A bill to be entitled

An act relating to the Florida Hurricane Catastrophe Fund; amending s. 215.555, F.S.; defining and redefining terms; revising the reimbursements that the State Board of Administration must make to an insurer to include 25 percent and 60 percent of the insurer's losses; revising the obligation of the board with respect to all contracts covering a particular contract year; revising the amount of charges that the reimbursement premium must include; requiring the money to be used by the Division of Emergency Management for certain purposes; authorizing certain temporary rapid cash build-up factors to be used if the fund balance drops below a specified amount; authorizing the board to direct the Office of Insurance Regulation to levy an emergency assessment on specified premiums to cure certain deficits in the fund; amending ss. 624.424 and 627.715, F.S.; correcting cross-references; providing an effective date.

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

Section 1. Subsection (2) of section 215.555, Florida Statutes, is reordered and amended, and paragraphs (b) and (c) of subsection (4), paragraph (b) of subsection (5), paragraph (b) of subsection (6), and paragraph (c) of subsection (16) of that section are amended, to read:

215.555 Florida Hurricane Catastrophe Fund.—

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

(a) ~~(m)~~ "Actual claims-paying capacity" means the sum of the balance of the fund as of December 31 of a contract year, plus any reinsurance purchased by the fund, plus the amount the board is able to raise through the issuance of revenue bonds under subsection (6).

(b) ~~(a)~~ "Actuarially indicated" means, with respect to premiums paid by insurers for reimbursement provided by the fund, an amount determined according to principles of actuarial science to be adequate, but not excessive, in the aggregate, to pay current and future obligations and expenses of the fund, including additional amounts if needed to pay debt service on revenue bonds issued under this section and to provide required debt service coverage in excess of the amounts required to pay actual debt service on revenue bonds issued under subsection (6), and determined according to principles of actuarial science to reflect each insurer's relative exposure to hurricane losses.

(c) "Board" means the State Board of Administration created by and referred to in s. 4, Art. IV of the State Constitution.

(d) ~~(g)~~ "Bond" means any bond, debenture, note, or other evidence of financial indebtedness issued under this section.

(e) ~~(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.

(f) ~~(n)~~ "Corporation" means the State Board of Administration Finance Corporation created in paragraph (6)(d).

(g) ~~(b)~~ "Covered event" means any one storm declared to be a hurricane by the National Hurricane Center, which storm causes insured losses in this state.

(h) ~~(c)~~ "Covered policy" means any insurance policy covering residential property in this state, including, but not limited to, any homeowner, mobile home owner, farm owner, condominium association, condominium unit owner, tenant, or apartment building policy, or any other policy covering a residential structure or its contents issued by any authorized insurer, including a commercial self-insurance fund holding a certificate of authority issued by the Office of Insurance Regulation under s. 624.462, the Citizens Property Insurance Corporation, and any joint underwriting association or similar entity created under law. The term "covered policy" includes any collateral protection insurance policy covering personal residences which protects both the borrower's and the lender's financial interests, in an amount at least equal to the coverage for the dwelling in place under the lapsed homeowner's policy, if such policy can be accurately reported as required in subsection (5). Additionally, covered policies include policies covering the peril of wind removed from the Florida Residential Property and Casualty Joint Underwriting Association or from the Citizens Property Insurance Corporation, created under s. 627.351(6), or from the Florida Windstorm Underwriting Association, created under s. 627.351(2), by an authorized insurer under the terms and conditions of an executed assumption agreement between the authorized insurer and such association or Citizens Property Insurance Corporation. Each assumption agreement between the association and such authorized insurer or Citizens Property Insurance Corporation must be approved by the Office of Insurance Regulation before the effective date of the assumption, and the Office of Insurance Regulation must provide written notification to the board within 15 working days after such approval. "Covered policy" does not include any policy that excludes wind coverage or hurricane coverage or any reinsurance agreement and does not include any policy otherwise meeting this definition which is issued by a surplus lines insurer or a reinsurer. All commercial residential excess policies and all deductible buy-back policies that, based on sound actuarial principles, require individual ratemaking shall be excluded by rule if the actuarial soundness of the fund is not jeopardized. For this purpose, the term "excess policy" means a policy that provides insurance protection for large commercial property risks and that provides a layer of coverage above a primary layer insured by another insurer.

(i) ~~(h)~~ "Debt service" means the amount required in any fiscal year to pay the principal of, redemption premium, if any, and interest on revenue bonds and any amounts required by the terms of documents authorizing, securing, or providing liquidity for revenue bonds necessary to maintain in effect any such liquidity or security arrangements.

(j) ~~(i)~~ "Debt service coverage" means the amount, if any, required by the documents under which revenue bonds are issued, which amount is to be received in any fiscal year in excess of the amount required to pay debt service for such fiscal year.

(k) ~~(l)~~ "Estimated claims-paying capacity" means the sum of the projected year-end balance of the fund as of December 31 of a contract year, plus any reinsurance purchased by the fund, plus the board's estimate of the board's borrowing capacity.

(l) "Fund" means the Florida Hurricane Catastrophe Fund.

(m) ~~(j)~~ "Local government" means a unit of general purpose local government as defined in s. 218.31(2).

(n) ~~(d)~~ "Losses" means all incurred losses under covered policies, including additional living expenses not to exceed 40 percent of the insured value of a residential structure or its contents and amounts paid as fees on behalf of or inuring to the benefit of a policyholder. The term does not include:

1. Losses for fair rental value, loss of rent or rental income, or business interruption losses;

2. Losses under liability coverages;

3. Property losses that are proximately caused by any peril other than a covered event, including, but not limited to, fire, theft, flood or rising water, or windstorm that does not constitute a covered event;

4. Amounts paid as the result of a voluntary expansion of coverage by the insurer, including, but not limited to, a waiver of an applicable deductible;

5. Amounts paid to reimburse a policyholder for condominium association or homeowners' association loss assessments or under similar coverages for contractual liabilities;

6. Amounts paid as bad faith awards, punitive damage awards, or other court-imposed fines, sanctions, or penalties;

7. Amounts in excess of the coverage limits under the covered policy; or

8. Allocated or unallocated loss adjustment expenses.

(o) ~~(k)~~ "Pledged revenues" means all or any portion of revenues to be derived from reimbursement premiums under subsection (5) or from emergency assessments under paragraph (6)(b), as determined by the board.

(p) ~~(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 the particular 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.

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 60-percent coverage level, the retention multiple is 150 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. For insurers electing

the 25-percent coverage level, the retention multiple is 360 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.

(q) "Statutory capacity" means the total obligation of the board with respect to all contracts covering a particular contract year as established in subparagraph (4)c.1.

(r) ~~(f)~~ "Workers' compensation" includes both workers' compensation and excess workers' compensation insurance.

(4) REIMBURSEMENT CONTRACTS.—

(b)1. The contract shall contain a promise by the board to reimburse the insurer for 25 percent, 45 percent, 60 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.

(c)1. Effective June 1, 2019, the contract shall also provide that the obligation of the board with respect to all contracts covering a particular contract year shall be the lesser of $17 billion or the aggregate reimbursement capacity purchased by participating insurers ~~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, 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 Register 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.

(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 <u>rate</u> 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. <u>Beginning in the 2018-2019 contract year, the reimbursement premium must include an additional 10-percent charge. The money shall be used by the Division of Emergency Management to fund and administer a mitigation program for wind and water resistance improvements to residential structures. If the fund balance is less than $10</u>

billion at the end of a contract year, a 5-percent temporary rapid cash build-up factor may be reinstated, in addition to the reimbursement premium charges, for the next contract year. Such build-up factor must increase by 5 percent each subsequent contract year until it reaches 15 percent and must continue at 15 percent per contract year until the fund balance reaches $10 billion ~~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, the factor is 10 percent. For the 2011-2012 contract year, the factor is 15 percent. For the 2012-2013 contract year, the factor is 20 percent. For the 2013-2014 contract year and thereafter, the factor is 25 percent~~. The rate 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.

(6) REVENUE BONDS.—

(b) Emergency assessments.—

1. If the board determines that the amount of revenue

produced under subsection (5) is insufficient to fund the obligations, costs, and expenses of the fund and the corporation, including<u>, but not limited to,</u> repayment of revenue bonds and that portion of the debt service coverage not met by reimbursement premiums, the board shall direct the Office of Insurance Regulation to levy, by order, an emergency assessment on direct premiums for all property and casualty lines of business in this state, including property and casualty business of surplus lines insurers regulated under part VIII of chapter 626, but not including any workers' compensation premiums or medical malpractice premiums. <u>The board may direct the Office of Insurance Regulation to levy, by order, an emergency assessment on direct premiums for all property and casualty lines of business in this state, including property and casualty business of surplus lines insurers regulated under part VIII of chapter 626, but not including any workers' compensation premiums or medical malpractice premiums, to cure any deficits needed to meet the fund's claim-paying obligations to participating insurers.</u> As used in this subsection, the term "property and casualty business" includes all lines of business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required of authorized insurers by s. 624.424 and any rule adopted under this section, except for those lines identified as accident and health insurance and except for policies written under the National Flood Insurance Program. The assessment shall be specified as a percentage of direct written premium and is subject to annual adjustments by the board in order to meet debt obligations. The same percentage applies to all policies in lines of business subject to the assessment issued or renewed during the 12-month period beginning on the effective date of the assessment.

2. A premium is not subject to an annual assessment under this paragraph in excess of 6 percent of premium with respect to obligations arising out of losses attributable to any one contract year, and a premium is not subject to an aggregate annual assessment under this paragraph in excess of 10 percent of premium. An annual assessment under this paragraph continues as long as the revenue bonds issued with respect to which the assessment was imposed are outstanding, including any bonds the proceeds of which were used to refund the revenue bonds, unless adequate provision has been made for the payment of the bonds under the documents authorizing issuance of the bonds.

3. Emergency assessments shall be collected from policyholders. Emergency assessments shall be remitted by insurers as a percentage of direct written premium for the preceding calendar quarter as specified in the order from the Office of Insurance Regulation. The office shall verify the accurate and timely collection and remittance of emergency assessments and shall report the information to the board in a form and at a time specified by the board. Each insurer

collecting assessments shall provide the information with respect to premiums and collections as may be required by the office to enable the office to monitor and verify compliance with this paragraph.

4. With respect to assessments of surplus lines premiums, each surplus lines agent shall collect the assessment at the same time as the agent collects the surplus lines tax required by s. 626.932, and the surplus lines agent shall remit the assessment to the Florida Surplus Lines Service Office created by s. 626.921 at the same time as the agent remits the surplus lines tax to the Florida Surplus Lines Service Office. The emergency assessment on each insured procuring coverage and filing under s. 626.938 shall be remitted by the insured to the Florida Surplus Lines Service Office at the time the insured pays the surplus lines tax to the Florida Surplus Lines Service Office. The Florida Surplus Lines Service Office shall remit the collected assessments to the fund or corporation as provided in the order levied by the Office of Insurance Regulation. The Florida Surplus Lines Service Office shall verify the proper application of such emergency assessments and shall assist the board in ensuring the accurate and timely collection and remittance of assessments as required by the board. The Florida Surplus Lines Service Office shall annually calculate the aggregate written premium on property and casualty business, other than workers' compensation and medical malpractice,

procured through surplus lines agents and insureds procuring coverage and filing under s. 626.938 and shall report the information to the board in a form and at a time specified by the board.

5. Any assessment authority not used for a particular contract year may be used for a subsequent contract year. If, for a subsequent contract year, the board determines that the amount of revenue produced under subsection (5) is insufficient to fund the obligations, costs, and expenses of the fund and the corporation, including, but not limited to, repayment of revenue bonds and that portion of the debt service coverage not met by reimbursement premiums, the board shall direct the Office of Insurance Regulation to levy an emergency assessment up to an amount not exceeding the amount of unused assessment authority from a previous contract year or years, plus an additional 4 percent provided that the assessments in the aggregate do not exceed the limits specified in subparagraph 2. The board may direct the Office of Insurance Regulation to levy, by order, an emergency assessment on direct premiums for all property and casualty lines of business in this state, including property and casualty business of surplus lines insurers regulated under part VIII of chapter 626, but not including any workers' compensation premiums or medical malpractice premiums, to cure any deficits needed to meet the fund's claim-paying obligations to participating insurers.

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

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

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

9. If a surplus lines insured or an insured who has procured coverage and filed under s. 626.938 is entitled to the

return of an unearned premium, the Florida Surplus Lines Service Office shall provide a credit or refund to the agent or such insured for the collected assessment attributable to the unearned premium before remitting the emergency assessment collected to the fund or corporation.

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

(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 set forth ~~defined~~ in paragraph (2)(e) ~~(c)~~.

Section 2. Subsection (10) of section 624.424, Florida Statutes, is amended to read:

624.424 Annual statement and other information.—

(10) Each insurer or insurer group doing business in this state shall file on a quarterly basis in conjunction with financial reports required by paragraph (1)(a) a supplemental report on an individual and group basis on a form prescribed by the commission with information on personal lines and commercial lines residential property insurance policies in this state. The supplemental report shall include separate information for personal lines property policies and for commercial lines property policies and totals for each item specified, including premiums written for each of the property lines of business as described in ss. 212.555(2)(h) ~~215.555(2)(c)~~ and 627.351(6)(a).

The report shall include the following information for each county on a monthly basis:

(a) Total number of policies in force at the end of each month.

(b) Total number of policies canceled.

(c) Total number of policies nonrenewed.

(d) Number of policies canceled due to hurricane risk.

(e) Number of policies nonrenewed due to hurricane risk.

(f) Number of new policies written.

(g) Total dollar value of structure exposure under policies that include wind coverage.

(h) Number of policies that exclude wind coverage.

Section 3. Subsection (7) of section 627.715, Florida Statutes, is amended to read:

627.715 Flood insurance.—An authorized insurer may issue an insurance policy, contract, or endorsement providing personal lines residential coverage for the peril of flood or excess coverage for the peril of flood on any structure or the contents of personal property contained therein, subject to this section. This section does not apply to commercial lines residential or commercial lines nonresidential coverage for the peril of flood. An insurer may issue flood insurance policies, contracts, endorsements, or excess coverage on a standard, preferred, customized, flexible, or supplemental basis.

(7) The Florida Hurricane Catastrophe Fund may not provide

reimbursement for losses proximately caused by the peril of flood, including losses that occur during a covered event as defined in s. 215.555(2)(g) ~~215.555(2)(b)~~.

Section 4. This act shall take effect July 1, 2018.