

**NATIONAL CONFERENCE OF INSURANCE LEGISLATORS**

**Model State Legislation Creating a Natural Disaster Catastrophe Fund<sup>1</sup>**

---

*To be considered by the Property-Casualty Insurance Committee on November 18, 2011.  
Adopted by the Property-Casualty Insurance and Executive Committees on November 12, 1995, and  
readopted on July 13, 2001; July 11, 2003 (amended); and July 8, 2005.*

**Section 1. Short title.**--This act may be cited as the [...name of state...] Natural Disaster Catastrophe Fund Act.

**Section 2. Findings and purpose.**--The Legislature finds and declares as follows:

(1) 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.

(2) As a result of unprecedented levels of insured losses from natural disasters in recent years, and especially as a result of Hurricane Andrew and the Northridge Earthquake, numerous insurers have determined that in order to protect their solvency, it is necessary for them to reduce their exposure to losses from natural disasters. The instability of the world reinsurance market, also caused in part by these events, has also increased the pressure on insurers to reduce their catastrophic exposures.

(3) 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.

(4) The insolvencies and financial impairments resulting from Hurricane Andrew and the Northridge Earthquake 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 major natural disaster. State action is therefore necessary to protect the public from an insurer's unwillingness or inability to maintain sufficient reserves, surplus, and reinsurance.

(5) A state program to provide reimbursement to insurers for a portion of their catastrophic 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.

(6) It is essential to the efficient 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 [...name of state agency or office in charge of the fund...<sup>2</sup>] and operate exclusively for the purpose of protecting and advancing the state's interest in maintaining insurance capacity in this state.

**Section 3. Definitions.--**As used in this act:

(1) "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 retire revenue bonds issued under Section 7, and determined according to principles of actuarial science to reflect each insurer's relative exposure to losses from covered events.

(2) "Covered event" means any one [...description of types of natural disasters to be covered by the fund...<sup>3</sup>], which event causes insured losses in this state.

(3) "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 any [...joint underwriting association, FAIR plan, or other residual market entity, as appropriate...] or similar entity created pursuant to law. "Covered policy" does not include any reinsurance agreement or any policy that excludes coverage for the perils referred to in subsection (2).

(4) "Losses" means direct incurred losses under covered policies, excluding losses attributable to additional living expense coverages and excluding loss adjustment expenses.<sup>4</sup>

(5) "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:

(a) The board shall calculate and report to each insurer the retention multiples for that year. For the contract year beginning [...effective date of initial contracts...], the retention multiple shall be equal to [...a specified amount determined by the Legislature to be the desired industrywide retention level...<sup>5</sup>], divided by the total estimated reimbursement premium for the contract year; for subsequent years, the retention multiple shall be equal to [...the amount inserted above...], adjusted to reflect the percentage growth in premium for covered policies since [...effective date of initial contracts...], divided by the total estimated reimbursement premium for the contract year.

(b) The retention multiple determined under paragraph (a) 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 paragraph (a). For insurers electing the 75-percent coverage level, the retention multiple is 120 percent of the amount determined under paragraph (a). For insurers electing the 45-percent coverage level, the adjusted retention multiple is 200 percent of the amount determined under paragraph (a).

(c) 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.

**Section 4. [...name of state...] Natural Disaster Catastrophe Fund created.--**There is created the [...name of state...] Natural Disaster Catastrophe Fund to be administered by [...state agency referred to in Section 2(6), above...]. 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 Section 5, payment of debts including obligations arising out of revenue bonds issued under Section 7, costs of the mitigation program under Section 8, costs of procuring reinsurance, and costs of administration of the fund. The [...state agency...] shall invest the moneys in the fund pursuant to [...applicable state laws regulating investment of state funds...<sup>6</sup>]. Except as otherwise provided in this act, earnings from all investments shall be retained in the fund. The [...state agency...] may employ or contract with such staff and professionals as the [...state agency...] deems necessary for the administration of the fund. The [...state agency...] may adopt such rules as are reasonable and necessary to implement this act. Such rules must conform to the Legislature's specific intent in establishing the fund as expressed in Section 2, 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.

**Section 5. Reimbursement contracts.**

(1) The [...state agency referred to in Section 2(6), above...] shall enter into a contract with each insurer writing covered policies in this state to provide to the insurer the reimbursement described in subsection (2), in exchange for the reimbursement premium paid to the fund under Section 6. As a condition of doing business in this state, each such insurer shall enter into such a contract.

(2)(a) The contract shall contain a promise by the [...state agency...] 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.

(b) The insurer must elect one of the payment percentages specified in this subsection and may, upon renewal of a reimbursement contract:

1. Elect a lower payment percentage if no revenue bonds issued under subsection (1) of Section 7 after a covered event are outstanding; or

2. Elect a higher payment percentage if it pays to the fund an actuarially appropriate equalization charge as determined by the [...state agency...].

(c) All members of an insurer group must elect the same payment percentage. Any joint underwriting association or assigned risk plan under [...state law creating joint underwriting associations or similar entities...<sup>7</sup>] must elect the 90 percent payment percentage.

(d) 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.

(3) The contract shall also provide that the obligation of the [...state agency...] with respect to all contracts covering a particular year shall not exceed the current balance of the fund, together with the maximum amount that the [...state agency...] is able to raise through the issuance of revenue bonds under Section 7. The contract shall require the [...state agency...] to annually notify insurers of the fund's anticipated borrowing capacity for the next year, the current balance of the fund, and the insurer's estimated share of total reimbursement 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 multiplied by the sum of current fund balance and bonding capacity as reported under this subsection. In May and October of each year, the [...state agency...] shall publish in the [...state's official compilation of proposed administrative actions...] a statement of the fund's anticipated borrowing capacity and the current balance of the fund.

(4)(a) The contract shall require the insurer to report to the [...state agency...] on December 31 of each year, and quarterly thereafter, the insurer's losses from covered events for the year. The contract shall require the [...state agency...] to determine and pay, as soon as practicable after receiving these reports, the initial amount of reimbursement due and adjustments to this amount based on later loss information. The adjustments to reimbursement amounts shall require the [...state agency...] to pay, or the insurer to return, amounts reflecting the most recent calculation of losses.

(b) If the [...state agency...] determines that the current balance of the fund, together with the amount that the [...state agency...] determines that it is possible to raise through revenue bonds issued

under Section 7, are insufficient to pay reimbursement to all insurers at the level promised in the contract, the [...state agency...] shall:

1. First reimburse any insurer writing covered policies, which insurer is found by the Department of Insurance to be in full compliance with this act, to have surplus as to policyholders not exceeding \$20 million, and to write at least 25 percent of its countrywide property insurance premium in this state.<sup>8</sup> 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 subparagraph may not exceed the full amount of reimbursement promised by the reimbursement contract. This subparagraph does not apply to any contract year in which the year-end projected cash balance of the fund, exclusive of any bonding capacity of the fund, exceeds [...specified dollar amount...<sup>9</sup>].

2. Next pay to each insurer the amount of reimbursement it is owed, up to an amount equal to the projected payout determined under subsection (3).

3. Thereafter, establish the prorated reimbursement level at the highest level for which any remaining fund balance or bond proceeds are sufficient.

(5) The contract shall provide that if an insurer demonstrates to the [...state agency...] that it is likely to qualify for reimbursement under the contract, and demonstrates to the [...state agency...] that the immediate receipt of moneys is likely to prevent the insurer from becoming insolvent, the [...state agency...] shall loan the insurer, at market interest rates, the amounts necessary to maintain the solvency of the insurer, up to 50 percent of the [...state agency's...] estimate of the reimbursement due the insurer. The insurer's reimbursement shall be reduced by an amount equal to the amount of the loan and interest thereon.

(6) The contract shall provide that in the event of the insolvency of an insurer, the fund shall pay directly to [...the state insurance guaranty association...] for the benefit of the insurer's policyholders in this state the net amount of reimbursement moneys owed to the insurer. As used in this subsection, the "net amount of all reimbursement moneys" means that amount which remains after reimbursement for 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. Such private reinsurers shall be reimbursed or otherwise paid prior to payment to [...the state insurance guaranty association...], notwithstanding any law to the contrary. The guaranty association shall pay all claims up to the maximum amount permitted by [...the statute establishing the guaranty association...<sup>10</sup>]; thereafter, any remaining moneys shall be paid pro rata to claims not fully satisfied.

(7) The [...state agency...] must adopt the initial contract form no later than [...date...] and must adopt the initial premium formula no later than [...date...]. Initial reimbursement contracts under this act must be entered into no earlier than [...date...] and no later than [...date...].

### **Section 6. Reimbursement premiums.--**

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

(2) The [...state agency referred to in Section 2(6), above...] 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 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 [...state agency...] shall consider the coverage level elected under subsection (2) of Section 5 and any factors that tend to enhance the actuarial sophistication of ratemaking for the fund, including deductibles, type of construction, type of coverage provided, relative concentration of risks, and other such factors deemed by the [...state agency...] to be appropriate. The [...state agency...] may, at any time, revise the formula pursuant to the procedure provided in this subsection.<sup>11</sup>

(3) 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.<sup>12</sup> On the basis of these reports, the [...state agency...] shall calculate the premium due from the insurer, based on the formula adopted under subsection (2). The insurer shall pay the required annual premium pursuant to a periodic payment plan specified in the contract. The [...state agency...] 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.

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

(5) In order to provide startup moneys for the administration of the fund, each insurer subject to this section shall pay to the fund an advance premium payment of \$1,000 no later than [...date...]. The Department of Insurance shall collect the advance premium payments required by this paragraph on behalf of the [...state agency...]. The insurer shall receive a credit against future premiums for the advance payment.

### **Section 7. Revenue bonds.**

(1) Upon the occurrence of a covered event 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 [...state agency referred to in Section 2(6), above...] shall enter into agreements with local governments for the issuance of revenue bonds for the benefit of the fund. The term of the bonds may not exceed 15 years. The [...state agency...] shall pledge all future revenues under Section 6 and under subsection (3), or a lesser portion of such revenues sufficient to raise moneys in an amount that will pay reimbursement at the levels promised in the reimbursement contracts, to the retirement of such bonds. The [...state agency...] may also enter into such agreements in the absence of a covered event upon a determination that such action would maximize the ability of the fund to meet future obligations.

(2) The governing body of any county or municipality may issue bonds as defined in [...appropriate statutory definition of revenue bonds...<sup>13</sup>] from time to time to fund an assistance program, in conjunction with the fund, for the purpose of meeting the reimbursement obligations of the fund. The issuance of such bonds is for the public purpose of ensuring that policyholders located within the county or municipality are able to recover under property insurance policies after a covered event. Revenue bonds may not be issued until validated pursuant to the provisions of [...statutory provision for validation of bonds...<sup>14</sup>]. The county or municipality shall enter into such contracts with the fund as are necessary to carry out this section. Any bonds issued under this section shall be payable from and secured by moneys received by the fund under Section 6, and assigned and pledged to or on behalf of the county or municipality for the benefit of the holders of such bonds. The funds, credit, property, and taxing power of the state or of the county or municipality shall not be pledged for the payment of such bonds.

(3) If the [...state agency...] determines that the amount of revenue produced under Section 6 is insufficient to fund revenue bonds to pay reimbursement at the levels promised in the reimbursement contracts, the [...state agency...] shall direct the Department of Insurance 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 fund by July 1 of each year an amount equal to 2 percent of its gross direct written premium for the prior year from all property and casualty business in this state<sup>15</sup>, except that, if the Governor has declared a state of emergency under [...declaration of emergency statute...<sup>16</sup>] due to the occurrence of a covered event, the amount of the assessment may be increased to an amount not exceeding 4 percent of such premium. The annual assessments under this subsection shall continue until the revenue bonds issued with respect to which the assessment was imposed are retired. An insurer shall not at any time be subject to more than one assessment under this subsection. Any rate filing or portion of a rate filing reflecting a rate change attributable entirely to the assessment levied under this subsection shall be deemed approved when made, subject to the authority of the Department of Insurance

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 subsection, the filing may consist of a certification so stating.

**Section 8. Additional powers and duties.**

(1) The [...state agency referred to in Section 2(6), above...] may procure reinsurance from reinsurers approved under [...statute providing for approval of reinsurers or reinsurance...<sup>17</sup>] for the purpose of maximizing the capacity of the fund.

(2) In addition to borrowing under Section 7, the [...state agency...] may also borrow from any market sources at prevailing interest rates.

(3) Each fiscal year, the Legislature shall appropriate from the investment income of the fund an amount no less than [...dollar amount...<sup>18</sup>] and no more than 35 percent of the investment income 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 natural disaster preparedness, reduce potential losses from covered events, provide research into means to reduce such losses, educate or inform the public as to means to reduce losses from covered events, 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 covered event. Moneys shall first be available for appropriation under this subsection in fiscal year [...first year following appropriations under Section 13...<sup>19</sup>]. Moneys in excess of the \$10 million specified in this subsection shall not be available for appropriation under this subsection if the [...state agency...] finds that an appropriation of investment income from the fund would jeopardize the actuarial soundness of the fund.

(4) The [...state agency...] may allow insurers to comply with reporting requirements and reporting format requirements 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 for the purposes of this act.

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

**Section 9. Advisory council.**--The [...state agency referred to in Section 2(6), above...] 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 [...state agency...] with information and advice in connection with its duties under this act. Members of the advisory council shall serve at the pleasure of the [...state agency...] and are eligible for per diem and travel expenses under [...statute governing per diem and travel for state employees...<sup>20</sup>].

**Section 10. Violations.**--Any violation of this act or of the rules adopted under this act constitutes a violation of the Insurance Code.

**Section 11. 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 act, the [...state agency referred to in Section 2(6), above...] 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 [...state agency...] finds appropriate in the circumstances.

**Section 12. Reversion of fund assets upon termination.**--The fund and the duties of the [...state agency referred to in Section 2(6), above...] under this act may be terminated only by law. Upon termination of the fund, all assets of the fund shall revert to the [...state general revenue fund...].

**Section 13. Appropriation.**--The sum of [...amount of appropriation...] is appropriated from [...the state general revenue fund or some other broad-based state fund...] to the [...name of state...] Natural Disaster Catastrophe Fund for the fiscal year [...year...] for the purpose of providing state funding for the [...name of state...] Natural Disaster Catastrophe Fund.<sup>1</sup>

## NOTES

- 
1. This Model Act is derived from section 215.555, Florida Statutes, which created the Florida Hurricane Catastrophe Fund. *See* Chapter 93-409, Laws of Florida, 1993, and Chapters 95-1 and 95-276, Laws of Florida, 1995.
  2. The Florida Hurricane Catastrophe Fund is controlled by the State Board of Administration, which consists of three elected officials: the Governor, the State Treasurer Chief Financial Officer, and the State Attorney General. The State Board of Administration's main function is investment of state trust funds, including the Florida Retirement System Trust Fund.
  3. A legislature might choose to limit the fund to one type of disaster (as in the Florida Legislature's decision to apply its act only to hurricanes), or it might choose for the fund to cover any natural disaster. The Florida act defines "covered event" as "any one storm declared to be a hurricane by the National Hurricane Center, which storm causes insured losses in this state."
  4. Under section 5(2)(a), reimbursed losses are increased by 5% to reflect loss adjustment expenses.
  5. The Florida act specifies an amount of \$3 billion for the contract year beginning June 1, 1995. At full actuarial rates, this amount produces retention multipliers of 5.9 at the 90% coverage level, 7.0 at the 75% coverage level, and 11.7 at the 45% coverage level. This method of calculating an insurer's retention was adopted in Florida in 1995 (*see* Chapter 95-276, Laws of Florida, 1995) to replace the prior formula, which set an insurer's retention at 2 times its direct written premium for covered policies (1.5 times with respect to insurers with \$15 million or less in surplus as to policyholders).
  6. The Florida act cites sections 215.44-215.52, Florida Statutes.
  7. The Florida act cites section 627.351, Florida Statutes.
  8. The Florida act cites section 627.351(2)(b)3., Florida Statutes, referring to insurers found to be "limited apportionment companies" for purposes of the statute creating the Florida Windstorm Underwriting Association. In order to be a limited apportionment company, an insurer must have
-

---

surplus as to policyholders of \$20 million or less and must write at least 25% of its countrywide property insurance premium in Florida.

9. The Florida act specifies \$2 billion, which amount is approximately equal to 5 years' premium revenues for the fund.

10. The Florida act cites Chapter 631, Florida Statutes.

11. The Florida act also requires that the premium formula be approved by unanimous vote of the three-member board that controls the fund. *See* section 215.555(5)(b), Florida Statutes.

12. While these deadlines are, because of the June 1-November 30 "hurricane season," appropriate for a hurricane-only catastrophe fund, other dates may be more desirable for a catastrophe fund covering other types of disasters.

13. The Florida act cites sections 125.013 and 166.101, Florida Statutes.

14. The Florida act cites Chapter 75, Florida Statutes.

15. The Florida act excludes workers' compensation premiums from assessment under this provision. *See* section 215.555(6)(c), Florida Statutes.

16. The Florida act cites section 252.36, Florida Statutes.

17. The Florida act cites section 624.610, Florida Statutes.

18. The Florida act specifies a minimum appropriation of \$10 million.

19. The Florida act provides that moneys will first be available for appropriation under this provision in fiscal year 1997-98. Sections 2 and 3 of Chapter 95-1, Laws of Florida, 1995, appropriate a total of \$50 million to the Florida Hurricane Catastrophe Fund over the fiscal years 1995-96 and 1996-97.

20. The Florida act cites section 112.061, Florida Statutes.

21. Chapter 95-1, Laws of Florida, 1995, appropriated \$50 million to the Florida Hurricane Catastrophe Fund. For each of the fiscal years 1995-96 and 1996-97, \$12.5 million was appropriated from the General Revenue Fund and \$12.5 million was appropriated from the Insurance Commissioner's Regulatory Trust Fund, which is composed of fees, fines, and other charges paid by insurers of all types (including life insurers, health insurers, and other insurers not covered by the Catastrophe Fund), agents, and others.