particular contract year, and the aggregate fund retention used to calculate individual insurer’s retention multiples for the particular contract year no later than January 1 of the immediately preceding contract year.</u>

Section 2. This act shall take effect upon becoming a law.