

By Senator Braynon

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1 A bill to be entitled
2 An act relating to the Florida Hurricane Catastrophe
3 Fund; amending s. 215.555, F.S.; redefining the term
4 "retention"; revising the calculation for retention
5 multiples; providing that the aggregate retention
6 level may not exceed a specified amount; reducing the
7 actual claims-paying capacity of the fund by specified
8 amounts during a certain period until the claims-
9 paying capacity of the fund is a specified amount;
10 requiring certain amounts to be reserved to pay
11 specified claims; requiring the board's reimbursement
12 contract with insurers to require the State Board of
13 Administration to pay the initial amount of
14 reimbursement within a specified amount of time after
15 receiving the reports of reimbursable losses;
16 providing an effective date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Paragraph (e) of subsection (2) and subsection
21 (4) of section 215.555, Florida Statutes, are amended to read:

22 215.555 Florida Hurricane Catastrophe Fund.—

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

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

27 1. The board shall calculate and report to each insurer the
28 retention multiples for each ~~that year. For the contract year.~~
29 ~~beginning June 1, 2005, the retention multiple shall be equal to~~

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30 ~~\$4.5 billion divided by the total estimated reimbursement~~
31 ~~premium for the contract year; for subsequent years, The~~
32 retention multiple shall be equal to \$4.5 billion, adjusted
33 based upon the reported exposure for the contract year occurring
34 2 years before the particular contract year to reflect the
35 percentage growth in exposure to the fund for covered policies
36 since 2004, divided by the total estimated reimbursement premium
37 for the contract year. Total reimbursement premium ~~for purposes~~
38 ~~of the calculation under this subparagraph~~ shall be estimated
39 using the assumption that all insurers have selected the 90-
40 percent coverage level. The aggregate retention level may not
41 exceed \$5 billion.

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

52 3. An insurer shall determine its provisional retention by
53 multiplying its provisional reimbursement premium by the
54 applicable adjusted retention multiple and shall determine its
55 actual retention by multiplying its actual reimbursement premium
56 by the applicable adjusted retention multiple.

57 4. For insurers who experience multiple covered events
58 causing loss during the contract year, beginning June 1, 2005,

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59 each insurer's full retention shall be applied to each of the
60 covered events causing the two largest losses for that insurer.
61 For each other covered event resulting in losses, the insurer's
62 retention shall be reduced to one-third of the full retention.
63 The reimbursement contract must ~~shall~~ provide for the
64 reimbursement of losses for each covered event based on the full
65 retention with adjustments made to reflect the reduced
66 retentions on or after January 1 of the contract year provided
67 the insurer reports its losses as specified in the reimbursement
68 contract.

69 (4) REIMBURSEMENT CONTRACTS.—

70 (a) The board shall enter into a contract with each insurer
71 writing covered policies in this state to provide to the insurer
72 the reimbursement described in paragraphs (b) and (d), in
73 exchange for the reimbursement premium paid into the fund under
74 subsection (5). As a condition of doing business in this state,
75 each ~~such~~ insurer shall enter into such a contract.

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

81 2. The insurer must elect one of the percentage coverage
82 levels specified in this paragraph and may, upon renewal of a
83 reimbursement contract, elect a lower percentage coverage level
84 if no revenue bonds issued under subsection (6) after a covered
85 event are outstanding, or elect a higher percentage coverage
86 level, regardless of whether the ~~or not~~ revenue bonds are
87 outstanding. All members of an insurer group must elect the same

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88 percentage coverage level. ~~A Any~~ joint underwriting association,
89 risk apportionment plan, or other entity created under s.
90 627.351 must elect the 90-percent coverage level.

91 3. The contract must ~~shall~~ provide that reimbursement
92 amounts may ~~shall~~ not be reduced by reinsurance paid or payable
93 to the insurer from other sources.

94 (c)1. The contract must ~~shall~~ also provide that the
95 obligation of the board with respect to all contracts covering a
96 particular contract year may ~~shall~~ not exceed the actual claims-
97 paying capacity of the fund up to a limit of \$17 billion for
98 that contract year, unless the board determines that there is
99 sufficient estimated claims-paying capacity to provide \$17
100 billion of capacity for the current contract year and an
101 additional \$17 billion of capacity for subsequent contract
102 years. If the board makes such a determination, the estimated
103 claims-paying capacity for the particular contract year shall be
104 determined by adding to the \$17 billion limit one-half of the
105 fund's estimated claims-paying capacity in excess of \$34
106 billion. However, the dollar growth in the limit may not
107 increase in any year by an amount greater than the dollar growth
108 of the balance of the fund as of December 31, less any premiums
109 or interest attributable to optional coverage, as defined by
110 rule which occurred over the prior calendar year.

111 2. The actual claims-paying capacity for the first covered
112 event in a contract year shall be reduced by \$1 billion per
113 contract year beginning with the 2016 contract year and by \$1
114 billion each subsequent contract year until the claims-paying
115 capacity of the first covered event in a contract year is \$8
116 billion.

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117 3. The \$1 billion reduction in the claims-paying capacity
118 for the first covered event in a contract year must be reserved
119 to pay claims for a second covered event in the same contract
120 year and treated as an automatic reinstatement of the first
121 event covered by the fund. Each \$1 billion annual amount will be
122 applied starting at the same retention as the first event and
123 build upward until such time as the fund covers an \$8 billion
124 event with an automatic reinstatement equal to \$8 billion.

125 4. In May and October of the contract year, the board shall
126 publish in the Florida Administrative Register a statement of
127 the fund's estimated borrowing capacity, the fund's estimated
128 claims-paying capacity, and the projected balance of the fund as
129 of December 31. After the end of each calendar year, the board
130 shall notify insurers of the estimated borrowing capacity,
131 estimated claims-paying capacity, and the balance of the fund as
132 of December 31 to provide insurers with data necessary to assist
133 them in determining their retention and projected payout from
134 the fund for loss reimbursement purposes. In conjunction with
135 the development of the premium formula, as provided for in
136 subsection (5), the board shall publish factors or multiples
137 that assist insurers in determining their retention and
138 projected payout for the next contract year. For all regulatory
139 and reinsurance purposes, an insurer may calculate its projected
140 payout from the fund as its share of the total fund premium for
141 the current contract year multiplied by the sum of the projected
142 balance of the fund as of December 31 and the estimated
143 borrowing capacity for that contract year as reported under this
144 subparagraph.

145 (d)1. For purposes of determining potential liability and

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146 to aid in the sound administration of the fund, the contract
147 must ~~shall~~ require each insurer to report the ~~such~~ insurer's
148 losses from each covered event on an interim basis, as directed
149 by the board. The contract must ~~shall~~ require the insurer to
150 report to the board no later than December 31 of each year, and
151 quarterly thereafter, its reimbursable losses from covered
152 events for the year. The contract must ~~shall~~ require the board
153 to determine and pay, as soon as practicable and no later than
154 15 days after receiving the ~~these~~ reports of reimbursable
155 losses, the initial amount of reimbursement due and adjustments
156 to this amount based on later loss information. The adjustments
157 to reimbursement amounts must ~~shall~~ require the board to pay, or
158 the insurer to return, amounts reflecting the most recent
159 calculation of losses.

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

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

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175 reflect the estimated claims-paying capacity.

176 (e)1. Except as provided in subparagraphs 2. and 3., the
177 contract must ~~shall~~ provide that if an insurer demonstrates to
178 the board that it is likely to qualify for reimbursement under
179 the contract, and demonstrates to the board that the immediate
180 receipt of moneys from the board is likely to prevent the
181 insurer from becoming insolvent, the board shall advance the
182 insurer, at market interest rates, the amounts necessary to
183 maintain the solvency of the insurer, up to 50 percent of the
184 board's estimate of the reimbursement due the insurer. The
185 insurer's reimbursement shall be reduced by an amount equal to
186 the amount of the advance and interest thereon.

187 2. With respect only to an entity created under s. 627.351,
188 the contract must ~~shall~~ also provide that the board may, upon
189 application by such entity, advance to such entity, at market
190 interest rates, up to 90 percent of the lesser of:

191 a. The board's estimate of the amount of reimbursement due
192 to such entity; or

193 b. The entity's share of the actual reimbursement premium
194 paid for that contract year, multiplied by the currently
195 available liquid assets of the fund. In order for the entity to
196 qualify for an advance under this subparagraph, the entity must
197 demonstrate to the board that the advance is essential to allow
198 the entity to pay claims for a covered event and the board must
199 determine that the fund's assets are sufficient and are
200 sufficiently liquid to allow the board to make an advance to the
201 entity and still fulfill the board's reimbursement obligations
202 to other insurers. The entity's final reimbursement for any
203 contract year in which an advance has been made under this

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204 subparagraph must be reduced by an amount equal to the amount of
205 the advance and any interest on such advance. In order to
206 determine what amounts, if any, are due the entity, the board
207 may require the entity to report its exposure and its losses at
208 any time to determine retention levels and reimbursements
209 payable.

210 3. The contract must ~~shall~~ also provide specifically and
211 solely with respect to any limited apportionment company under
212 s. 627.351(2)(b)3. that the board may, upon application by such
213 company, advance to such company the amount of the estimated
214 reimbursement payable to such company as calculated pursuant to
215 paragraph (d), at market interest rates, if the board determines
216 that the fund's assets are sufficient and are sufficiently
217 liquid to permit the board to make an advance to such company
218 and at the same time fulfill its reimbursement obligations to
219 the insurers that are participants in the fund. Such company's
220 final reimbursement for any contract year in which an advance
221 pursuant to this subparagraph has been made shall be reduced by
222 an amount equal to the amount of the advance and interest
223 thereon. In order to determine what amounts, if any, are due to
224 such company, the board may require such company to report its
225 exposure and its losses at such times as may be required to
226 determine retention levels and loss reimbursements payable.

227 (f) In order to ensure that insurers have properly reported
228 the insured values on which the reimbursement premium is based
229 and to ensure that insurers have properly reported the losses
230 for which reimbursements have been made, the board shall
231 inspect, examine, and verify the records of each insurer's
232 covered policies at such times as the board deems appropriate

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233 and according to standards established by rule for the specific
234 purpose of validating the accuracy of exposures and losses
235 required to be reported under the terms and conditions of the
236 reimbursement contract. The costs of the examinations shall be
237 borne by the board. However, in order to remove any incentive
238 for an insurer to delay preparations for an examination, the
239 board shall be reimbursed by the insurer for any examination
240 expenses incurred in addition to the usual and customary costs
241 of the examination, which additional expenses were incurred as a
242 result of an insurer's failure, despite proper notice, to be
243 prepared for the examination or as a result of an insurer's
244 failure to provide requested information while the examination
245 is in progress. If the board finds any insurer's records or
246 other necessary information to be inadequate or inadequately
247 posted, recorded, or maintained, the board may employ experts to
248 reconstruct, rewrite, record, post, or maintain such records or
249 information, at the expense of the insurer being examined, if
250 such insurer has failed to maintain, complete, or correct such
251 records or deficiencies after the board has given the insurer
252 notice and a reasonable opportunity to do so. Any information
253 contained in an examination report, which information is
254 described in s. 215.557, is confidential and exempt from the
255 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
256 Constitution, as provided in s. 215.557. Nothing in this
257 paragraph expands the exemption in s. 215.557.

258 (g) The contract must ~~shall~~ provide that in the event of
259 the insolvency of an insurer, the fund shall pay directly to the
260 Florida Insurance Guaranty Association for the benefit of
261 Florida policyholders of the insurer the net amount of all

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262 reimbursement moneys owed to the insurer. As used in this
263 paragraph, the term "net amount of all reimbursement moneys"
264 means that amount which remains after reimbursement for:

265 1. Preliminary or duplicate payments owed to private
266 reinsurers or other inuring reinsurance payments to private
267 reinsurers that satisfy statutory or contractual obligations of
268 the insolvent insurer attributable to covered events to such
269 reinsurers; or

270 2. Funds owed to a bank or other financial institution to
271 cover obligations of the insolvent insurer under a credit
272 agreement that assists the insolvent insurer in paying claims
273 attributable to covered events.

274
275 The private reinsurers, banks, or other financial institutions
276 shall be reimbursed or otherwise paid prior to payment to the
277 Florida Insurance Guaranty Association, notwithstanding any law
278 to the contrary. The guaranty association shall pay all claims
279 up to the maximum amount permitted by chapter 631; thereafter,
280 any remaining moneys shall be paid pro rata to claims not fully
281 satisfied. This paragraph does not apply to a joint underwriting
282 association, risk apportionment plan, or other entity created
283 under s. 627.351.

284 Section 2. This act shall take effect July 1, 2015.