

The 2005 Florida Statutes

¹215.555 Florida Hurricane Catastrophe Fund.--

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

(a) There is a compelling state interest in maintaining a viable and orderly private sector market for property insurance in this state. To the extent that the private sector is unable to maintain a viable and orderly market for property insurance in this state, state actions to maintain such a viable and orderly market are valid and necessary exercises of the police power.

(b) As a result of unprecedented levels of catastrophic insured losses in recent years, and especially as a result of Hurricane Andrew, numerous insurers have determined that in order to protect their solvency, it is necessary for them to reduce their exposure to hurricane losses. Also as a result of these events, world reinsurance capacity has significantly contracted, increasing the pressure on insurers to reduce their catastrophic exposures.

(c) Mortgages require reliable property insurance, and the unavailability of reliable property insurance would therefore make most real estate transactions impossible. In addition, the public health, safety, and welfare demand that structures damaged or destroyed in a catastrophe be repaired or reconstructed as soon as possible. Therefore, the inability of the private sector insurance and reinsurance markets to maintain sufficient capacity to enable residents of this state to obtain property insurance coverage in the private sector endangers the economy of the state and endangers the public health, safety, and welfare. Accordingly, state action to correct for this inability of the private sector constitutes a valid and necessary public and governmental purpose.

(d) The insolvencies and financial impairments resulting from Hurricane Andrew demonstrate that many property insurers are unable or unwilling to maintain reserves, surplus, and reinsurance sufficient to enable the insurers to pay all claims in full in the event of a catastrophe. State action is therefore necessary to protect the public from an insurer's unwillingness or inability to maintain sufficient reserves, surplus, and reinsurance.

(e) A state program to provide a stable and ongoing source of reimbursement to insurers for a portion of their catastrophic hurricane losses will create additional insurance capacity sufficient to ameliorate the current dangers to the state's economy and to the public health, safety, and welfare.

(f) It is essential to the functioning of a state program to increase insurance capacity that revenues received be exempt from federal taxation. It is therefore the intent of the Legislature that this program be structured as a state trust fund under the direction and control of the State Board of Administration and operate exclusively for the purpose of protecting and advancing the state's interest in maintaining insurance capacity in this state.

(g) Hurricane Andrew, which caused insured and uninsured losses in excess of \$20 billion, will likely not be the last major windstorm to strike Florida. Recognizing that a future wind catastrophe could cause damages in excess of \$60 billion, especially if a major urban area or series of urban areas were hit, it is the intent of the Legislature to balance equitably its concerns about mitigation of hurricane impact, insurance affordability and availability, and the risk of insurer and joint underwriting association insolvency, as well as assessment and bonding limitations.

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

(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.

(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.

(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 Office of Insurance Regulation prior to 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.

(d) "Losses" means direct incurred losses under covered policies, which shall include losses for additional living expenses not to exceed 40 percent of the insured value of a residential structure or its contents and shall exclude loss adjustment expenses. "Losses" does not include losses for fair rental value, loss of use, or business interruption losses.

(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 from the prior contract year to reflect the percentage growth in exposure to the fund for covered policies since 2004, divided by the total estimated reimbursement premium for the contract year. Total reimbursement premium for purposes of the calculation under this subparagraph shall be estimated using the assumption that all insurers have selected the 90-percent coverage level.

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

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

4. For insurers who experience multiple covered events causing loss during the contract year, beginning June 1, 2005, each insurer's full retention shall be applied to each of the covered events causing the two largest losses for that insurer. For each other covered event resulting in losses, the insurer's retention shall be reduced to one-third of the full retention. The reimbursement contract shall provide for the reimbursement of losses for each covered event based on the full retention with adjustments made to reflect the reduced retentions after January 1 of the contract year provided the insurer reports its losses as specified in the reimbursement contract.

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

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

(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.

(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.

(j) "Local government" means a unit of general purpose local government as defined in s. [218.31\(2\)](#).

(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.

(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.

(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).

(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 in aggregate exposure for covered policies 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.

(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 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.

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.

(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 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 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 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. The costs of the examinations shall be borne by the board. However, in order to remove any incentive for an insurer to delay preparations for an examination, the board shall be reimbursed by the insurer for any examination expenses incurred in addition to the usual and customary costs of the examination, which additional expenses were incurred as a result of an insurer's failure, despite proper notice, to be prepared for the examination or as a result of an insurer's failure to provide requested information while the examination 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, 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 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 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](#).

(5) REIMBURSEMENT PREMIUMS.--

(a) Each reimbursement contract shall require the insurer to annually pay to the fund an actuarially indicated premium for the reimbursement.

(b) The State Board of Administration shall select an independent consultant to develop a formula for determining the actuarially indicated premium to be paid to the fund. The formula shall specify, for each zip code or other limited geographical area, the amount of premium to be paid by an insurer for each \$1,000 of insured value under covered policies in that zip code or other area. In establishing premiums, the board shall consider the coverage elected under paragraph (4)(b) and any factors that tend to enhance the actuarial sophistication of ratemaking for the fund, including deductibles, type of construction, type of coverage provided, relative concentration of risks, a factor providing for more rapid cash buildup in the fund until the fund capacity for a single hurricane season is fully funded, and other such factors deemed by the board to be appropriate. The formula may provide for a procedure to determine the premiums to be paid by new insurers that begin writing covered policies after the beginning of a contract year, taking into consideration when the insurer starts writing covered policies, the potential exposure of the insurer, the potential exposure of the fund, the administrative costs to the insurer and to the fund, and any other factors deemed appropriate by the board. The formula must be approved by unanimous vote of the board. The board may, at any time, revise the formula pursuant to the procedure provided in this paragraph.

(c) No later than September 1 of each year, each insurer shall notify the board of its insured values under covered policies by zip code, as of June 30 of that year. On the basis of these reports, the board shall calculate the premium due from the insurer, based on the formula adopted under paragraph (b). The insurer shall pay the required annual premium pursuant to a periodic payment plan specified in the contract. The board shall provide for payment of reimbursement premium in periodic installments and for the adjustment of provisional premium installments collected prior to submission of the exposure report to reflect data in the exposure report. The board shall collect interest on late reimbursement premium payments consistent with the assumptions made in developing the premium formula in accordance with paragraph (b).

(d) All premiums paid to the fund under reimbursement contracts shall be treated as premium for approved reinsurance for all accounting and regulatory purposes.

(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) or paragraph (d) 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) 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). 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) or paragraph (d) 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 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 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.

(c) 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) 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) 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.

(7) ADDITIONAL POWERS AND DUTIES.--

(a) The board may procure reinsurance from reinsurers acceptable to the Office of Insurance Regulation 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 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.

(8) **ADVISORY COUNCIL.**--The State Board of Administration shall appoint a nine-member advisory council that consists of an actuary, a meteorologist, an engineer, a representative of insurers, a representative of insurance agents, a representative of reinsurers, and three consumers who shall also be representatives of other affected professions and industries, to provide the board with information and advice in connection with its duties under this section. Members of the advisory council shall serve at the pleasure of the board and are eligible for per diem and travel expenses under s. [112.061](#).

(9) **APPLICABILITY OF S. 19, ART. III OF THE STATE CONSTITUTION.**--The Legislature finds that the Florida Hurricane Catastrophe Fund created by this section is a trust fund established for bond covenants, indentures, or resolutions within the meaning of s. 19(f)(3), Art. III of the State Constitution.

(10) **VIOLATIONS.**--Any violation of this section or of rules adopted under this section constitutes a violation of the insurance code.

(11) **LEGAL PROCEEDINGS.**--The board is authorized to take any action necessary to enforce the rules, and the provisions and requirements of the reimbursement contract, required by and adopted pursuant to this section.

(12) **FEDERAL OR MULTISTATE CATASTROPHIC FUNDS.**--Upon the creation of a federal or multistate catastrophic insurance or reinsurance program intended to serve purposes similar to the purposes of the fund created by this section, the State Board of Administration shall promptly make recommendations to the Legislature for coordination with the federal or multistate program, for termination of the fund, or for such other actions as the board finds appropriate in the circumstances.

(13) **REVERSION OF FUND ASSETS UPON TERMINATION.**--The fund and the duties of the board under this section may be terminated only by law. Upon termination of the fund, all assets of the fund shall revert to the General Revenue Fund.

(14) **SEVERABILITY.**--If any provision of this section or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared severable.

²(15) **COLLATERAL PROTECTION INSURANCE.**--As used in this section and ss. [627.311](#) and [627.351](#), the term "collateral protection insurance" means commercial property insurance of which a creditor is the primary beneficiary and policyholder and which protects or covers an interest of the creditor arising out of a credit

transaction secured by real or personal property. Initiation of such coverage is triggered by the mortgagor's failure to maintain insurance coverage as required by the mortgage or other lending document. Collateral protection insurance is not residential coverage.

History.--s. 1, ch. 93-409; s. 1, ch. 95-1; s. 1, ch. 95-276; s. 2, ch. 96-194; s. 86, ch. 98-199; s. 1, ch. 99-217; s. 1, ch. 99-237; s. 1, ch. 2000-168; s. 1, ch. 2002-240; s. 2, ch. 2002-282; ss. 29, 79, ch. 2002-402; s. 221, ch. 2003-261; s. 3, ch. 2004-6; ss. 1, 2, ch. 2004-27; s. 19, ch. 2005-2; s. 1, ch. 2005-111.

¹Note.--

A. Section 2, ch. 2004-480, provides that:

"Reimbursement for multiple hurricane deductibles.--

"(1) For the purposes of this section, 'residential property insurance' means residential coverage as described in s. [627.4025\(1\)](#), Florida Statutes.

"(2) The Department of Financial Services shall reimburse policyholders of residential property insurance whose property was damaged by two or more hurricanes in 2004 and whose insurer applied more than one hurricane deductible to the insurance claims. The reimbursement shall be the amount of the claim that was not paid due to application of the second or subsequent deductible, as further limited by this section.

"(3) To be eligible for reimbursement, a policyholder must meet the criteria of subsection (2) and must:

"(a) Apply to the department by March 1, 2005, on a form provided by the department. The form shall identify the amount of the claims paid by the insurer, per hurricane, the amount of the deductible that was applied to each claim, and such additional information as the department may require to verify the claim for reimbursement, including documentation from the insurer. The applicant must submit documentation from the insurer that the insurance claim was not paid, in full or in part, due to application of the deductible.

"(b) Have incurred damages in excess of the full amount of a single hurricane deductible.

"(c) Meet a \$100 deductible for a second and each subsequent hurricane claim in addition to the amount of the deductible which must be met under paragraph (b).

"(d) Provide written authorization for the department to obtain information from the policyholder's insurer related to the claim for reimbursement.

"(4)(a) Reimbursement may be provided only for damages that would have been paid under the policy but for application of the deductible. The maximum reimbursement shall be limited to the amount of the policyholder's loss in excess of one full deductible, but not more than \$10,000 per policy for damage caused by two hurricanes, not more than \$20,000 per policy for damage caused by three or more hurricanes, except as otherwise provided in this subsection.

"(b) For a policy issued to a condominium association, the maximum reimbursement shall be limited to an amount equal to \$3,000 multiplied by the number of condominium units, or the maximum amount specified in paragraph (a) or paragraph (c), whichever is greater.

"(c) If more than one residential structure is insured under the policy and a separate hurricane deductible applies to each residential structure, the maximum reimbursement shall be limited to \$10,000 per structure for multiple hurricane claims for that structure.

"(d) Reimbursement may not be paid for loss amounts for which the policyholder has received a grant from the Federal Emergency Management Agency or any other federal, state, county, or municipal agency or program. Reimbursement may not be paid to a condominium association for loss amounts for which the condominium association has assessed unit owners and for which the unit owners have insurance coverage for the assessment.

"(5) The total amount of funds paid to policyholders pursuant to this section is limited to the amount appropriated for this purpose. Payments shall be made to eligible applicants in the following order of priority:

"(a) The department shall first reimburse policyholders who received claims payments from their insurer for two or more hurricanes for which each payment was reduced by the full amount of the deductible.

"(b) After reimbursing all policyholders who meet the criteria of paragraph (a), the department shall reimburse all other eligible policyholders. If the amount appropriated for this purpose is not adequate to pay all other eligible policyholders up to the maximum reimbursement amounts, the department shall provide reimbursement on a pro rata basis so that each policyholder receives an equal percentage of the amount of the reimbursement claim that is approved.

"(6) The insurer issuing the policy to the applicant for reimbursement shall provide to the department, upon request, such information in the applicant's claim file that would assist the department in determining the validity and reasonableness of the claim, subject to the policyholder's authorization to release such information. The department may further investigate or adjust the claim as the department determines is necessary and may contract with third parties for this purpose.

"(7) Insurers shall mail notice to those residential property insurance policyholders who filed claims with the insurer for two or more hurricanes in 2004 and to whom the insurer applied more than one hurricane deductible, whether there was a claims payment or not. The notice shall be on a form provided by the department informing the policyholder of the reimbursement program established by this section and the procedures for seeking reimbursement, including the application form provided by the department. The notice shall be mailed in such manner and within such time as specified by the department. For subsequent claims, the insurer shall provide the notice at the time that the insurer notifies the policyholder of the application of the second deductible.

"(8) The department may adopt rules to implement this section. It is the Legislature's intent that the department implement this section as soon as possible in order to provide immediate relief to affected policyholders. Therefore, the department may adopt such rules pursuant to the emergency rule procedures of s. [120.54](#)(4), Florida Statutes.

"(9) Applications for reimbursement shall be considered submitting an insurance claim for purposes of determining whether a person has committed insurance fraud pursuant to s. [817.234](#), Florida Statutes. The Department of Financial Services and the department's Division of Insurance Fraud shall have such powers to investigate and enforce such actions as provided in s. [626.989](#), Florida Statutes.

"(10) It is a violation of the Insurance Code for an insurer to change its method of determining whether to waive or apply multiple hurricane deductibles to multiple claims due to the provisions of this section.

"(11) The Office of Insurance Regulation shall collect data from residential property insurers regarding the number of claims that were filed by policyholders for two or more hurricanes for the 2004 hurricane season, the number of those claims for which the insurer applied two or more deductibles, including the dollar amount of those claims, and such additional related information as the department may require."

B. Section 3, ch. 2004-480, provides that "[i]t is the intent of the Legislature that payments made to policyholders under this act shall be considered disaster relief assistance within the meaning of s. 139 of the Internal Revenue Code."

C. Section 6(6), ch. 2004-480, provides that "[i]n order to maintain actuarially indicated premiums as required by s. [215.555](#), Florida Statutes, the State Board of Administration shall increase future premiums by the amount appropriated and transferred from the Florida Hurricane Catastrophe Fund under this section, plus additional amounts necessary to recover lost investment income, less any refunds of unused cash to the Florida Hurricane Catastrophe Fund. The increase in future premiums shall be spread over 5 years, in equal or approximately equal amounts, beginning with the June 1, 2006, contract year."

²**Note.**--Also published at s. [627.351](#)(7).