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4188

2009-2010 Regular Sessions

I N S E N A T E

April 15, 2009

Introduced by Sens. FLANAGAN, O. JOHNSON, VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to enacting the New York consumers catastrophe preparedness and protection act; to amend the state finance law, in relation to establishing the New York state catastrophe fund; and making an appropriation therefor

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Short title. This act shall be known and may be cited as the "New York consumers catastrophe preparedness and protection act".

S 2. Findings and purpose. The legislature finds and declares as follows:

1. The exposure in New York state to major catastrophe is greater than commonly understood, particularly catastrophes involving hurricanes, earthquakes and terrorism events including those involving nuclear, biological, chemical or radiological elements;

2. All New Yorkers, regardless of location, are susceptible to the devastating and unpredictable consequences of catastrophes, thereby necessitating a statewide preparedness and proactive program aimed at catastrophe management;

3. 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 assist in maintaining such a viable and orderly market are valid and necessary exercises of the police power;

4. The failure of the state to properly prepare for a potential catastrophe could result in a devastating impact on New York state families as well as the entire state's economy;

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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5. The current approach to dealing with catastrophes is an after-the-fact response model that is inadequate to protect New Yorkers from catastrophic loss. New York consumers need a public/private partnership which improves the means to provide financial assistance to families that are victims of catastrophes, enhances prevention and mitigation measures, improves recovery and rebuilding processes and educates homeowners on issues surrounding catastrophe management;

6. The result of unprecedented levels of insured losses from natural catastrophes in recent years, as evidenced by Hurricane Andrew, the 2004 four-storm hurricane season in Florida, tsunamis in Asia, the Northridge earthquake in California and the most recent devastation in Louisiana, Mississippi, Alabama and Texas from Katrina and Rita, have resulted in numerous insurers determining that in order to protect their solvency, it is necessary for them to reduce their exposure to catastrophic losses. The instability of the global reinsurance market, also caused in part by these events, has also increased the pressure on insurers to reduce their exposure to catastrophic loss;

7. 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 potential 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;

8. Insolvencies and financial impairments resulting from Hurricane Andrew and other events demonstrate that many property insurers have not collected and retained premiums sufficient to maintain reserves, surplus, and reinsurance in amounts to enable the insurers to pay all claims in full in the event of a major catastrophe. State action is therefore necessary to protect the public so that all covered catastrophic losses can be paid;

9. A public/private partnership that strengthens and builds on the existing private insurance market through the creation of a state catastrophe fund will result in additional insurance capacity sufficient to ameliorate the current dangers to the state's economy and to the public health, safety, and welfare;

10. Successful public/private partnerships recognize that government has an important and appropriate role to take reasonable steps to enhance the ability of the private sector to meet critical public needs;

11. It is essential to the efficient functioning of a state program to increase insurance capacity that revenues received by a state catastrophe fund 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 comptroller and operate exclusively for the purpose of protecting and advancing the state's interest in maintaining insurance capacity in this state; and

12. It is therefore appropriate for the legislature to supplement and amend New York state law to better prepare and protect New York state residents from the perils of catastrophes by creating a public/private partnership to protect the economic integrity of the homeowners insurance marketplace; ensure proper consumer education; improve rebuilding

and recovery processes; and recognize the need for continuous recognition and implementation of improved catastrophe management programs.

S 3. The insurance law is amended by adding a new article 60 to read as follows:

ARTICLE 60
NEW YORK CONSUMERS CATASTROPHE
PREPAREDNESS AND PROTECTION ACT

SECTION 6001. DEFINITIONS.
6002. REIMBURSEMENT CONTRACTS.
6003. REIMBURSEMENT PREMIUMS.
6004. REVENUE BONDS.
6005. ADDITIONAL POWERS AND DUTIES.
6006. ADVISORY COUNCIL.
6007. FEDERAL OR MULTISTATE CATASTROPHIC FUNDS.
6008. REVERSION OF FUND ASSETS UPON TERMINATION.

S 6001. DEFINITIONS. THE TERMS USED IN THIS ARTICLE SHALL HAVE THE MEANINGS SET FORTH IN THIS CHAPTER, EXCEPT TO THE EXTENT ADDED OR MODIFIED BY THE FOLLOWING:

(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 RETIRE REVENUE BONDS ISSUED UNDER SECTION SIX THOUSAND FOUR OF THIS ARTICLE, AND DETERMINED ACCORDING TO PRINCIPLES OF ACTUARIAL SCIENCE TO REFLECT EACH INSURER'S RELATIVE EXPOSURE TO LOSSES FROM COVERED EVENTS.

(B) "COVERED LOSS" MEANS:

(1) ALL STORMS, REGARDLESS OF QUANTITY, THAT OCCUR IN A CALENDAR YEAR, THAT ARE DECLARED TO BE HURRICANES BY THE NATIONAL HURRICANE CENTER, WHICH STORMS CAUSE INSURED LOSSES IN THIS STATE;

(2) ALL EARTHQUAKES, REGARDLESS OF QUANTITY, THAT OCCUR IN A CALENDAR YEAR, THAT ARE DECLARED TO BE EARTHQUAKES BY THE UNITED STATES GEOLOGICAL SURVEY, WHICH EARTHQUAKES CAUSE INSURED LOSSES IN THIS STATE;

(3) ALL TERRORIST ATTACKS, REGARDLESS OF QUANTITY, THAT OCCUR IN A CALENDAR YEAR, THAT ARE DECLARED TO BE TERRORIST ATTACKS BY THE GOVERNOR, WHICH TERRORIST ATTACKS CAUSE INSURED LOSSES IN THIS STATE; AND

(4) ALL ICE STORMS, REGARDLESS OF QUANTITY, THAT OCCUR IN A CALENDAR YEAR, WHICH STORMS CAUSE 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 NEW YORK PROPERTY INSURANCE UNDERWRITING ASSOCIATION 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 (B) OF THIS SECTION.

(D) "FUND" MEANS THE NEW YORK CATASTROPHE FUND ESTABLISHED IN SECTION NINETY-SEVEN-JJJJ OF THE STATE FINANCE LAW.

(E) "LOSSES" MEANS DIRECT INCURRED LOSSES UNDER COVERED POLICIES IN A CALENDAR YEAR, INCLUDING LOSSES ATTRIBUTABLE TO ADDITIONAL LIVING EXPENSE COVERAGE NOT TO EXCEED FORTY PERCENT OF THE INSURED VALUE OF A RESIDENTIAL STRUCTURE OR ITS CONTENTS, AND EXCLUDING LOSS ADJUSTMENT EXPENSES AND FAIR RENTAL VALUE LOSSES AND BUSINESS INTERRUPTION LOSSES.

(F) "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 COMPTROLLER SHALL CALCULATE AND REPORT TO EACH INSURER THE RETENTION MULTIPLES FOR THAT YEAR. FOR THE CONTRACT YEAR BEGINNING IN TWO THOUSAND ELEVEN THE RETENTION MULTIPLE SHALL BE EQUAL TO TWO BILLION DOLLARS, DIVIDED BY THE TOTAL ESTIMATED REIMBURSEMENT PREMIUM FOR THE CONTRACT YEAR; FOR SUBSEQUENT YEARS, THE RETENTION MULTIPLE SHALL BE EQUAL TO TWO BILLION DOLLARS, ADJUSTED TO REFLECT THE PERCENTAGE GROWTH IN INSURED VALUES FOR COVERED POLICIES SINCE TWO THOUSAND ELEVEN, DIVIDED BY THE TOTAL ESTIMATED REIMBURSEMENT PREMIUM FOR THE CONTRACT YEAR.

(2) THE RETENTION MULTIPLE DETERMINED UNDER PARAGRAPH ONE OF THIS SUBSECTION SHALL BE ADJUSTED TO REFLECT THE COVERAGE LEVEL ELECTED BY THE INSURER. FOR INSURERS ELECTING THE NINETY PERCENT COVERAGE LEVEL, THE ADJUSTED RETENTION MULTIPLE IS ONE HUNDRED PERCENT OF THE AMOUNT DETERMINED UNDER PARAGRAPH ONE OF THIS SUBSECTION. FOR INSURERS ELECTING THE SEVENTY-FIVE PERCENT COVERAGE LEVEL, THE RETENTION MULTIPLE IS ONE HUNDRED TWENTY PERCENT OF THE AMOUNT DETERMINED UNDER PARAGRAPH ONE OF THIS SUBSECTION. FOR INSURERS ELECTING THE FORTY-FIVE PERCENT COVERAGE LEVEL, THE ADJUSTED RETENTION MULTIPLE IS TWO HUNDRED PERCENT OF THE AMOUNT DETERMINED UNDER PARAGRAPH ONE OF THIS SUBSECTION.

(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.

S 6002. REIMBURSEMENT CONTRACTS. (A) THE COMPTROLLER SHALL ENTER INTO AN ANNUAL, CALENDAR YEAR CONTRACT WITH EACH INSURER WRITING COVERED POLICIES IN THIS STATE TO PROVIDE TO THE INSURER THE REIMBURSEMENT DESCRIBED IN SUBSECTION (B) OF THIS SECTION, IN EXCHANGE FOR THE REIMBURSEMENT PREMIUM PAID TO THE FUND UNDER SECTION SIX THOUSAND THREE OF THIS ARTICLE. 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 COMPTROLLER TO REIMBURSE THE INSURER FOR FORTY-FIVE PERCENT, SEVENTY-FIVE PERCENT, OR NINETY PERCENT OF ITS LOSSES FROM EACH COVERED LOSS IN EXCESS OF THE INSURER'S RETENTION, PLUS TEN PERCENT OF THE REIMBURSED LOSSES TO COVER LOSS ADJUSTMENT EXPENSES.

(2) THE INSURER MUST ELECT ONE OF THE PAYMENT PERCENTAGES SPECIFIED IN THIS SUBSECTION AND MAY, UPON RENEWAL OF A REIMBURSEMENT CONTRACT:

(I) ELECT A LOWER PAYMENT PERCENTAGE IF NO REVENUE BONDS ISSUED UNDER SUBSECTION (A) OF SECTION SIX THOUSAND FOUR OF THIS ARTICLE AFTER A COVERED EVENT ARE OUTSTANDING; OR

(II) ELECT A HIGHER PAYMENT PERCENTAGE IF IT PAYS TO THE FUND AN ACTUARIALLY APPROPRIATE EQUALIZATION CHARGE AS DETERMINED BY THE COMPTROLLER.

(3) ALL MEMBERS OF AN INSURER GROUP MUST ELECT THE SAME PAYMENT PERCENTAGE THE NEW YORK PROPERTY INSURANCE UNDERWRITING ASSOCIATION OR ANY OTHER SIMILAR TYPE PLAN OR OTHER RESIDUAL MARKET ENTITY MUST ELECT THE NINETY PERCENT PAYMENT PERCENTAGE.

(4) 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 ONE HUNDRED PERCENT OF THE INSURER'S LOSSES FROM COVERED EVENTS. IF SUCH RECOVERIES

AND REIMBURSEMENTS EXCEED ONE HUNDRED 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 ONE HUNDRED PERCENT OF THE INSURER'S LOSSES SHALL BE RETURNED TO THE FUND.

(C) THE CONTRACT SHALL ALSO PROVIDE THAT THE OBLIGATION OF THE COMPTROLLER 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 COMPTROLLER IS ABLE TO RAISE THROUGH THE ISSUANCE OF REVENUE BONDS UNDER SECTION SIX THOUSAND FOUR OF THIS ARTICLE. THE CONTRACT SHALL REQUIRE THE COMPTROLLER 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 COMPTROLLER SHALL PUBLISH IN THE STATE REGISTER A STATEMENT OF THE FUND'S ANTICIPATED BORROWING CAPACITY AND THE CURRENT BALANCE OF THE FUND.

(D) (1) THE CONTRACT SHALL REQUIRE THE INSURER TO REPORT TO THE COMPTROLLER ON DECEMBER THIRTY-FIRST OF EACH YEAR, AND QUARTERLY THEREAFTER, THE INSURER'S LOSSES FROM COVERED EVENTS FOR THE YEAR. THE CONTRACT SHALL REQUIRE THE COMPTROLLER 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 COMPTROLLER TO PAY, OR THE INSURER TO RETURN, AMOUNTS REFLECTING THE MOST RECENT CALCULATION OF LOSSES.

(2) IF THE COMPTROLLER DETERMINES THAT THE CURRENT BALANCE OF THE FUND, TOGETHER WITH THE AMOUNT THAT THE COMPTROLLER DETERMINES THAT IT IS POSSIBLE TO RAISE THROUGH REVENUE BONDS ISSUED UNDER SECTION SIX THOUSAND FOUR OF THIS ARTICLE, ARE INSUFFICIENT TO PAY REIMBURSEMENT TO ALL INSURERS AT THE LEVEL PROMISED IN THE CONTRACT, THE COMPTROLLER SHALL:

(I) PAY TO EACH INSURER THE AMOUNT OF REIMBURSEMENT IT IS OWED, UP TO AN AMOUNT EQUAL TO THE PROJECTED PAYOUT DETERMINED UNDER SUBSECTION (B) OF THIS SECTION; AND

(II) THEREAFTER, ESTABLISH THE PRORATED REIMBURSEMENT LEVEL AT THE HIGHEST LEVEL FOR WHICH ANY REMAINING FUND BALANCE OR BOND PROCEEDS ARE SUFFICIENT.

(E) THE CONTRACT SHALL PROVIDE THAT IF AN INSURER DEMONSTRATES TO THE COMPTROLLER THAT IT IS LIKELY TO QUALIFY FOR REIMBURSEMENT UNDER THE CONTRACT, AND DEMONSTRATES TO THE COMPTROLLER THAT THE IMMEDIATE RECEIPT OF MONEYS IS LIKELY TO PREVENT THE INSURER FROM BECOMING INSOLVENT, THE COMPTROLLER SHALL LOAN THE INSURER, AT MARKET INTEREST RATES, THE AMOUNTS NECESSARY TO MAINTAIN THE SOLVENCY OF THE INSURER, UP TO FIFTY PERCENT OF THE COMPTROLLER'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.

(F) THE CONTRACT SHALL PROVIDE THAT IN THE EVENT OF THE INSOLVENCY OF AN INSURER, THE FUND SHALL PAY DIRECTLY TO NEW YORK STATE 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 NEW YORK PROPERTY/CASUALTY INSURANCE SECURITY FUND AS PROVIDED IN SECTION SEVEN THOUSAND SIX HUNDRED THREE OF THIS CHAPTER NOTWITHSTANDING ANY LAW TO THE CONTRARY. THE SECURITY FUND SHALL PAY ALL CLAIMS UP TO THE MAXIMUM AMOUNT PERMITTED BY ARTICLE SEVENTY-SIX OF THIS CHAPTER; THEREAFTER, ANY REMAINING MONEYS SHALL BE PAID PRO RATA TO CLAIMS NOT FULLY SATISFIED.

(G) THE COMPTROLLER MUST ADOPT THE INITIAL CONTRACT FORM NO LATER THAN SEPTEMBER FIRST, TWO THOUSAND ELEVEN AND MUST ADOPT THE INITIAL PREMIUM FORMULA NO LATER THAN OCTOBER FIRST, TWO THOUSAND ELEVEN. INITIAL REIMBURSEMENT CONTRACTS UNDER THIS ARTICLE MUST BE ENTERED INTO NO EARLIER THAN NOVEMBER FIRST, TWO THOUSAND ELEVEN AND NO LATER THAN DECEMBER FIFTEENTH, TWO THOUSAND ELEVEN.

S 6003. REIMBURSEMENT PREMIUMS. (A) EACH REIMBURSEMENT CONTRACT SHALL REQUIRE THE INSURER TO ANNUALLY PAY TO THE FUND AN ACTUARIALLY INDICATED PREMIUM FOR THE REIMBURSEMENT PROMISED.

(B) THE COMPTROLLER 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 ONE THOUSAND DOLLARS OF INSURED VALUE UNDER COVERED POLICIES IN THAT ZIP CODE OR OTHER AREA. IN ESTABLISHING PREMIUMS, THE COMPTROLLER SHALL CONSIDER THE COVERAGE LEVEL ELECTED UNDER SUBSECTION (B) OF SECTION SIX THOUSAND TWO OF THIS ARTICLE 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 COVERED SEASON IS FULLY FUNDED AND OTHER SUCH FACTORS DEEMED BY THE COMPTROLLER TO BE APPROPRIATE. THE COMPTROLLER MAY, AT ANY TIME, REVISE THE FORMULA PURSUANT TO THE PROCEDURE PROVIDED IN THIS SUBSECTION.

(C) NO LATER THAN SEPTEMBER FIRST OF EACH YEAR, EACH INSURER SHALL NOTIFY THE COMPTROLLER OF ITS INSURED VALUES UNDER COVERED POLICIES BY ZIP CODE, AS OF JUNE THIRTIETH OF THAT YEAR. ON THE BASIS OF THESE REPORTS, THE COMPTROLLER SHALL CALCULATE THE PREMIUM DUE FROM THE INSURER, BASED ON THE FORMULA ADOPTED UNDER SUBSECTION (B) OF THIS SECTION. THE INSURER SHALL PAY THE REQUIRED ANNUAL PREMIUM PURSUANT TO A PERIODIC PAYMENT PLAN SPECIFIED IN THE CONTRACT. THE COMPTROLLER 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.

(D) ALL PREMIUMS PAID TO THE FUND UNDER REIMBURSEMENT CONTRACTS SHALL BE TREATED AS PREMIUM FOR APPROVED REINSURANCE FOR ALL ACCOUNTING AND REGULATORY PURPOSES.

(E) 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 ONE THOUSAND DOLLARS NO LATER THAN MARCH THIRTY-FIRST, TWO THOUSAND ELEVEN. THE DEPARTMENT SHALL COLLECT THE ADVANCE PREMIUM PAYMENTS REQUIRED BY THIS SUBSECTION ON BEHALF OF THE COMPTROLLER. THE INSURER SHALL RECEIVE A CREDIT AGAINST FUTURE PREMIUMS FOR THE ADVANCE PAYMENT.

S 6004. REVENUE BONDS. (A) 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 DIVISION OF THE BUDGET, UPON AUTHORIZATION OF THE GOVERNOR, SHALL ENTER INTO AGREEMENTS WITH THE DORMITORY AUTHORITY FOR THE ISSUANCE OF REVENUE BONDS FOR THE BENEFIT OF THE FUND.

(B) ANY AGREEMENT ENTERED INTO OR ANY PAYMENTS MADE OR TO BE MADE THEREUNDER MAY BE ASSIGNED AND PLEDGED BY THE DORMITORY AUTHORITY AS SECURITY FOR ITS BONDS, NOTES, OR OTHER OBLIGATIONS.

(C) ANY SUCH AGREEMENTS SHALL PROVIDE THAT THE OBLIGATION OF THE DIRECTOR OF THE BUDGET OR OF THE STATE TO FUND OR TO PAY THE AMOUNTS THEREIN PROVIDED FOR SHALL NOT CONSTITUTE A DEBT OF THE STATE WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION IN THE EVENT THE DORMITORY AUTHORITY ASSIGNS OR PLEDGES THE SERVICE CONTRACT PAYMENTS AS SECURITY FOR ITS BONDS, NOTES, OR OTHER OBLIGATIONS AND SHALL BE DEEMED EXECUTORY ONLY TO THE EXTENT MONEYS ARE AVAILABLE AND THAT NO LIABILITY SHALL BE INCURRED BY THE STATE BEYOND THE MONEYS AVAILABLE FOR THE PURPOSE, AND THAT SUCH OBLIGATION IS SUBJECT TO ANNUAL APPROPRIATIONS BY THE LEGISLATURE.

(D) ANY AGREEMENT ENTERED INTO PURSUANT TO THIS SECTION SHALL PROVIDE FOR STATE COMMITMENTS TO PROVIDE ANNUALLY TO THE DORMITORY AUTHORITY A SUM OR SUMS, UPON SUCH TERMS AND CONDITIONS AS SHALL BE DEEMED APPROPRIATE BY THE DIRECTOR OF THE BUDGET, TO FUND THE PRINCIPAL, INTEREST, OR OTHER RELATED PAYMENTS REQUIRED FOR ANY BONDS, NOTES, OR OTHER OBLIGATIONS OF THE DORMITORY AUTHORITY ISSUED PURSUANT TO THIS SECTION.

(E) TO OBTAIN FUNDS FOR THE PURPOSES OF THIS SECTION, THE AUTHORITY SHALL HAVE POWER FROM TIME TO TIME TO ISSUE NEGOTIABLE BONDS OR NOTES. UNLESS THE CONTEXT SHALL CLEARLY INDICATE OTHERWISE, WHENEVER THE WORD "BOND" OR "BONDS" ARE USED IN THIS SECTION, SUCH WORDS SHALL INCLUDE A NOTE OR NOTES OF AUTHORITY.

(F) THE STATE HEREBY COVENANTS WITH THE PURCHASERS, HOLDERS, AND OWNERS FROM TIME TO TIME OF THE BONDS OF THE AUTHORITY ISSUED PURSUANT TO THIS SECTION THAT IT WILL NOT REPEAL, REVOKE, RESCIND, MODIFY, OR AMEND THE PROVISIONS OF THIS SECTION WHICH RELATE TO THE MAKING OF ANNUAL AGREEMENT PAYMENTS TO THE AUTHORITY WITH RESPECT TO SUCH BONDS AS TO LIMIT, IMPAIR, OR IMPEDE THE RIGHTS AND REMEDIES GRANTED TO BONDHOLDERS UNDER TITLE FOUR OF ARTICLE EIGHT OF THE PUBLIC AUTHORITIES LAW OR OTHERWISE DIMINISH THE SECURITY PLEDGED TO SUCH PURCHASERS, HOLDERS, AND OWNERS OR SIGNIFICANTLY IMPAIR THE PROSPECT OF PAYMENT OF ANY SUCH BOND.

(G) IF THE COMPTROLLER DETERMINES THAT THE AMOUNT OF REVENUE PRODUCED UNDER SECTION SIX THOUSAND THREE OF THIS ARTICLE IS INSUFFICIENT TO FUND REVENUE BONDS TO PAY REIMBURSEMENT AT THE LEVELS PROMISED IN THE REIMBURSEMENT CONTRACTS, THE COMPTROLLER SHALL DIRECT THE DEPARTMENT TO LEVY AN EMERGENCY ASSESSMENT ON DIRECT PREMIUMS FOR ALL PROPERTY AND CASUALTY LINES OF BUSINESS IN THIS STATE, EXCEPT FOR POLICIES WRITTEN UNDER THE NATIONAL FLOOD INSURANCE PROGRAM, MEDICAL MALPRACTICE, WORKERS' COMPENSATION AND ACCIDENT AND HEALTH INSURANCE. THE ASSESSMENT SHALL BE SPECIFIED AS A PERCENTAGE OF FUTURE PREMIUM COLLECTIONS AND IS SUBJECT TO ANNUAL ADJUSTMENTS BY THE COMPTROLLER TO REFLECT CHANGES IN PREMIUMS SUBJECT TO ASSESSMENTS COLLECTED UNDER THIS SUBSECTION 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 TWELVE-MONTH PERIOD BEGINNING ON THE EFFECTIVE DATE OF THE ASSESSMENT. A PREMIUM IS NOT SUBJECT TO AN ANNUAL ASSESSMENT UNDER THIS SUBSECTION IN EXCESS OF SIX 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 SUBSECTION IN EXCESS OF TEN PERCENT OF PREMIUM. AN ANNUAL ASSESSMENT

UNDER THIS SUBSECTION 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. 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 DEPARTMENT. THE DEPARTMENT SHALL VERIFY THE ACCURATE AND TIMELY COLLECTION AND REMITTANCE OF EMERGENCY ASSESSMENTS AND SHALL MAINTAIN REPORTS AND REPORT THEIR FINDINGS TO THE COMPTROLLER. EACH INSURER COLLECTING ASSESSMENTS SHALL PROVIDE THE INFORMATION WITH RESPECT TO PREMIUMS AND COLLECTIONS AS MAY BE REQUIRED BY THE DEPARTMENT TO ENABLE THE OFFICE TO MONITOR AND VERIFY COMPLIANCE WITH THIS SUBSECTION.

S 6005. ADDITIONAL POWERS AND DUTIES. (A) THE COMPTROLLER MAY PROCURE REINSURANCE FROM LICENSED REINSURERS FOR THE PURPOSE OF MAXIMIZING THE CAPACITY OF THE FUND.

(B) IN ADDITION TO BORROWING UNDER SECTION SIX THOUSAND FOUR OF THIS ARTICLE, THE COMPTROLLER MAY ALSO BORROW FROM ANY MARKET SOURCES AT PREVAILING INTEREST RATES.

(C) EACH FISCAL YEAR, THE LEGISLATURE SHALL APPROPRIATE FROM THE INVESTMENT INCOME OF THE FUND AN AMOUNT NO LESS THAN TEN PERCENT AND NO MORE THAN THIRTY-FIVE 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 NONPRO- FIT ORGANIZATIONS TO SUPPORT PROGRAMS INTENDED TO IMPROVE CATASTROPHE PREPAREDNESS, PREVENT AND REDUCE POTENTIAL LOSSES FROM A COVERED LOSS, PROVIDE RESEARCH INTO MEANS TO PREVENT AND 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, PROVIDING FUNDING FOR THE ENFORCEMENT OF CATASTROPHE APPROPRIATE BUILDING CODES, OR PROTECT LOCAL INFRASTRUCTURE FROM POTENTIAL DAMAGE FROM A COVERED LOSS. MONEYS SHALL FIRST BE AVAILABLE FOR APPROPRIATION UNDER THIS SUBSECTION IN FISCAL YEAR TWO THOUSAND TWELVE. MONEYS IN EXCESS OF THE TEN PERCENT SPECIFIED IN THIS SUBSECTION SHALL NOT BE AVAILABLE FOR APPROPRIATION UNDER THIS SUBSECTION IF THE COMPTROLLER APPROPRIATION OF INVESTMENT INCOME FROM THE FUND WOULD JEOPARDIZE THE ACTUARIAL SOUNDNESS OF THE FUND.

(D) THE COMPTROLLER 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 THAT IS CONSISTENT FOR THE PURPOSES OF THIS ARTICLE.

(E) IN ORDER TO ASSURE THE EQUITABLE OPERATION OF THE FUND, THE COMP- TROLLER MAY IMPOSE A REASONABLE FEE ON AN INSURER TO RECOVER COSTS INVOLVED IN REPROCESSING INACCURATE, INCOMPLETE, OR UNTIMELY EXPOSURE DATA SUBMITTED BY THE INSURER.

S 6006. ADVISORY COUNCIL. THE GOVERNOR, IN CONSULTATION WITH THE SPEAKER OF THE ASSEMBLY AND THE TEMPORARY PRESIDENT OF THE SENATE, SHALL APPOINT A THIRTEEN MEMBER ADVISORY COUNCIL. THE ADVISORY COUNCIL SHALL CONSIST OF AN ACTUARY, A METEOROLOGIST, AN ENGINEER, A REPRESENTATIVE OF INSURERS, A REPRESENTATIVE OF INSURANCE AGENTS, A REPRESENTATIVE OF REINSURERS, A CONSUMER REPRESENTATIVE, A LABOR REPRESENTATIVE, A REPRE- SENTATIVE FROM LAW ENFORCEMENT, A REPRESENTATIVE FROM FIREFIGHTERS, A

REPRESENTATIVE FROM THE DIVISION OF CODE ENFORCEMENT AND ADMINISTRATION, A REPRESENTATIVE OF STATE EMERGENCY MANAGEMENT OFFICE, AND ONE ADDITIONAL AT-LARGE REPRESENTATIVE, TO PROVIDE THE COMPTROLLER WITH INFORMATION AND ADVICE IN CONNECTION WITH ITS DUTIES UNDER THIS ARTICLE. MEMBERS OF THE ADVISORY COUNCIL SHALL SERVE AT THE PLEASURE OF THE GOVERNOR AND ARE ELIGIBLE FOR ALL ACTUAL AND NECESSARY EXPENSES ASSOCIATED WITH SERVING ON THE ADVISORY COUNCIL. IN ADDITION TO PROVIDING THE COMPTROLLER WITH INFORMATION AND ADVICE IN CONNECTION WITH ITS DUTIES, THE ADVISORY COUNCIL SHALL BE SPECIFICALLY CHARGED WITH DEVELOPING PREVENTION AND MITIGATION STANDARDS TO INCLUDE:

(A) THE DEVELOPMENT AND IMPLEMENTATION OF STATE MANDATED BUILDING CODES APPROPRIATE FOR THE RISK WITH NO ALLOWANCE FOR WEAKER CODES TO BE ADOPTED BY LOCAL COMMUNITIES;

(B) ADEQUATE ENFORCEMENT OF RISK APPROPRIATE BUILDING CODES;

(C) BUILDING MATERIALS THAT PREVENT OR SIGNIFICANTLY LESSEN POTENTIAL DAMAGE FROM THE NATURAL OR MANMADE COVERED LOSS;

(D) BUILDING METHODS THAT PREVENT OR SIGNIFICANTLY LESSEN THE POTENTIAL DAMAGE FROM THE NATURAL OR MANMADE COVERED LOSS; AND

(E) FOCUS ON PREVENTION AND MITIGATION FOR ANY SUBSTANTIALLY DAMAGED STRUCTURE, AS WELL AS DEVELOPING AND RECOMMENDING IDEAS THAT WILL AID IN THE RECOVERY, REBUILDING AND RENEWAL PROCESS, AND IN ANALYZING AND DEVELOPING WAYS TO CONTINUOUSLY IMPROVE THE ADMINISTRATION AND PURPOSE OF THE FUND. FURTHERMORE, THE ADVISORY COUNCIL SHALL ANALYZE, STUDY AND DEVELOP ACTUARIALLY APPROPRIATE INSURANCE DISCOUNTS TO BE OFFERED TO INDIVIDUALS SHOULD THEY PERFORM MITIGATION AND PREVENTION IMPROVEMENTS TO STRUCTURES. THE ADVISORY COUNCIL SHALL REPORT ITS FINDINGS TO THE COMPTROLLER, WHO SHALL, IN CONSULTATION WITH THE SUPERINTENDENT, IMPLEMENT SAID DISCOUNTS. FURTHERMORE, THE COMPTROLLER SHALL CONSIDER, AND TO THE EXTENT POSSIBLE IMPLEMENT SAID FINDINGS, AND ANNUALLY REPORT TO THE LEGISLATURE ON ANY AND ALL RECOMMENDATIONS OF THE ADVISORY COUNCIL THAT ARE CONSISTENT WITH THE PURPOSES AND GOALS OF THIS ARTICLE.

S 6007. 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 PURSUANT TO SECTION NINETY-SEVEN-JJJJ OF THE STATE FINANCE LAW, THE COMPTROLLER SHALL PROMPTLY MAKE RECOMMENDATIONS TO THE LEGISLATURE FOR HOW THE FUND CAN COORDINATE WITH THE FEDERAL OR MULTISTATE PROGRAM AND FOR SUCH OTHER ACTIONS AS THE COMPTROLLER FINDS APPROPRIATE IN THE CIRCUMSTANCES.

S 6008. REVERSION OF FUND ASSETS UPON TERMINATION. THE FUND AND THE DUTIES OF THE COMPTROLLER UNDER THIS ARTICLE MAY BE TERMINATED ONLY BY LAW. UPON TERMINATION OF THE FUND, ALL ASSETS OF THE FUND SHALL REVERT TO THE STATE GENERAL REVENUE FUND.

S 4. The state finance law is amended by adding a new section 97-jjjj to read as follows:

S 97-JJJJ. NEW YORK STATE CATASTROPHE FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE COMPTROLLER AND THE SUPERINTENDENT OF INSURANCE A SPECIAL FUND TO BE KNOWN AS THE "NEW YORK STATE CATASTROPHE FUND".

2. SUCH FUND SHALL CONSIST OF ALL MONEYS CREDITED OR APPROPRIATED FOR TRANSFER THERETO FROM ANY SOURCE ACCORDING TO LAW.

3. MONEYS OF THE FUND SHALL BE AVAILABLE ONLY TO PAY OBLIGATIONS OF SUCH FUND ARISING OUT OF REIMBURSEMENT CONTRACTS ENTERED INTO PURSUANT TO SECTION SIX THOUSAND TWO OF THE INSURANCE LAW, PAYMENT OF DEBTS INCLUDING OBLIGATIONS ARISING OUT OF REVENUE BONDS ISSUED PURSUANT TO SECTION SIX THOUSAND FOUR OF THE INSURANCE LAW, COSTS OF THE MITIGATION

PROGRAM ESTABLISHED IN SECTION SIX THOUSAND SIX OF THE INSURANCE LAW, COSTS OF PROCURING REINSURANCE AND OTHER COSTS RELATED TO THE ADMINISTRATION OF THE FUND.

4. THE COMPTROLLER MAY EMPLOY OR CONTRACT WITH SUCH STAFF AND PROFESSIONALS HE DEEMS NECESSARY FOR THE ADMINISTRATION OF THE FUND AND SHALL DEVELOP THE RULES AND REGULATIONS NECESSARY TO ESTABLISH THIS FUND AND TO ENHANCE SUCH FUND'S POTENTIAL ABILITY TO RESPOND TO CLAIMS FOR COVERED CATASTROPHIC EVENTS. SUCH RULES AND REGULATIONS SHALL BE ESTABLISHED WITH SUFFICIENT 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.

5. MONEYS OF THE FUND SHALL BE KEPT SEPARATE AND SHALL NOT BE COMMINGLED WITH ANY OTHER MONEYS IN THE CUSTODY OF THE COMPTROLLER. ANY SUCH MONEYS IN THE FUND MAY, IN THE DISCRETION OF THE COMPTROLLER, BE INVESTED IN OBLIGATIONS IN WHICH THE COMPTROLLER IS AUTHORIZED TO INVEST PURSUANT TO SECTION NINETY-EIGHT-A OF THIS ARTICLE. ANY INCOME OR INTEREST FROM SUCH INVESTMENT SHALL BE CREDITED TO SUCH FUND.

6. ALL PAYMENTS OF MONEYS FROM THE FUND SHALL BE MADE ON THE AUDIT AND WARRANT OF THE COMPTROLLER.

S 5. The sum of ten million dollars ($10,000,000), or so much thereof as may be necessary, is hereby appropriated to the New York catastrophe fund from any moneys in the state treasury in the general fund to the credit of the state purposes account not otherwise appropriated for services and expenses of the insurance department for the purposes of carrying out the provisions of this act. Such sum shall be payable on the audit and warrant of the state comptroller on vouchers certified or approved by the superintendent of the department of insurance, or his or her duly designated representative in the manner provided by law. No expenditure shall be made from this appropriation until a certificate of approval of availability shall have been issued by the director of the budget and filed with the state comptroller and a copy filed with the chairman of the senate finance committee and the chairman of the assembly ways and means committee. Such certificate may be amended from time to time by the director of the budget and a copy of each such amendment shall be filed with the state comptroller, the chairman of the senate finance committee and the chairman of the assembly ways and means committee.

S 6. This act shall take effect on the one hundred twentieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized to be made on or before such effective date.