CHAPTER 2004-27

Committee Substitute for Committee Substitute for Committee Substitute for Committee Substitute for Senate Bill No. 2488

An act relating to the Florida Hurricane Catastrophe Fund; amending s. 215.555, F.S.; redefining and defining terms; providing for the State Board of Administration to specify interest due on delinquent remittances; revising conditions of, amounts of, and procedures relating to reimbursement contracts; revising maximum rates of, procedures relating to, and types of insurance subject to emergency assessments; revising provisions relating to reinsurance; deleting expired provisions; requiring insurers to make a rate filing or certification for policies covered under the act; providing transitional provisions; providing application; providing criteria, requirements, and limitations; providing effective dates.

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

Section 1. Paragraphs (c), (d), (e), and (k) of subsection (2) and subsections (3), (4), (7), and (16) of section 215.555, Florida Statutes, are amended, and paragraph (n) is added to subsection (2) of that section, to read:

215.555 Florida Hurricane Catastrophe Fund.—

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

(c) "Covered policy" means any insurance policy covering residential property in this state, including, but not limited to, any homeowner's, mobile home owner's, farm owner's, condominium association, condominium unit owner's, tenant's, or apartment building policy, or any other policy covering a residential structure or its contents issued by any authorized insurer, including the Citizens Property Insurance Corporation and any joint underwriting association or similar entity created pursuant to 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 pursuant to s. 627.351(6), or from the Florida Windstorm Underwriting Association, created pursuant to 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 Florida Department of Insurance or~~ the Office of Insurance Regulation prior to the effective date of the assumption, and ~~the Department of~~

~~Insurance or 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.

(d) "Losses" means direct incurred losses under covered policies, which shall include losses for additional living expenses not to exceed 40 ~~20~~ percent of the insured value of a ~~mobile homes or personal~~ residential structure or its ~~structures and 40 percent of the insured value of~~ contents ~~covered under a tenant's policy or a condominium unit owner's policy~~ and shall exclude loss adjustment expenses. "Losses" does not include losses for fair rental value, loss of use, ~~associated with personal and commercial residential exposures~~ or business interruption losses ~~associated with commercial residential exposures~~.

(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, 1995, the retention multiple shall be equal to $3 billion divided by the total estimated reimbursement premium for the contract year; for subsequent years, the retention multiple shall be equal to $3 billion, 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 1998, 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 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.

(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) ~~subparagraph (6)(a)3.~~, as determined by the board.

(n) "Corporation" means the Florida Hurricane Catastrophe Fund Finance Corporation created in paragraph (6)(d).

(3) FLORIDA HURRICANE CATASTROPHE FUND CREATED.—There is created the Florida Hurricane Catastrophe Fund to be administered by the State Board of Administration. Moneys in the fund may not be expended, loaned, or appropriated except to pay obligations of the fund arising out of reimbursement contracts entered into under subsection (4), payment of debt service on revenue bonds issued under subsection (6), costs of the mitigation program under subsection (7), costs of procuring reinsurance, and costs of administration of the fund. The board shall invest the moneys in the fund pursuant to ss. 215.44-215.52. Except as otherwise provided in this section, earnings from all investments shall be retained in the fund. The board may employ or contract with such staff and professionals as the board deems necessary for the administration of the fund. The board may adopt such rules as are reasonable and necessary to implement this section and shall specify interest due on any delinquent remittances, which interest may not exceed the fund's rate of return plus 5 percent. Such rules must conform to the Legislature's specific intent in establishing the fund as expressed in subsection (1), must enhance the fund's potential ability to respond to claims for covered events, must contain general provisions so that the rules can be applied with reasonable flexibility so as to accommodate insurers in situations of an unusual nature or where undue hardship may result, except that such flexibility may not in any way impair, override, supersede, or constrain the public purpose of the fund, and must be consistent with sound insurance practices. The board may, by rule, provide for the exemption from subsections (4) and (5) of insurers writing covered policies with less than $10 million ~~$500,000~~ in aggregate exposure for covered policies~~, which exposure results in a de minimis reimbursement premium,~~ if the exemption does not affect the actuarial soundness of the fund.

(4) REIMBURSEMENT CONTRACTS.—

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

(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; ~~however, recoveries from such other sources, taken together with reimbursements under the contract, may not exceed 100 percent of the insurer's losses from covered events. If such recoveries and reimbursements exceed 100 percent of the insurer's losses from covered events, and if there is no agreement between the insurer and the reinsurer to the contrary, any amount in excess of 100 percent of the insurer's losses shall be returned to the fund.~~

(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 $11 billion for that contract year, unless the board determines that there is sufficient estimated claims-paying capacity to provide $11 billion of capacity for the current contract year and an additional $11 billion of capacity for subsequent contract years. Upon such determination being made, the estimated claims-paying capacity for the current contract year shall be determined by adding to the $11 billion limit one-half of the fund's estimated claims-paying capacity in excess of $22 billion.

2. In May before the start of the upcoming contract year and in October during the contract year, the board shall publish in the Florida Administrative Weekly a statement of the fund's estimated borrowing 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 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. ~~The contract shall require the board to annually notify insurers of the fund's estimated borrowing capacity for the next contract year, the projected year-end balance of the fund, and the insurer's estimated share of total reimbursement premium to be paid to the fund. 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 year-end fund balance and the estimated borrowing capacity for that contract year as reported under this paragraph. In May and October of each year, the board shall publish in the Florida Administrative Weekly a statement of the fund's estimated borrowing capacity and the projected year-end balance of the fund for the current contract year.~~

(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:

a. First reimburse insurers writing covered policies, which insurers are in full compliance with this section and have petitioned the Office of Insurance Regulation and qualified as limited apportionment companies under s. 627.351(2)(b)3. The amount of such reimbursement shall be the lesser of $10 million or an amount equal to 10 times the insurer's reimbursement premium for the current year. The amount of reimbursement paid under this sub-subparagraph may not exceed the full amount of reimbursement promised in the reimbursement contract. This sub-subparagraph does not apply with respect to any contract year in which the year-end projected cash balance of the fund, exclusive of any bonding capacity of the fund, exceeds $2 billion. Only one member of any insurer group may receive reimbursement under this sub-subparagraph.

b. Next 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; provided, entities created pursuant to s. 627.351 shall be further reimbursed in accordance with sub-subparagraph c.

c. Thereafter, establish~~, based on reimbursable losses,~~ the prorated reimbursement level at the highest level for which any remaining fund balance or bond proceeds are sufficient to reimburse entities created pursuant to s. 627.351 based on reimbursable ~~for~~ losses exceeding the amounts payable pursuant to sub-subparagraph b. for the current contract year.

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

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

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

b. The entity's share of the actual reimbursement premium paid for that contract year, multiplied by the currently available liquid assets of the fund. In order for the entity to qualify for an advance under this subparagraph, the entity must demonstrate to the board that the advance is essential to allow the entity to pay claims for a covered event and the board must determine that the fund's assets are sufficient and are sufficiently liquid to allow the board to make an advance to the entity and still fulfill the board's reimbursement obligations to other insurers. The entity's final reimbursement for any contract year in which an advance has been made under this subparagraph must be reduced by an amount equal to the amount of the advance and any interest on such advance. In order to determine what amounts, if any, are due the entity, the board may require the entity to report its exposure and its losses at any time to determine retention levels and reimbursements payable.

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

(f) In order to ensure that insurers have properly reported the insured values on which the reimbursement premium is based and to ensure that insurers have properly reported the losses for which reimbursements have been made, the board shall inspect, examine, and verify ~~audit~~ the records of each insurer's covered policies at such times as the board deems appropriate and according to standards established by rule for the specific purpose of validating the accuracy of exposures and losses required to be reported under the terms and conditions of the reimbursement contract ~~in such manner as is consistent with generally accepted auditing standards~~. The costs of the examinations ~~audits~~ shall be borne by the board. However, in order to remove any incentive for an insurer to delay preparations for an examination ~~audit~~, the board shall be reimbursed by the insurer for any examination ~~audit~~ expenses incurred in addition to the usual and customary costs of the

examination ~~audit~~, which additional expenses were incurred as a result of an insurer's failure, despite proper notice, to be prepared for the examination ~~audit~~ or as a result of an insurer's failure to provide requested information while the examination ~~audit~~ is in progress. If the board finds any insurer's records or other necessary information to be inadequate or inadequately posted, recorded, or maintained, the board may employ experts to reconstruct, rewrite, record, post, or maintain such records or information, at the expense of the insurer being examined ~~audited~~, if such insurer has failed to maintain, complete, or correct such records or deficiencies after the board has given the insurer notice and a reasonable opportunity to do so. Any information contained in an examination ~~audit~~ report, which information is described in s. 215.557, is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, as provided in s. 215.557. Nothing in this paragraph expands the exemption in s. 215.557.

(g) The contract shall provide that in the event of the insolvency of an insurer, the fund shall pay directly to the Florida Insurance Guaranty Association for the benefit of Florida policyholders of the insurer the net amount of all reimbursement moneys owed to the insurer. As used in this paragraph, the term "net amount of all reimbursement moneys" means that amount which remains after reimbursement for:

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

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

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

(7) ADDITIONAL POWERS AND DUTIES.—

(a) The board may procure reinsurance from reinsurers acceptable to the Office of Insurance Regulation ~~approved under s. 624.610~~ for the purpose of maximizing the capacity of the fund.

(b) In addition to borrowing under subsection (6), the board may also borrow from, or enter into other financing arrangements with, any market sources at prevailing interest rates.

(c) Each fiscal year, the Legislature shall appropriate from the investment income of the Florida Hurricane Catastrophe Fund an amount no less

than $10 million and no more than 35 percent of the investment income based upon the most recent fiscal year-end audited financial statements ~~from the prior fiscal year~~ for the purpose of providing funding for local governments, state agencies, public and private educational institutions, and nonprofit organizations to support programs intended to improve hurricane preparedness, reduce potential losses in the event of a hurricane, provide research into means to reduce such losses, educate or inform the public as to means to reduce hurricane losses, assist the public in determining the appropriateness of particular upgrades to structures or in the financing of such upgrades, or protect local infrastructure from potential damage from a hurricane. Moneys shall first be available for appropriation under this paragraph in fiscal year 1997-1998. Moneys in excess of the $10 million specified in this paragraph shall not be available for appropriation under this paragraph if the State Board of Administration finds that an appropriation of investment income from the fund would jeopardize the actuarial soundness of the fund.

(d) The board may allow insurers to comply with reporting requirements and reporting format requirements by using alternative methods of reporting if the proper administration of the fund is not thereby impaired and if the alternative methods produce data which is consistent with the purposes of this section.

(e) In order to assure the equitable operation of the fund, the board may impose a reasonable fee on an insurer to recover costs involved in reprocessing inaccurate, incomplete, or untimely exposure data submitted by the insurer.

~~(16) For the 2002-2003 fiscal year only, the State Board of Administration shall disburse funds, by nonoperating transfer, from the Florida Hurricane Catastrophe Fund to the Ecosystem Management and Restoration Trust Fund of the Department of Environmental Protection in an amount equal to 8.47 percent of the appropriation made from the Ecosystem Management and Restoration Trust Fund for "Grants and Aids to Local Governments and Non-State Entities - Fixed Capital Outlay, Statewide Restoration Projects" in the 2002-2003 General Appropriations Act. This subsection expires July 1, 2003.~~

Section 2. Effective June 1, 2004, paragraph (e) of subsection (2), paragraph (c) of subsection (4), and subsection (6) of section 215.555, Florida Statutes, as amended by this act, are amended 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, 2004 ~~1995~~, the retention multiple shall be equal to $4.5 ~~$3~~ billion divided by the total

estimated reimbursement premium for the contract year; for subsequent years, the retention multiple shall be equal to $4.5 ~~$3~~ billion, 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 ~~1998~~, 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 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) REIMBURSEMENT CONTRACTS.—

(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 $15 ~~$11~~ 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 cash balance which occurred over the prior calendar year~~, unless the board determines that there is sufficient estimated claims-paying capacity to provide $11 billion of capacity for the current contract year and an additional $11 billion of capacity for subsequent contract years. Upon such determination being made, the estimated claims-paying capacity for the current contract year shall be determined by adding to the $11 billion limit one-half of the fund's estimated claims-paying capacity in excess of $22 billion.~~

2. In May before the start of the upcoming contract year and in October during the contract year, the board shall publish in the Florida Administrative Weekly a statement of the fund's estimated borrowing 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 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.

(6) REVENUE BONDS.—

(a) General provisions.—

1. Upon the occurrence of a hurricane and a determination that the moneys in the fund are or will be insufficient to pay reimbursement at the levels promised in the reimbursement contracts, the board may take the necessary steps under paragraph (c) ~~(b)~~ or paragraph (d) ~~(c)~~ for the issuance of revenue bonds for the benefit of the fund. The proceeds of such revenue bonds may be used to make reimbursement payments under reimbursement contracts; to refinance or replace previously existing borrowings or financial arrangements; to pay interest on bonds; to fund reserves for the bonds; to pay expenses incident to the issuance or sale of any bond issued under this section, including costs of validating, printing, and delivering the bonds, costs of printing the official statement, costs of publishing notices of sale of the bonds, and related administrative expenses; or for such other purposes related to the financial obligations of the fund as the board may determine. The term of the bonds may not exceed 30 years. The board may pledge or authorize the corporation to pledge all or a portion of all revenues under subsection (5) and under paragraph (b) ~~subparagraph 3.~~ to secure such revenue bonds and the board may execute such agreements between the board and the issuer of any revenue bonds and providers of other financing arrangements under paragraph (7)(b) as the board deems necessary to evidence, secure, preserve, and protect such pledge. If reimbursement premiums received under subsection (5) or earnings on such premiums are used to pay debt service on revenue bonds, such premiums and earnings shall be used only after the use of the moneys derived from assessments under paragraph (b) ~~subparagraph 3~~. The funds, credit, property, or taxing power of the state or political subdivisions of the state shall not be pledged for the payment of such bonds. The board may also enter into agreements under paragraph (c) ~~(b)~~ or paragraph (d) ~~(c)~~ for the purpose of issuing revenue bonds in the absence of a hurricane upon a determination that such action would maximize the ability of the fund to meet future obligations.

2. The Legislature finds and declares that the issuance of bonds under this subsection is for the public purpose of paying the proceeds of the bonds to insurers, thereby enabling insurers to pay the claims of policyholders to assure that policyholders are able to pay the cost of construction, reconstruction, repair, restoration, and other costs associated with damage to property of policyholders of covered policies after the occurrence of a hurricane. Revenue bonds may not be issued under this subsection until validated under chapter 75. The validation of at least the first obligations incurred pursuant to this subsection shall be appealed to the Supreme Court, to be handled on an expedited basis.

(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 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. 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 future premium collections and is subject to annual adjustments by the board to reflect changes in premiums subject to assessments collected under this subparagraph in order to meet debt obligations. The same percentage shall apply 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 shall continue until 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. With respect to each insurer collecting premiums that are subject to the assessment, the insurer shall collect the assessment at the same time as it collects the premium payment for each policy and shall remit the assessment collected to the fund or corporation as provided in the order issued by 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 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 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.

6. The assessments otherwise payable to the corporation under this paragraph shall be paid to the fund unless and until the Office of Insurance Regulation and the Florida Surplus Lines Service Office have received from the corporation and the fund a notice, 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. When 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. When 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 prior to remitting the emergency assessment collected to the fund or corporation.

10. The exemption of medical malpractice insurance premiums from emergency assessments under this paragraph is repealed May 31, 2007, and medical malpractice insurance premiums shall be subject to emergency assessments attributable to loss events occurring in the contract years commencing on June 1, 2007.

~~3. 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 repayment of revenue bonds, the board shall direct the Office of Insurance Regulation to levy an emergency assessment on each insurer writing property and casualty business in this state. Pursuant to the emergency assessment, each such insurer shall pay to the corporation by July 1 of each year an amount set by the board not exceeding 2 percent of its gross direct written premium for the prior year from all property and casualty business in this state except for workers' compensation, except that, if the Governor has declared a state of emergency under s. 252.36 due to the occurrence of a covered event, the amount of the assessment for the contract year may be increased to an amount not exceeding 4 percent of such premium. Any assessment authority not used for the 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 repayment of revenue bonds for that contract year, 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 2 percent if the Governor has declared a state of emergency under s. 252.36 due to the occurrence of a covered event. Any assessment authority not used for the contract year may be used for a subsequent contract year. 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 by s. 624.424 and any rules adopted under such section, except for those lines identified as accident and health insurance. The annual assessments under this subparagraph shall continue as long as the revenue bonds issued with respect to which the assessment was imposed are outstanding, unless adequate provision has been made for the payment of such bonds pursuant to the documents authorizing issuance of the bonds. An insurer shall not at any time be subject to aggregate annual assessments under this subparagraph of more than 2 percent of premium, except that in the case of a declared emergency, an insurer shall not at any time be subject to aggregate annual assessments under this subparagraph of more than 6 percent of premium; provided, no more than 4 percent may be assessed for any one contract year. Any rate filing or portion of a rate filing reflecting a rate change attributable entirely to the assessment levied under this subparagraph shall be deemed approved when made, subject to the authority of the Office of Insurance Regulation to require actuarial justification as to the adequacy of any rate at any time. If the rate filing reflects only a rate change attributable to the assessment under this paragraph, the filing may consist of a certification so stating. The assessments otherwise payable to the corporation pursuant to this subparagraph shall be paid instead to the fund unless and until the Office of Insurance Regulation has received from the corporation and the~~

~~fund a notice, which shall be conclusive and upon which the Office of Insurance Regulation may rely without further inquiry, that the corporation has issued bonds and the fund has no agreements in effect with local governments pursuant to paragraph (b). On or after the date of such notice and until such date as 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 agreements with the corporation.~~

(c)~~(b)~~ Revenue bond issuance through counties or municipalities.—

1. If the board elects to enter into agreements with local governments for the issuance of revenue bonds for the benefit of the fund, the board shall enter into such contracts with one or more local governments, including agreements providing for the pledge of revenues, as are necessary to effect such issuance. The governing body of a county or municipality is authorized to issue bonds as defined in s. 125.013 or s. 166.101 from time to time to fund an assistance program, in conjunction with the Florida Hurricane Catastrophe Fund, for the purposes set forth in this section or for the purpose of paying the costs of construction, reconstruction, repair, restoration, and other costs associated with damage to properties of policyholders of covered policies due to the occurrence of a hurricane by assuring that policyholders located in this state are able to recover claims under property insurance policies after a covered event.

2. In order to avoid needless and indiscriminate proliferation, duplication, and fragmentation of such assistance programs, any local government may provide for the payment of fund reimbursements, regardless of whether or not the losses for which reimbursement is made occurred within or outside of the territorial jurisdiction of the local government.

3. The state hereby covenants with holders of bonds issued under this paragraph that the state will not repeal or abrogate the power of the board to direct the Office of Insurance Regulation to levy the assessments and to collect the proceeds of the revenues pledged to the payment of such bonds as long as any such bonds remain outstanding unless adequate provision has been made for the payment of such bonds pursuant to the documents authorizing the issuance of such bonds.

4. There shall be no liability on the part of, and no cause of action shall arise against any members or employees of the governing body of a local government for any actions taken by them in the performance of their duties under this paragraph.

(d)~~(c)~~ Florida Hurricane Catastrophe Fund Finance Corporation.—

1. In addition to the findings and declarations in subsection (1), the Legislature also finds and declares that:

a. The public benefits corporation created under this paragraph will provide a mechanism necessary for the cost-effective and efficient issuance of bonds. This mechanism will eliminate unnecessary costs in the bond issuance process, thereby increasing the amounts available to pay reimbursement for losses to property sustained as a result of hurricane damage.

b. The purpose of such bonds is to fund reimbursements through the Florida Hurricane Catastrophe Fund to pay for the costs of construction, reconstruction, repair, restoration, and other costs associated with damage to properties of policyholders of covered policies due to the occurrence of a hurricane.

c. The efficacy of the financing mechanism will be enhanced by the corporation's ownership of the assessments, by the insulation of the assessments from possible bankruptcy proceedings, and by covenants of the state with the corporation's bondholders.

2.a. There is created a public benefits corporation, which is an instrumentality of the state, to be known as the Florida Hurricane Catastrophe Fund Finance Corporation.

b. The corporation shall operate under a five-member board of directors consisting of the Governor or a designee, the Chief Financial Officer or a designee, the Attorney General or a designee, the director of the Division of Bond Finance of the State Board of Administration, and the senior employee of the State Board of Administration responsible for operations of the Florida Hurricane Catastrophe Fund.

c. The corporation has all of the powers of corporations under chapter 607 and under chapter 617, subject only to the provisions of this subsection.

d. The corporation may issue bonds and engage in such other financial transactions as are necessary to provide sufficient funds to achieve the purposes of this section.

e. The corporation may invest in any of the investments authorized under s. 215.47.

f. There shall be no liability on the part of, and no cause of action shall arise against, any board members or employees of the corporation for any actions taken by them in the performance of their duties under this paragraph.

3.a. In actions under chapter 75 to validate any bonds issued by the corporation, the notice required by s. 75.06 shall be published only in Leon County and in two newspapers of general circulation in the state, and the complaint and order of the court shall be served only on the State Attorney of the Second Judicial Circuit.

b. The state hereby covenants with holders of bonds of the corporation that the state will not repeal or abrogate the power of the board to direct the Office of Insurance Regulation to levy the assessments and to collect the proceeds of the revenues pledged to the payment of such bonds as long as any such bonds remain outstanding unless adequate provision has been made for the payment of such bonds pursuant to the documents authorizing the issuance of such bonds.

4. The bonds of the corporation are not a debt of the state or of any political subdivision, and neither the state nor any political subdivision is

liable on such bonds. The corporation does not have the power to pledge the credit, the revenues, or the taxing power of the state or of any political subdivision. The credit, revenues, or taxing power of the state or of any political subdivision shall not be deemed to be pledged to the payment of any bonds of the corporation.

5.a. The property, revenues, and other assets of the corporation; the transactions and operations of the corporation and the income from such transactions and operations; and all bonds issued under this paragraph and interest on such bonds are exempt from taxation by the state and any political subdivision, including the intangibles tax under chapter 199 and the income tax under chapter 220. This exemption does not apply to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations other than the Florida Hurricane Catastrophe Fund Finance Corporation.

b. All bonds of the corporation shall be and constitute legal investments without limitation for all public bodies of this state; for all banks, trust companies, savings banks, savings associations, savings and loan associations, and investment companies; for all administrators, executors, trustees, and other fiduciaries; for all insurance companies and associations and other persons carrying on an insurance business; and for all other persons who are now or may hereafter be authorized to invest in bonds or other obligations of the state and shall be and constitute eligible securities to be deposited as collateral for the security of any state, county, municipal, or other public funds. This sub-subparagraph shall be considered as additional and supplemental authority and shall not be limited without specific reference to this sub-subparagraph.

6. The corporation and its corporate existence shall continue until terminated by law; however, no such law shall take effect as long as the corporation has bonds outstanding unless adequate provision has been made for the payment of such bonds pursuant to the documents authorizing the issuance of such bonds. Upon termination of the existence of the corporation, all of its rights and properties in excess of its obligations shall pass to and be vested in the state.

(e)~~(d)~~ Protection of bondholders.—

1. As long as the corporation has any bonds outstanding, neither the fund nor the corporation shall have the authority to file a voluntary petition under chapter 9 of the federal Bankruptcy Code or such corresponding chapter or sections as may be in effect, from time to time, and neither any public officer nor any organization, entity, or other person shall authorize the fund or the corporation to be or become a debtor under chapter 9 of the federal Bankruptcy Code or such corresponding chapter or sections as may be in effect, from time to time, during any such period.

2. The state hereby covenants with holders of bonds of the corporation that the state will not limit or alter the denial of authority under this paragraph or the rights under this section vested in the fund or the corporation to fulfill the terms of any agreements made with such bondholders or in any way impair the rights and remedies of such bondholders as long as

any such bonds remain outstanding unless adequate provision has been made for the payment of such bonds pursuant to the documents authorizing the issuance of such bonds.

3. Notwithstanding any other provision of law, any pledge of or other security interest in revenue, money, accounts, contract rights, general intangibles, or other personal property made or created by the fund or the corporation shall be valid, binding, and perfected from the time such pledge is made or other security interest attaches without any physical delivery of the collateral or further act and the lien of any such pledge or other security interest shall be valid, binding, and perfected against all parties having claims of any kind in tort, contract, or otherwise against the fund or the corporation irrespective of whether or not such parties have notice of such claims. No instrument by which such a pledge or security interest is created nor any financing statement need be recorded or filed.

Section 3. Each insurer writing a covered policy as defined in section 215.555(2)(c), Florida Statutes, shall include an appropriate adjustment, if any, to reflect the provisions of this act not later than its next annual rate filing or a certification as provided in section 627.0645, Florida Statutes, for each line of insurance that includes covered policies under section 215.555, Florida Statutes. No adjustment is necessary if the rates are in compliance with the requirements of section 627.062, Florida Statutes.

Section 4. Transitional provisions.—

(1) This section applies only to the Florida Hurricane Catastrophe Fund's 2004-2005 contract year, and the option provided in this section is available only if the selection is made no later than June 1, 2004. The definitions in section 215.555, Florida Statutes, apply to the terms used in this section.

(2) Subject to the provisions of subsection (1), a participating insurer writing covered policies shall have the option, as specified in rules adopted by the board, of selecting an alternative contract provision that will operate in lieu of the provision in section 215.555(4)(c), Florida Statutes, as amended by this act. Under the alternative contract provision, the obligation of the board to such insurer shall not exceed the insurer's share of actual claims-paying capacity of the fund, subject to the limitation that for purposes of this section the "claims-paying capacity of the fund" as to insurers selecting the alternative contract provision is limited to an aggregate limit of $11 billion. This option is not available to any entity created under section 627.351, Florida Statutes.

(3) Nothing in this section shall be construed to provide for additional claims paying capacity beyond the claims paying capacity specified in section 215.555(4)(c), Florida Statutes, as amended by this act. The capacity of the fund is limited up to the actual claims paying capacity provided in section 215.555(4)(c), Florida Statutes, and is not additive as a result of participating insurers ability to select this option.

(4) Each insurer's projected payout shall be equal to the insurer's share of the estimated premium which would have been paid assuming all insurers selected this option, multiplied by the claims-paying capacity limit as set

forth in this section subject to true-up provisions as set forth in the reimbursement contract.

(5) As to each insurer choosing the alternative contract provision option, the board shall calculate the retention multiple for such insurer in an amount equal to $4.866 billion divided by the total estimated reimbursement premium for the contract year, in lieu of the calculation provided for in section 215.555(2)(e)1., Florida Statutes. Total reimbursement premium for the purposes of this calculation shall be estimated using the assumption that all insurers have selected the option provided herein and have selected the 90-percent coverage level. The existence of this option shall not affect the estimation of total reimbursement premiums as provided for in section 215.555(2)(e)1., Florida Statutes.

(6) For those insurers that do not select this alternative contract provision, each insurer's projected payout shall be equal to the insurer's share of the estimated premium which would have been paid assuming no insurers selected this option, multiplied by the claims-paying capacity limit as set forth in section 215.555(4)(c)1., Florida Statutes, as amended by this act, subject to true-up provisions as set forth in the reimbursement contract.

(7) As to each insurer not choosing the alternative contract provision option, the board shall calculate the retention multiple for such insurer in accordance with section 215.555(2)(e)1., Florida Statutes, as amended by this act, divided by the total estimated reimbursement premium for the contract year. Total reimbursement premium for the purposes of this calculation shall be estimated using the assumption that no insurers have selected the option provided herein and have selected the 90-percent coverage level. This calculation shall not affect the estimation of total reimbursement premiums as provided for in section 215.555(2)(e)1., Florida Statutes, as amended under this act.

Section 5. Except as otherwise provided herein, this act shall take effect upon becoming a law.

Approved by the Governor May 11, 2004.

Filed in Office Secretary of State May 11, 2004.