

Regular Session, 2009

SENATE BILL NO. 295

BY SENATOR N. GAUTREAUX

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

FUNDS/FUNDING. Dedicates funds to state catastrophic fund and implement plan. (1/1/10)

AN ACT

To enact Chapter 20 of Title 22 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 22:2451 through 2462, relative to a state catastrophe fund; to provide for the Louisiana Consumers Catastrophe Preparedness and Protection Act; to create and provide for the Louisiana State Catastrophe Fund as a special fund in the state treasury; to provide for the deposit of monies into the fund; to provide for the use of monies in the fund; to provide for the administration, investment, and use of the monies in the fund by the state treasurer; to provide for a program of reinsurance using monies in the fund; to authorize the issuance of revenue bonds; to create the Louisiana Consumers Catastrophe Preparedness and Protection Corporation and provide for a board of directors of the corporation, including development of the Louisiana Consumers Catastrophe Preparedness and Protection Plan; to provide for the powers, duties, functions, and responsibilities of the board of directors; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

16 Section 1. Chapter 20 of Title 22 of the Louisiana Revised Statutes of 1950,
17 comprised of R.S. 22:2451 through 2462, is hereby enacted to read as follows:

1 **CHAPTER 20. LOUISIANA CONSUMERS CATASTROPHE**

2 **PREPAREDNESS AND PROTECTION ACT**

3 **§2451. Short title; findings and purpose**

4 **A. This Chapter shall be known as, and may be cited as, the "Louisiana**

5 **Consumers Catastrophe Preparedness and Protection Act".**

6 **B. The legislature makes the following findings and declarations:**

7 **(1) As hurricanes Katrina, Rita, Ike and Gustav demonstrated, the**

8 **exposure in Louisiana to major hurricane catastrophe is very great.**

9 **(2) All Louisiana property, regardless of location, is susceptible to the**

10 **devastating and unpredictable consequences of natural catastrophes, thereby**

11 **necessitating a statewide preparedness and proactive program aimed at**

12 **catastrophe management.**

13 **(3) There is a compelling state interest in maintaining a viable and**

14 **orderly private sector market for property insurance in this state. To the extent**

15 **that the private sector is unable to maintain a viable and orderly market for**

16 **property insurance in this state, state actions to assist in maintaining such a**

17 **viable and orderly market are valid and necessary exercises of the police power.**

18 **(4) The failure of the state to properly prepare for a natural catastrophe**

19 **could result in a devastating impact on Louisiana's families, commercial**

20 **interests, school districts and municipalities, as well as the entire state's**

21 **economy and severely limit our nation's energy supply.**

22 **(5) The current approach to dealing with natural catastrophes is an**

23 **after-the-fact response model that is inadequate to protect Louisiana residents**

24 **and other property owners from catastrophic loss. The citizens of Louisiana**

25 **need a public/private partnership that improves the means to provide financial**

26 **assistance to families that are victims of natural catastrophes, enhances**

27 **prevention and mitigation measures, improves recovery and rebuilding**

28 **processes, and educates homeowners and other property owners on issues**

29 **surrounding catastrophe management.**

1 (6) The result of unprecedented levels of insured losses from natural
2 catastrophes in recent years, as evidenced by the most recent devastation in
3 Louisiana, and the Gulf Coast states from Hurricane Katrina and Hurricane
4 Rita, the 2008 storms of Hurricanes Ike and Gustav, as well as by Hurricane
5 Andrew and the 2004 calendar year four-storm hurricane season that occurred
6 in Florida, have caused numerous insurers to determine that in order to protect
7 their solvency, it is necessary for them to reduce their exposure to catastrophic
8 losses. The instability of the unregulated global reinsurance market, caused in
9 part by these recent events, has increased the pressure on insurers to reduce
10 their exposure to catastrophic loss. This pressure will result in an increase in
11 reinsurance costs and did cause an increase in homeowners and other property
12 insurance premiums.

13 (7) Mortgage lenders require reliable property insurance coverage, and
14 the unavailability of such coverage make most real estate transactions
15 impossible to complete. In addition, the public health, safety, and welfare
16 demand that structures damaged or destroyed in a natural catastrophe be
17 repaired or reconstructed as soon as possible. The potential inability of the
18 private sector insurance and reinsurance markets to maintain sufficient
19 capacity to enable the homeowners, commercial interests, school districts and
20 municipalities in this state to obtain sufficient property insurance coverage in
21 the private sector endangers the economy of the state and endangers the public
22 health, safety, and welfare; therefore, state action to correct for this inability of
23 the private sector to provide adequate coverage constitutes a valid and
24 necessary public and governmental purpose.

25 (8) Insolvencies and financial impairments resulting from natural
26 catastrophes demonstrate that many property insurers have not collected and
27 retained premiums sufficient to maintain reserves, surplus, and reinsurance in
28 amounts to enable the insurers to pay all claims in full in the event of a major
29 natural catastrophe. State action is necessary to protect the public so that all

1 covered catastrophic losses can be paid.

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

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

10 (11) It is essential to the efficient functioning of a state program and
11 catastrophe fund to increase insurance capacity that the revenues received by
12 a state natural catastrophe fund be exempt from federal taxation. It is the intent
13 of the legislature that this program be structured as a state trust fund under the
14 direction and control of the state treasurer and operate exclusively for the
15 purpose of protecting and advancing the state's interest in maintaining
16 insurance capacity in this state.

17 (12) It is therefore appropriate for the legislature to supplement and
18 amend state law to better prepare and protect Louisiana residents from the
19 perils of natural catastrophes by creating a public/private partnership to
20 protect the economic integrity of the property insurance market for
21 homeowners, commercial interests, school districts and municipalities; ensure
22 proper consumer education to improve rebuilding and recovery processes; and
23 recognize the need for continuous recognition and implementation of improved
24 natural catastrophe management programs.

25 **§2452. Louisiana State Catastrophe Fund**

26 A. The legislature may provide by law for implementation of programs,
27 including reinsurance programs, and purposes consistent with the Louisiana
28 Consumers Catastrophe Preparedness and Protection Plan developed by the
29 Louisiana Consumers Catastrophe Preparedness and Protection Corporation,

1 or its successor.

2 B. The Louisiana State Catastrophe Fund is established in the state
3 treasury as a special fund. The fund shall consist of monies appropriated by the
4 legislature to the fund and such additional revenue from any other source as
5 provided by law or that may become available for purposes of the fund,
6 including assessments or charges or fees imposed by the Louisiana Consumers
7 Catastrophe Preparedness and Protection Corporation, or its successor,
8 pursuant to the Louisiana Consumers Catastrophe Preparedness and Protection
9 Plan.

10 C. After allocation of money to the Bond Security and Redemption Fund
11 as provided in Article VII, Section 9(B) of the constitution, monies in the
12 Louisiana State Catastrophe Fund shall be appropriated by the legislature
13 solely for purposes consistent with the Louisiana Consumers Catastrophe
14 Preparedness and Protection Plan, including payment of obligations of the fund
15 arising out of reimbursement contracts executed pursuant to R.S. 22:2454,
16 payment of debts including obligations arising out of revenue bonds issued
17 pursuant to R.S. 22:2456, costs of the mitigation program established in R.S.
18 22:2458, costs of procuring reinsurance and other costs related to the
19 administration of the fund.

20 D.(1) All unexpended and unencumbered monies in the fund at the end
21 of each fiscal year shall remain in the fund and be available for appropriation
22 in the next fiscal year in the same manner as allocated herein. Monies in the
23 fund shall be invested by the state treasurer with the same authority and subject
24 to the same restrictions for investment of monies in the state general fund.
25 Interest earned on the investment of monies in the fund, after being credited to
26 the Bond Security and Redemption Fund pursuant to Article VII, Section 9(B)
27 of the constitution shall be credited to the fund.

28 (2) After compliance with the provisions of Subsection C of this Section,
29 thirty-five percent of the investment income remaining in the fund, but not less

1 than ten million dollars in any one year beginning with the second year of the
2 operation of the fund or the second year following an event for which the fund
3 is to cover losses which funds shall be distributed for the following programs:

4 (a) One million dollars for disaster prevention and mitigation programs
5 administered by volunteer firefighters.

6 (b) Two million dollars for programs administered by professional
7 firefighters.

8 (c) Two million dollars for programs administered by state police.

9 (d) Two million dollars for local law enforcement.

10 (e) One million dollars for parish and municipal organizations.

11 (f) One million dollars for affordable housing programs to mitigate and
12 retrofit homes from catastrophes.

13 (g) One million dollars for flood plain management, flood hazard
14 mitigation, preparedness, warning and recovery programs.

15 E. The board of directors of the Louisiana Consumers Catastrophe
16 Preparedness and Protection Corporation, acting through the state treasurer
17 as its chief executive officer, may employ or contract with such staff and
18 professionals deemed necessary for the administration of the fund.

19 §2453. Definitions

20 As used in this Chapter, unless the context otherwise requires, the
21 following definitions shall be applicable:

22 (1) "Actuarially indicated" means, with respect to premiums paid by
23 insurers for reimbursement provided by the fund, an amount determined
24 according to principles of actuarial science to be adequate, but not excessive, in
25 the aggregate, to pay current and future obligations and expenses of the fund,
26 including additional amounts if needed to retire revenue bonds issued under
27 R.S. 22:2456, and determined according to principles of actuarial science to
28 reflect each insurer's relative exposure to losses from covered events.

29 (2) "Board" means the board of directors of the Louisiana Consumers

1 Catastrophe Preparedness and Protection Corporation.

2 (3) "Corporation" means the Louisiana Consumers Catastrophe
3 Preparedness and Protection Corporation.

4 (4) "Covered loss" means all natural catastrophes, regardless of
5 quantity, that occur in a calendar year which cause insured losses in this state
6 provided the natural catastrophic event or series of events has been declared a
7 disaster or emergency by the governor and has also been declared to be a
8 federal disaster by the president of the United States.

9 (5) "Covered policy" means any property insurance policy covering
10 residential property for homeowners, condominium owners, mobile
11 homeowners, and renters of residential property in this state issued by any
12 authorized insurer, including the Louisiana Joint Reinsurance Plan (FAIR
13 Plan), the Louisiana Insurance Underwriting Plan (Coastal Plan), or similar
14 entity created pursuant to law. "Covered policy" also means any property
15 insurance policy or self-insurance plan covering non-residential property owned
16 by a school district or municipality. "Covered policy" does not include any
17 reinsurance agreement or any policy that excludes coverage for a covered loss
18 as defined in Paragraph (4) of this Section.

19 (6) "Fund" means the Louisiana State Catastrophe Fund established in
20 R.S. 22:1515.1, et seq.

21 (7) "Losses" means direct incurred losses under covered policies in a
22 calendar year, including losses attributable to additional living expense
23 coverage not to exceed forty percent of the insured value of a residential
24 structure or its contents, and excluding loss adjustment expenses and fair rental
25 value losses and business interruption losses.

26 (8) "Plan" means the plan of operation adopted by the corporation
27 pursuant to the provisions of this Chapter.

28 (9) "Retention" means the amount of losses below which an insurer is
29 not entitled to reimbursement from the fund. An insurer's retention shall be

1 calculated as follows:

2 (a) The state treasurer shall calculate and report to each insurer the
3 retention multiples for that year. For the contract year beginning in 2008, the
4 retention multiple shall be equal to two billion dollars, divided by the total
5 estimated reimbursement premium for the contract year; for subsequent years,
6 the retention multiple shall be equal to two billion dollars, adjusted to reflect the
7 percentage growth in insured values for covered policies since year 2008,
8 divided by the total estimated reimbursement premium for the contract year.

9 (b) The retention multiple determined under Subparagraph (a) of this
10 Paragraph shall be adjusted to reflect the coverage level elected by the insurer.
11 For insurers electing the ninety percent coverage level, the adjusted retention
12 multiple is one hundred percent of the amount determined under Subparagraph
13 (a) of this Paragraph. For insurers electing the seventy-five percent coverage
14 level, the retention multiple is one hundred twenty percent of the amount
15 determined under Subparagraph (a) of this Paragraph. For insurers electing the
16 forty-five percent coverage level, the adjusted retention multiple is two hundred
17 percent of the amount determined under Subparagraph (a) of this Paragraph.

18 (c) An insurer shall determine its provisional retention by multiplying
19 its provisional reimbursement premium by the applicable adjusted retention
20 multiple, and shall determine its actual retention by multiplying its actual
21 reimbursement premium by the applicable adjusted retention multiple.

22 **§2454. Reimbursement contracts**

23 A. The state treasurer, on behalf of the board, shall enter into an annual
24 calendar year contract with each insurer writing covered policies in this state
25 to provide to the insurer the reimbursement described in Subsection B of this
26 Section, in exchange for the reimbursement premium paid to the fund pursuant
27 to R.S. 22:2455. As a condition of doing business in this state, each such insurer
28 shall execute a contract pursuant to the provisions of this Section.

29 B.(1) Any contract executed pursuant to this Section shall contain a

1 promise by the board to reimburse the insurer for forty-five percent, seventy-
2 five percent, or ninety percent of its losses from each covered loss in excess of
3 the insurer's retention, plus ten percent of the reimbursed losses to cover loss
4 adjustment expenses.

5 (2) The insurer shall elect one of the payment percentages specified in
6 this Subsection and may, upon renewal of a reimbursement contract elect one
7 of the following items:

8 (a) A lower payment percentage if no revenue bonds issued under R.S.
9 22:2456(A) after a covered event are outstanding.

10 (b) A higher payment percentage if it pays to the fund an actuarially
11 appropriate equalization charge as determined by the board.

12 (3) All members of an insurer group shall elect the same payment
13 percentage. The Louisiana Joint Reinsurance Plan (FAIR Plan), the Louisiana
14 Insurance Underwriting Plan (Coastal Plan), or any other similar type plan or
15 other residual market entity shall elect the ninety percent payment percentage.

16 (4) Each contract executed pursuant to this Section shall provide that
17 reimbursement amounts shall not be reduced by reinsurance paid or payable
18 to the insurer from other sources; however, recoveries from such other sources,
19 taken together with reimbursements under the contract, may not exceed one
20 hundred percent of the insurer's losses from covered events. If the recoveries
21 and reimbursements exceed one hundred percent of the insurer's losses from
22 covered events, and if there is no agreement between the insurer and the
23 reinsurer to the contrary, any amount in excess of one hundred percent of the
24 insurer's losses shall be returned to the fund.

25 C. Each contract executed pursuant to this Section shall also provide that
26 the obligation of the state treasurer with respect to all contracts covering a
27 particular year shall not exceed the current balance of the fund, together with
28 the maximum amount that the board is able to raise through the issuance of
29 revenue bonds under R.S. 22:2456, up to a limit of five billion dollars for that

1 contract year adjusted based upon the reported exposure from the prior
2 contract year to reflect the percentage growth in exposure to the fund for
3 covered policies since 2008. Each such contract shall require the board to
4 annually notify insurers of the fund's anticipated borrowing capacity for the
5 next year, the current balance of the fund, and the insurer's estimated share of
6 total reimbursement to be paid to the fund. For all regulatory and reinsurance
7 purposes, an insurer may calculate its projected payout from the fund as its
8 share of the total fund premium multiplied by the sum of current fund balance
9 and bonding capacity as reported under this Subsection. In May and October
10 of each year, the state treasurer shall publish in the state register a statement
11 of the fund's anticipated borrowing capacity and the current balance of the
12 fund.

13 D.(1) Each contract executed pursuant to this Section shall require the
14 insurer to report to the state treasurer on December thirty-first of each year,
15 and quarterly thereafter, the insurer's losses from covered events for the year.
16 Each such contract shall require that the state treasurer determine and pay, as
17 soon as practicable after receiving these reports, the initial amount of
18 reimbursement due and adjustments to this amount based on later loss
19 information. The adjustments to reimbursement amounts shall require the state
20 treasurer to pay, or the insurer to return, amounts reflecting the most recent
21 calculation of losses.

22 (2) If the state treasurer determines that the current balance of the fund,
23 together with the amount that the state treasurer determines that it is possible
24 to raise through revenue bonds issued under R.S. 22:2456, are insufficient to
25 pay reimbursement to all insurers at the level promised in the contract, the state
26 treasurer shall do both of the following items:

27 (i) Pay to each insurer the amount of reimbursement it is owed, up to an
28 amount equal to the projected payout determined under Subsection B of this
29 Section.

1 (ii) Thereafter, establish the prorated reimbursement level at the highest
2 level for which any remaining fund balance or bond proceeds are sufficient.

3 E. Each contract executed pursuant to this Section shall provide that in
4 the event of the insolvency of an insurer, the fund shall pay directly to the
5 Louisiana Insurance Guaranty Association for the benefit of the insurer's
6 policyholders in this state the net amount of reimbursement monies owed to the
7 insurer. As used in this Subsection, the "net amount of all reimbursement
8 monies" means that amount which remains after reimbursement for
9 preliminary or duplicate payments owed to private reinsurers or other inuring
10 reinsurance payments to private reinsurers that satisfy statutory or contractual
11 obligations of the insolvent insurer attributable to covered events to such
12 reinsurers. Such private reinsurers shall be reimbursed or otherwise paid prior
13 to payment to the Louisiana Insurance Guaranty Association as provided in
14 R.S. 22:1382 notwithstanding any law to the contrary. The Insurance Guaranty
15 Association shall pay all claims up to the maximum amount permitted by R.S.
16 22:1382; thereafter, any remaining monies shall be paid on a prorata basis to
17 claims not fully satisfied.

18 F. The corporation, acting through its board of directors, shall adopt the
19 initial contract form no later than September 1, 2009, and shall adopt the initial
20 premium formula no later than October 1, 2009. Initial reimbursement
21 contracts under this Chapter shall be entered into no earlier than November 1,
22 2009, and no later than December 15, 2009.

23 §2455. Reimbursement premiums

24 A. Each reimbursement contract shall require the insurer to annually
25 pay to the fund an actuarially indicated premium for the reimbursement
26 promised.

27 B. The state treasurer, with the approval of the board of directors, shall
28 select an independent consultant possessed with the qualifications, expertise,
29 and practical experience necessary to develop a formula for determining the

1 actuarially indicated premium to be paid to the fund. The formula shall specify,
2 for each zip code or other limited geographical area, the amount to be paid by
3 an insurer for each one thousand dollars of insured value under covered policies
4 in that zip code or other area. In establishing premiums, the state treasurer
5 shall consider the coverage level elected under R.S. 22:2454(B) and any factors
6 that tend to enhance the actuarial sophistication of ratemaking for the fund,
7 including deductibles, type of construction, type of coverage provided, relative
8 concentration of risks, and other such factors deemed by the state treasurer to
9 be appropriate. The board of directors, acting through the state treasurer may,
10 at any time, revise the formula pursuant to the procedure provided in this
11 Subsection.

12 C. No later than September first of each year, each insurer shall notify
13 the state treasurer of its insured values under covered policies by zip code, as
14 of June thirtieth of that year. On the basis of these reports, the state treasurer
15 shall calculate the premium due from the insurer, based on the formula adopted
16 under Subsection B of this Section. The insurer shall pay the required annual
17 premium pursuant to a periodic payment plan specified in the contract. The
18 state treasurer shall provide for payment of the reimbursement premium in
19 periodic installments and for the adjustment of provisional premium
20 installments collected prior to submission of the exposure report to reflect data
21 in the exposure report.

22 D. All premiums paid to the fund under reimbursement contracts shall
23 be treated as premium for approved reinsurance for all accounting and
24 regulatory purposes.

25 E. In order to provide startup monies for the administration of the fund,
26 each insurer subject to the provisions of this Section shall pay to the fund an
27 advance premium payment of one thousand dollars no later than March 31,
28 2009. The state treasurer shall collect the advance premium payments required
29 by this Subsection. The insurer shall receive a credit against future premiums

1 for the advance payment.

2 **§2456. Revenue bonds**

3 A. Upon the occurrence of a covered event and a determination that the
4 monies in the fund are, or will be, insufficient to pay reimbursement at the
5 levels promised in the reimbursement contracts, the board of directors shall
6 provide for the issuance of revenue bonds for the benefit of the fund.

7 B. Any agreement providing for the issuance of bonds pursuant to this
8 Section shall provide that the obligation of the state treasurer, acting on behalf
9 of the corporation, to pay the amounts provided in such issuance shall not
10 constitute a debt of the state within the meaning of any constitutional or
11 statutory provision and shall be deemed executory only to the extent monies are
12 available and that no liability shall be incurred by the state beyond the monies
13 available for that purpose.

14 C. To obtain funds for the purposes of this Section, the corporation shall
15 have power from time to time to issue negotiable bonds or notes. Unless the
16 context shall clearly indicate otherwise, whenever the word "bond" or "bonds"
17 is used in this Section, such words shall include a note or notes of the
18 corporation.

19 D. The state hereby covenants with the purchasers, holders, and owners
20 from time to time of the bonds of the fund issued pursuant to this Section that
21 it will not repeal, revoke, rescind, modify, or amend the provisions of this
22 Section which relate to the making of annual agreement payments to the fund
23 with respect to such bonds as to limit, impair, or impede the rights and remedies
24 granted to bondholders under law or otherwise diminish the security pledged
25 to such purchasers, holders, and owners or significantly impair the prospect of
26 payment of any such bond.

27 E. If the state treasurer determines that the amount of revenue produced
28 under R.S. 22:2455 is insufficient to fund revenue bonds to pay reimbursement
29 at the levels promised in the reimbursement contracts, the state treasurer,

1 acting on behalf of the board of directors, shall levy an emergency assessment
2 on direct premiums for all property and casualty lines of business in this state,
3 except for policies written under the national flood insurance program, medical
4 malpractice, workers' compensation and accident and health insurance. The
5 assessment shall be specified as a percentage of future premium collections and
6 is subject to annual adjustments by the corporation to reflect changes in
7 premiums subject to assessments collected under this Subsection in order to
8 meet debt obligations. The same percentage shall apply to all policies in lines of
9 business subject to the assessment issued or renewed during the twelve-month
10 period beginning on the effective date of the assessment. A premium is not
11 subject to an annual assessment under this Subsection in excess of six percent
12 of premium with respect to obligations arising out of losses attributable to any
13 one contract year, and a premium is not subject to an aggregate annual
14 assessment under this Subsection in excess of ten percent of premium. An
15 annual assessment imposed pursuant to this Section shall continue until the
16 revenue bonds issued with respect to which the assessment was imposed are
17 outstanding, including any bonds the proceeds of which were used to refund the
18 revenue bonds, unless adequate provision has been made for the payment of the
19 bonds under the documents authorizing issuance of the bonds. With respect to
20 each insurer collecting premiums that are subject to the assessment, the insurer
21 shall collect the assessment at the same time as it collects the premium payment
22 for each policy and shall remit the assessment collected to the fund as provided
23 in the order issued by the state treasurer. Each insurer collecting assessments
24 shall provide the information with respect to premiums and collections as may
25 be required by the state treasurer to enable the office to monitor and verify
26 compliance with this Section.

27 §2457. Additional powers and duties

28 A. The state treasurer, acting on behalf of the corporation, may procure
29 reinsurance for up to seventy-five percent of the total risk assumed by the fund

1 from licensed reinsurers for the purpose of maximizing the capacity of the fund
2 and may participate in a national catastrophe fund if such fund becomes
3 available.

4 B. In addition to borrowing under R.S. 22:2456, the corporation may
5 also borrow from any market sources at prevailing interest rates.

6 C. Each fiscal year, the legislature shall appropriate from the investment
7 income of the fund an amount not less than ten percent and not more than
8 thirty-five percent of the investment income from the prior fiscal year for the
9 purpose of providing funding for local governments, state agencies, public and
10 private educational institutions, and nonprofit organizations to support
11 programs intended to improve natural catastrophe preparedness, prevent and
12 reduce potential losses from a covered loss, provide research into means to
13 prevent and reduce such losses, educate or inform the public as to means to
14 reduce losses from covered events, assist the public in determining the
15 appropriateness of particular upgrades to structures or in the financing of such
16 upgrades, providing funding for the enforcement of natural catastrophe
17 appropriate building codes, or protect local infrastructure from potential
18 damage from a covered loss. Monies shall first be available for appropriation
19 under this Section in Fiscal Year 2010. Monies in excess of the ten percent
20 specified in this Subsection shall not be available for appropriation under this
21 Subsection if the state treasurer determines that appropriation of investment
22 income from the fund would jeopardize the actuarial soundness of the fund.

23 D. The corporation may allow insurers to comply with reporting
24 requirements and reporting format requirements using alternative methods of
25 reporting if the proper administration of the fund is not thereby impaired and
26 if the alternative methods produce data that are consistent for the purposes of
27 this Chapter.

28 E. In order to assure the equitable operation of the fund, the corporation
29 may impose a reasonable fee on an insurer to recover costs involved in

1 reprocessing inaccurate, incomplete, or untimely exposure data submitted by
2 the insurer.

3 §2458. Louisiana Consumers Catastrophe Preparedness and Protection
4 Corporation; powers, duties, functions, and responsibilities

5 A.(1) There is hereby created a nonprofit corporation to be known as the
6 "Louisiana Consumers Catastrophe Preparedness and Protection
7 Corporation", which shall operate a reinsurance program as provided in this
8 Chapter.

9 (2) The domicile of the corporation shall be located in the parish of East
10 Baton Rouge, state of Louisiana.

11 B. The governing body of the corporation shall be a board of directors
12 which shall consist of the following members:

13 (1) The state treasurer or an employee of the Department of the
14 Treasury as his designee.

15 (2) The commissioner of the Department of Insurance, or an employee
16 of the Department of Insurance as his designee.

17 (3) The legislative auditor or an employee of the office of the legislative
18 auditor as his designee.

19 (4) Twelve members appointed by the governor, in consultation with the
20 speaker of the House of Representatives and the president of the Senate, subject
21 to Senate confirmation and shall serve at the pleasure of the governor:

22 (a) One member shall be an actuary.

23 (b) One member shall be a meteorologist.

24 (c) One member shall be an engineer.

25 (d) One member shall be a representative of insurers authorized to
26 transact business in this state.

27 (e) One member shall be a representative of insurance agents licensed in
28 this state.

29 (f) One member shall be a representative of reinsurers.

1 (g) One member shall be a representative of consumers in this state.

2 (h) One member shall be a representative of labor.

3 (i) One member shall be a representative of law enforcement.

4 (j) One member shall be a representative of firefighters.

5 (k) One member shall be a representative from the Louisiana State
6 Uniform Construction Code Council in the office of the state fire marshal.

7 (l) One member shall be a representative of the Governor's Office of
8 Homeland Security and Emergency Preparedness.

9 C. Members appointed by the governor shall receive no salary or other
10 compensation for service on the board but each shall be reimbursed for
11 necessary travel and other expenses actually incurred while in attendance at the
12 meetings of the board or on business of the board.

13 D.(1) The board of directors shall adopt a plan of operation consistent
14 with the provisions of this Chapter which shall be filed with the office of
15 property and casualty of the Louisiana Department of Insurance. This plan
16 shall be known as the Louisiana Consumers Catastrophe Preparedness and
17 Protection Plan.

18 (2) The plan of operation shall include establishment of necessary
19 facilities and operating procedure; management of the corporation;
20 implementation of provisions in this Chapter relative to reimbursement
21 contracts, reimbursement premiums, issuance of revenue bonds pursuant to the
22 provisions of this Chapter, and such other powers, duties, and functions as
23 provided in this Chapter.

24 (3) The board of directors may amend the plan of operation at any time
25 but not less than once in each calendar year which amendment shall be filed
26 with the office of property and casualty of the Louisiana Department of
27 Insurance.

28 E. The plan of operation adopted by the board of directors of the
29 corporation shall include developing prevention and mitigation standards to

1 include all of the following items:

2 (1) The development and implementation of a mandated building code
3 consistent with the State Uniform Construction Code.

4 (2) Adequate enforcement of risk appropriate building codes.

5 (3) Building materials that prevent or significantly lessen potential
6 damage from a covered loss.

7 (4) Building methods that prevent or significantly lessen the potential
8 damage from a covered loss.

9 (5) Focus on prevention and mitigation for any substantially damaged
10 structure, as well as developing and recommending ideas that will aid in the
11 recovery, rebuilding and renewal process, and in analyzing and developing ways
12 to continuously improve the administration and purpose of the fund.

13 F. The board of directors shall analyze, study and develop actuarially
14 appropriate insurance discounts to be offered to individuals should they
15 perform mitigation and prevention improvements to structures.

16 G.(1) The state treasurer shall be the chief executive officer of the
17 corporation and shall act on behalf of the corporation and implement all actions
18 of the board of directors consistent with the provisions of this Chapter.

19 (2) The state treasurer, on behalf of the board of directors of the
20 corporation, shall annually report to the legislature on the activities of the
21 corporation that are consistent with the purposes and goals of this Chapter.

22 §2459. Consumer savings; mandatory rate adjustments

23 All insurers writing covered policies shall complete a thorough actuarial
24 review of their property insurance rates associated with catastrophe coverage
25 for the perils included within the scope of this Chapter that is consistent with
26 the Casualty Actuarial Society Statement of Principles Regarding Property and
27 Casualty Insurance Ratemaking, and shall adjust their rates to reflect all
28 reinsurance expense savings and all reductions in loss costs due to the provisions
29 of this Chapter. Each such insurer shall provide an actuarial certification to the

1 Department of Insurance that it has complied with this Section.

2 §2460. Federal or multistate catastrophic funds

3 A. Upon the creation of a federal or multistate catastrophic insurance or
4 reinsurance program intended to serve purposes similar to the purposes of the
5 fund created pursuant to R.S. 39:100.31, the state treasurer shall promptly
6 make recommendations to the legislature for how the fund can coordinate with
7 the federal or multistate program and for such other actions as the state
8 treasurer finds appropriate in the circumstances.

9 B. The board of directors may execute an agreement to create or to
10 participate in a federal or multistate catastrophic insurance or reinsurance
11 program or fund intended to serve the purposes similar to the purposes of the
12 fund. This agreement shall be reviewed by the state treasurer, shall be
13 consistent with the treasurer's recommendations to the legislature for how the
14 fund can coordinate with the federal or multistate program or fund, and shall
15 not be executed unless approved by, or revised pursuant to recommendations
16 by the Joint Legislative Committee on the Budget.

17 §2461. Reversion of fund assets upon termination

18 The fund and the duties of the state treasurer under this Chapter may
19 be terminated only by law. Upon termination of the fund, all assets of the fund
20 shall revert to the state general revenue fund.

21 §2462. Reduction of rates

22 Any premium savings or reduction in rates attributed to the activities of
23 the corporation, directly or indirectly, shall be passed on to the policyholders
24 in this state in the form of a rebate or reduction in insurance premium paid by
25 the policyholder.

26 Section 3. The provisions of R.S. 22:2454(F) and 2458 as enacted in this Act relative
27 to the creation and activities of the board of directors of the Louisiana Consumers
28 Catastrophe Preparedness and Protection Corporation in developing and implementing a plan
29 of operation and promulgating necessary rules and regulations shall become effective on

1 August 15, 2009.

2 Section 4. This Act shall become effective on January 1, 2010.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Thomas L. Tyler.

DIGEST

Proposed law creates the Louisiana State Catastrophe Fund as a special fund in the state treasury and provides that the fund consist of monies appropriated to the fund by the legislature and such other sources of funds as may be provided by law.

Requires that monies in the fund be appropriated by the legislature for funding programs as may be provided by law including, but not limited to, programs of reinsurance and programs involving payment of damages to property arising from catastrophes.

Requires that all unexpended and unencumbered monies in the fund at the end of a fiscal year shall remain in the fund. Provides for investment of monies in the fund and for interest earned on monies in the fund.

Proposed law, relative to the Louisiana Consumers Catastrophe Preparedness and Protection Act, provides for use of monies in the Louisiana State Catastrophe Fund in implementing the Louisiana Consumers Catastrophe Preparedness and Protection Plan.

Creates the Louisiana Consumers Catastrophe Preparedness and Protection Corporation to operate a reinsurance program as provided in proposed law. Provides that the corporation be governed by a board of directors comprised of the state treasurer, or his designee; the commissioner of insurance, or his designee; the legislative auditor, or his designee; and 12 persons appointed by the governor in consultation with the speaker of the House and the president of the Senate. Provides that the 12 members appointed by the governor be subject to Senate confirmation and serve at the pleasure of the governor.

Provides that the board of directors adopt a plan of operation, to be called the Louisiana Consumers Catastrophe Preparedness and Protection Plan, and that the plan be filed with the office or property and casualty of the Louisiana Department of Insurance.

Proposed law defines the following terms as used under the plan:

- (1) "Covered loss" means all natural catastrophes, regardless of quantity, that occur in a calendar year which cause insured losses in this state provided the natural catastrophic event or series of events has been declared a disaster or emergency by the governor and has also been declared to be a federal disaster by the president.
- (2) "Covered policy" means any property insurance policy covering residential property for homeowners, condominium owners, mobile homeowners, and renters of residential property in this state issued by any authorized insurer, including the FAIR Plan, the Coastal Plan, or similar entity created pursuant to law. Provides that a "covered policy" also includes any property insurance policy or self-insurance plan covering non-residential property owned by a school district or municipality. Excludes any reinsurance agreement or any policy that excludes coverage for a "covered loss."
- (3) "Losses" means direct incurred losses under covered policies in a calendar year, including losses attributable to additional living expense coverage not to exceed 40% 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.

- (4) "Retention" means the amount of losses below which an insurer is not entitled to reimbursement from the fund.

Proposed law provides for calculation of an insurer's retention multiple as provides that for the contract year beginning in 2010, the retention multiple is equal to \$2 billion, divided by the total estimated reimbursement premium for the contract year. Provides that for subsequent years, the retention multiple is equal to \$2 billion, adjusted to reflect the percentage growth in insured values for covered policies since year 2009, divided by the total estimated reimbursement premium for the contract year.

Provides for adjustments in the retention multiple to reflect the coverage level elected by an insurer and provides for election of 90%, 75%, and 45% coverage levels.

Proposed law authorizes the state treasurer, on behalf of the board, to execute annual contracts with each insurer writing covered policies in this state to provide for reimbursement to the insurer for 45%, 75%, or 90% of its losses from each covered loss in excess of the insurer's retention, plus 10% of the reimbursed losses to cover loss adjustment expenses.

Proposed law provides for calculation of an actuarially indicated reimbursement premium to be paid to the fund by each insurer executing a reimbursement contract.

Proposed law authorizes the issuance of revenue bonds upon occurrence of a covered event for which monies in the fund are insufficient. Provides that such bond obligations issued by the corporation do not constitute a debt of the state within the meaning of any constitutional or statutory provision and shall be deemed executory only to the extent monies are available in the fund and that no liability shall be incurred by the state beyond the monies available for that purpose.

Proposed law requires that any premium savings or reduction in rates attributed to the activities of the corporation, directly or indirectly, be passed on to the policyholders in the form of a rebate or reduction in insurance premium paid by the policyholder.

Authorizes the board to participate in federal or multistate catastrophic insurance or reinsurance programs subject to approval by the state treasurer and the Joint Legislative Committee on the Budget.

Effective January 1, 2010.

(Adds R.S. 22:2451 - 2462)