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ORIGINAL

YEAR

1 A bill to be entitled
 2 An act relating to the Insurance Capital Build-Up
 3 Incentive Program; revising legislative findings with
 4 respect to the Insurance Capital Build-Up Incentive
 5 Program and the appropriation of state funds for surplus
 6 notes issued by residential property insurers; revising
 7 the conditions and requirements for providing funds to
 8 insurers under the program; requiring a commitment by the
 9 insurer to meet minimum premium-to-surplus writing ratios
 10 for residential property insurance and for taking policies
 11 out of Citizens Property Insurance Corporation; allowing
 12 the State Board of Administration to charge a late fee for
 13 payment of remittances; providing that amendments made by
 14 the act do not affect the terms of surplus notes approved
 15 prior to a specified date, but authorizing the board and
 16 an insurer to renegotiate such terms consistent with such
 17 amendments; providing that the Citizens Property Insurance
 18 Corporation shall transfer funds to the General Revenue
 19 Fund for appropriation by the legislature for certain
 20 purposes; providing an effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Section 215.5595, Florida Statutes, is amended
 25 to read:

26 215.5595 Insurance Capital Build-Up Incentive Program.--

27 (1) Upon entering the 2008 ~~2006~~ hurricane season, the
 28 Legislature finds that:

BILL

ORIGINAL

YEAR

29 (a) The losses in Florida from eight hurricanes in 2004
 30 and 2005 have seriously strained the resources of both the
 31 voluntary insurance market and the public sector mechanisms of
 32 Citizens Property Insurance Corporation and the Florida
 33 Hurricane Catastrophe Fund.

34 ~~(b) Private reinsurance is much less available and at a~~
 35 ~~significantly greater cost to residential property insurers as~~
 36 ~~compared to 1 year ago, particularly for amounts below the~~
 37 ~~insurer's retention or retained losses that must be paid before~~
 38 ~~reimbursement is provided by the Florida Hurricane Catastrophe~~
 39 ~~Fund.~~

40 ~~(c) The Office of Insurance Regulation has reported that~~
 41 ~~the insolvency of certain insurers may be imminent.~~

42 ~~(d) Hurricane forecast experts predict that the 2006~~
 43 ~~hurricane season will be an active hurricane season and that the~~
 44 ~~Atlantic and Gulf Coast regions face an active hurricane cycle~~
 45 ~~of 10 to 20 years or longer.~~

46 (b)(e) Citizens Property Insurance Corporation has over
 47 1.2 million policies in force and has the largest market share
 48 of any insurer writing residential property insurer in the
 49 state, and faces the threat of a catastrophic loss that ~~The~~
 50 ~~number of cancellations or nonrenewals of residential property~~
 51 ~~insurance policies is expected to increase and the number of new~~
 52 ~~residential policies written in the voluntary market are likely~~
 53 ~~to decrease, causing increased policy growth and exposure to the~~
 54 ~~state insurer of last resort, Citizens Property Insurance~~
 55 ~~Corporation, and threatening to increase the deficit of the~~
 56 ~~corporation, currently estimated to be over \$1.7 billion. This~~

BILL

ORIGINAL

YEAR

57 ~~deficit~~ must be funded by assessments against insurers and
 58 policyholders, unless otherwise funded by the state. The
 59 program has a substantial positive effect on the depopulation
 60 efforts of the Citizens Property Insurance Corporation since
 61 companies participating in the program have removed over 199,000
 62 policies from the Citizens Property Insurance Corporation.
 63 Companies participating in the program have issued a significant
 64 number of new policies thereby keeping an estimated 480,000 new
 65 policies out of the Citizens Property Insurance Corporation.

66 ~~(c)-(f)~~ Policyholders are subject to high ~~increased~~
 67 premiums and assessments that are increasingly making such
 68 coverage unaffordable and that may force policyholders to sell
 69 their homes and even leave the state.

70 ~~(d)-(g)~~ The increased risk to the public sector and private
 71 sector continues to pose ~~poses~~ a serious threat to the economy
 72 of this state, particularly the building and financing of
 73 residential structures, and existing mortgages may be placed in
 74 default.

75 ~~(h)~~ ~~The losses from 2004 and 2005, combined with the~~
 76 ~~expectation that the increase in hurricane activity will~~
 77 ~~continue for the foreseeable future, have caused both insurers~~
 78 ~~and reinsurers to limit the capital they are willing to commit~~
 79 ~~to covering the hurricane risk in Florida; attracting new~~
 80 ~~capital to the Florida market is a critical priority; and~~
 81 ~~providing a low cost source of capital would enable insurers to~~
 82 ~~write additional residential property insurance coverage and act~~
 83 ~~to mitigate premium increases.~~

84 ~~(e)-(i)~~ Appropriating state funds to be exchanged for used

BILL

ORIGINAL

YEAR

85 ~~as~~ surplus notes issued by ~~for~~ residential property insurers,
 86 under conditions requiring the insurer to contribute additional
 87 private sector capital and to write a minimum level of premiums
 88 for residential hurricane coverage, is a valid and important
 89 public purpose.

90 (f) Extending the Insurance Capital Build-up Incentive
 91 Program will provide an incentive for investors to commit
 92 additional capital to Florida's residential insurance market.

93 (2) The purpose of this section is to provide funds in
 94 exchange for surplus notes to be issued by ~~to~~ new or existing
 95 authorized residential property insurers under the Insurance
 96 Capital Build-Up Incentive Program administered by the State
 97 Board of Administration, under the following conditions:

98 (a) The amount of state funds provided in exchange for a
 99 ~~the~~ surplus note to ~~for~~ any insurer or insurer group, other than
 100 an insurer writing only manufactured housing policies, may not
 101 exceed \$25 million or 20 percent of the total amount of funds
 102 appropriated for ~~available under~~ the program, whichever is
 103 greater. The amount of the surplus note for any insurer or
 104 insurer group writing residential property insurance covering
 105 only manufactured housing may not exceed \$7 million.

106 (b) The insurer must contribute an amount of new capital
 107 to its surplus which is at least equal to the amount of the
 108 surplus note and must apply to the board by September 1, 2008
 109 ~~July 1, 2006~~. If an insurer applies after September 1, 2008 ~~July~~
 110 ~~1, 2006~~, but before June 1, 2009 ~~2007~~, the amount of the surplus
 111 note is limited to one-half of the new capital that the insurer
 112 contributes to its surplus, except that an insurer writing only

BILL

ORIGINAL

YEAR

113 manufactured housing policies is eligible to receive a surplus
 114 note of up to \$7 million. For purposes of this section, new
 115 capital must be in the form of cash or cash equivalents as
 116 specified in s. 625.012(1).

117 (c) The insurer's surplus, new capital, and the surplus
 118 note must total at least \$50 million, except for insurers
 119 writing residential property insurance covering only
 120 manufactured housing. The insurer's surplus, new capital, and
 121 the surplus note must total at least \$14 million for insurers
 122 writing only residential property insurance covering
 123 manufactured housing policies as provided in paragraph (a).

124 (d) The insurer must commit to increase its writings of
 125 residential property insurance, including the peril of wind, and
 126 to meet ~~meeting~~ a minimum writing ratio of net written premium
 127 to surplus of at least 1:1 for the first year after receiving
 128 the state funds, 1.5:1 for the second year, and 2:1 for the
 129 remaining term of the surplus note. Alternatively, the insurer
 130 must meet a minimum writing ratio of gross written premium to
 131 surplus of at least 3:1 for the first year after receiving the
 132 state funds, 4.5:1 for the second year, and 6:1 for the
 133 remaining term of the surplus note. The writing ratios, which
 134 shall be determined by the Office of Insurance Regulation and
 135 certified quarterly to the board. For this purpose, the term
 136 "premium" ~~"net written premium"~~ means ~~net written~~ premium for
 137 residential property insurance in Florida, including the peril
 138 of wind, and "surplus" refers to the entire surplus of the
 139 insurer. The insurer must also commit to writing at least ten
 140 percent of its net or gross written premium for new policies,

BILL

ORIGINAL

YEAR

141 not including renewal premiums, for policies taken out of
 142 Citizens Property Insurance Corporation, during each of the
 143 first 3 years after receiving the state funds in exchange for
 144 the surplus note, which shall be determined by the Office of
 145 Insurance Regulation and certified annually to the board. The
 146 office may determine that an insurer meets the requirement for
 147 taking policies out of Citizens, by written notice to the board,
 148 upon a finding that the insurer made offers of coverage to
 149 policyholders of Citizens which would have resulted in meeting
 150 this requirement had the policyholders accepted the offer. If
 151 the required ratio or the required writings for policies taken
 152 out of Citizens is not maintained during the term of the surplus
 153 note, the board may increase the interest rate, accelerate the
 154 repayment of interest and principal, or shorten the term of the
 155 surplus note, subject to approval by the Commissioner of
 156 Insurance of payments by the insurer of principal and interest
 157 as provided in paragraph (f).

158 (e) If the requirements of this section are met, the board
 159 may approve an application by an insurer for funds in exchange
 160 for issuance of a surplus note, unless the board determines that
 161 the financial condition of the insurer and its business plan for
 162 writing residential property insurance in Florida places an
 163 unreasonably high level of financial risk to the state of
 164 nonpayment in full of the interest and principal. The board
 165 shall consult with the Office of Insurance Regulation and may
 166 contract with independent financial and insurance consultants in
 167 making this determination.

168 (f) The surplus note must be repayable to the state with a

BILL

ORIGINAL

YEAR

169 term of 20 years. The surplus note shall accrue interest on the
 170 unpaid principal balance at a rate equivalent to the 10-year
 171 U.S. Treasury Bond rate, require the payment only of interest
 172 during the first 3 years, and include such other terms as
 173 approved by the board. The board may charge late fees up to 5
 174 percent for late payments or other late remittances. Payment of
 175 principal, ~~or interest,~~ or late fees by the insurer on the
 176 surplus note must be approved by the Commissioner of Insurance,
 177 who shall approve such payment unless the commissioner
 178 determines that such payment will substantially impair the
 179 financial condition of the insurer. If such a determination is
 180 made, the commissioner shall approve such payment that will not
 181 substantially impair the financial condition of the insurer.

182 (g) The total amount of funds available for the program is
 183 limited to the amount appropriated by the Legislature for this
 184 purpose. If the amount of surplus notes requested by insurers
 185 exceeds the amount of funds available, the board may prioritize
 186 insurers that are eligible and approved, with priority for
 187 funding given to insurers writing only manufactured housing
 188 policies, regardless of the date of application, based on the
 189 financial strength of the insurer, the viability of its proposed
 190 business plan for writing additional residential property
 191 insurance in the state, and the effect on competition in the
 192 residential property insurance market. Between insurers writing
 193 residential property insurance covering manufactured housing,
 194 priority shall be given to the insurer writing the highest
 195 percentage of its policies covering manufactured housing.

196 ~~(h) The board may allocate portions of the funds available~~

BILL

ORIGINAL

YEAR

197 ~~for the program and establish dates for insurers to apply for~~
 198 ~~surplus notes from such allocation which are earlier than the~~
 199 ~~dates established in paragraph (b).~~

200 (h)~~(i)~~ Notwithstanding paragraph (d), a newly formed
 201 manufactured housing insurer that is eligible for a surplus note
 202 under this section shall meet the premium to surplus ratio
 203 provisions of s. 624.4095.

204 (i)~~(j)~~ As used in this section, "an insurer writing only
 205 manufactured housing policies" includes:

206 1. A Florida domiciled insurer that begins writing
 207 personal lines residential manufactured housing policies in
 208 Florida after March 1, 2007, and that removes a minimum of
 209 50,000 policies from Citizens Property Insurance Corporation
 210 without accepting a bonus, provided at least 25 percent of its
 211 policies cover manufactured housing. Such an insurer may count
 212 any funds above the minimum capital and surplus requirement that
 213 were contributed into the insurer after March 1, 2007, as new
 214 capital under this section.

215 2. A Florida domiciled insurer that writes at least 40
 216 percent of its policies covering manufactured housing in
 217 Florida.

218 (3) As used in this section, the term:

219 (a) "Board" means the State Board of Administration.

220 (b) "Program" means the Insurance Capital Build-Up
 221 Incentive Program established by this section.

222 (4) The state funds provided to the insurer in exchange
 223 for the A surplus note ~~provided to an insurer pursuant to this~~
 224 section ~~is~~ considered borrowed surplus ~~an asset~~ of the

BILL

ORIGINAL

YEAR

225 insurer pursuant to s. 628.401 ~~s. 625.012~~.

226 (5) If an insurer that receives funds in exchange for
 227 issuance of a surplus note pursuant to this section is rendered
 228 insolvent, the state is a class 3 creditor pursuant to s.
 229 631.271 for the unpaid principal and interest on the surplus
 230 note.

231 (6) The board shall adopt rules prescribing the
 232 procedures, administration, and criteria for approving the
 233 applications of insurers to receive funds in exchange for
 234 issuance of surplus notes pursuant to this section, which may be
 235 adopted pursuant to the procedures for emergency rules of
 236 chapter 120. Otherwise, actions and determinations by the board
 237 pursuant to this section are exempt from chapter 120.

238 (7) The board shall invest and reinvest the funds
 239 appropriated for the program in accordance with s. 215.47 and
 240 consistent with board policy.

241 (8) The amendments to this section enacted in 2008 do not
 242 affect the terms or conditions of the surplus notes that were
 243 approved prior to January 1, 2008. However, the board may
 244 renegotiate the terms of any surplus note issued by an insurer
 245 prior to January 2008 under this program, upon the agreement of
 246 the insurer and the board, consistent with the requirements of
 247 this section as amended in 2008.

248 (9) Citizens Property Insurance Corporation shall transfer
 249 \$100 million to the General Revenue Fund on or before August 1,
 250 2008 for appropriation by the Legislature to the Insurance
 251 Capital Build-Up Incentive Program.

252 Section 2. This act shall take effect July 1, 2008.