BILL TEXT:

STATE OF NEW YORK

1883

2007-2008 Regular Sessions

IN SENATE

January 29, 2007

Introduced by Sen. LARKIN -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the insurance law, in relation to establishing the New York state catastrophe fund authority act 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 state catastrophe fund authority act".

§ 2. Legislative findings and declaration. The legislature finds and declares:

1. There is a compelling state interest to maintain a viable and orderly private sector property/casualty insurance market for both residential and commercial properties in this state and across the United States. To the extent that the private sector is unable to maintain an orderly market, due to catastrophic losses from natural disasters, state action to maintain an orderly insurance market is a necessary exercise of police power;

2. As a result of scores of billions of dollars in insured losses from natural disasters this past year across the nation and the world, due to either chance or as a result of global warming, numerous insurers are now beginning to reduce their loss exposure from natural disasters by pulling out of certain insurance markets. The potential instability of the world reinsurance market, which has been caused in part by these events, has also increased pressure on direct insurers to reduce their risk exposure from a catastrophic loss;

3. The formation of a public authority to provide reimbursement to insurers for a portion of their catastrophic losses should create additional insurance capacity to ameliorate the current dangers to the state's economy and to the public health, safety and welfare; and

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

LBD01396-01-7

4. To increase insurance industry capacity to cover insured losses, it is essential that revenues received by such authority be exempt from federal and state taxation. It is therefore the intent of the legislature that this program be structured as a public authority to operate the fund. Furthermore, funds held by such fund will be protected and remain available to pay for catastrophic losses and not used for state budget general fund expenditures.

§ 3. The insurance law is amended by adding a new article 92 to read as follows:

ARTICLE 92

NEW YORK STATE CATASTROPHE FUND AUTHORITY

§ 9201. Definitions. As used in this article:

(a) "Actuarially indicated" means, with respect to premiums paid by insurers for reimbursement provided by the catastrophe fund authority, an amount determined according to principles of actuarial science to be adequate, but not excessive, in the aggregate, to pay current and future obligations and expenses of the fund, including additional amounts if needed to pay debt service on revenue bonds issued under this article and to provide required debt service coverage in excess of the amounts required to pay actual debt service on revenue bonds issued under section nine thousand two hundred five of this article, and determined according to principles of actuarial science to reflect each insurer's relative exposure to losses from covered events.

(b) "Authority" means the New York state catastrophe fund authority.

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

(d) "Covered event" means: (1) any wind storm, including wind borne water damage, which storm causes insured losses in this state; (2) all earthquakes that are declared to be earthquakes by the United States Geological Survey, and which causes insured losses in this state; (3) all ice storms that are declared by the United States government to be designated as a national disaster; and (4) any other catastrophic event caused by nature or an act of God that is deemed to be a major catastrophic event as designated by the governor.

(e) "Covered policy" means any insurance policy covering residential or commercial 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 a policy issued by the New York property insurance underwriting association, or any insurance policy covering commercial properties from physical damage due to acts of nature or acts of God. "Covered policy" does not include any reinsurance agreement or any policy that excludes coverage for the peril referred to in subsection (d) of this section.

(f) "Debt service" means the amount required in any fiscal year to pay the principal of, redemption premium, if any, and interest on revenue bonds and any amounts required by the terms of documents authorizing, securing or providing liquidity for revenue bonds necessary to maintain in effect any such liquidity or security arrangements.

(g) "Debt service coverage" means the amount, if any, required by the documents under which revenue bonds are issued, which amount is to be received in any fiscal year in excess of the amount required to pay debt service for such fiscal year.

(h) "Local government" shall mean any county, city, town or village.

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

(j) "Pledged revenues" means all or any portion of revenues to be derived from reimbursement premiums or from assessments, as determined by the authority.

(k) "Retention" means the amount of losses below which and above which an insurer is not entitled to reimbursement from the fund. An insurer's retention shall be calculated as follows:

(1) The authority shall calculate and report to each insurer the retention multiples for that year. For the contract year beginning May first, two thousand eight, the retention multiple shall be equal to six billion dollars, divided by the total estimated reimbursement premium for the contract year; for subsequent years, the retention multiple shall be equal to six billion dollars, adjusted to reflect the percentage growth in premium for covered policies since May first, two thousand eight, divided by the total estimated reimbursement premium for the contract year. In addition, for the contract year beginning May first, two thousand eight, the retention multiple shall be above fifteen billion dollars, divided by the total estimated reimbursement premium for the contract year; and for subsequent contract years, the retention multiple shall be above fifteen billion dollars, adjusted to reflect the percentage growth in premiums for covered policies since May first, two thousand eight, divided by the total estimated reimbursement premium for the contract year. Participating insurers shall retain losses below six billion dollars and above fifteen billion dollars as adjusted annually to reflect increases or decreases in the growth in premium for covered policies. Total reimbursement premium for purposes of the calculation under this paragraph shall be estimated using the assumption that all insurers have selected a percentage coverage level established by the authority. Such percentage coverage shall not be set lower than eighty percent nor higher than ninety percent.

(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 first coverage level set by the authority pursuant to such paragraph, the adjusted retention multiple is one hundred percent of the amount determined under paragraph one of this subsection. For insurers electing the second coverage level to be established by the authority at not more than eighty percent nor less than seventy percent, the retention multiple is one hundred twenty percent of the amount determined under paragraph one of this subsection.

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For insurers electing the third coverage level to be established by the authority at not more than seventy percent nor less than fifty percent, 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.

§ 9202. New York state catastrophe fund. There is hereby created the New York state catastrophe fund to be administered by the authority. Moneys in the fund may not be expended, loaned or appropriated except to pay obligations of the authority arising out of reimbursement contracts entered into under section nine thousand two hundred three of this article, payment of debt service on revenue bonds issued under section nine thousand two hundred five of this article, costs of the mitigation program under section nine thousand two hundred six of this article, costs of procuring reinsurance, and costs of administration of the authority. The authority shall invest the moneys in the fund pursuant to applicable state laws regulating investment of state funds. Except as otherwise provided in this article, earnings from all investments shall be retained in the fund. The authority may adopt such rules as are reasonable and necessary to implement this article. Such rules must conform to the legislature's specific intent in establishing the New York state catastrophe fund, must enhance the fund's potential ability to respond to claims for covered events, must contain general provisions so that the rules can be applied with reasonable flexibility so as to accommodate insurers in situations of an unusual nature or where undue hardship may result, except that such flexibility may not in any way impair, override, supersede or constrain the public purpose of the fund, and must be consistent with sound insurance practices. The authority may, by rule, provide for the exemption from sections nine thousand two hundred three and nine thousand two hundred four of this article for insurers writing covered policies with less than four million dollars in aggregate exposure for covered policies, which exposure results in a de minimis reimbursement premium, if the exemption does not affect the actuarial soundness of the fund.

§ 9202-a. New York state catastrophe fund authority. There is hereby created the "New York state catastrophe fund authority". (a) (1) The authority shall be a body corporate and politic constituting a public benefit corporation. The authority shall consist of a chair and nineteen other members. The chair of the authority shall be appointed by the governor. Two of the nineteen members shall be appointed on the written recommendation of the mayor of the city of New York. Ten members shall be appointed by the governor of which three of those members shall be the superintendent and the commissioners of taxation and finance and transportation. The state comptroller shall be a member of this board. Two members shall be appointed by the temporary president of the senate, two by the speaker of the assembly, and one each by the minority leader of the senate and the minority leader of the assembly. The chair and each of the members shall be appointed for a term of three years, provided however, that the chair first appointed shall serve for a term ending June thirtieth, two thousand ten, and the eighteen other members first appointed shall serve for the following terms: The four members appointed by the temporary president of the senate and the speaker of the assembly shall each serve for a term ending June thirtieth, two thousand eleven; the two members appointed on recommendation of the mayor of the city of New York shall each serve for a term ending June thirtieth, two thousand twelve, two of the members appointed by the governor shall each serve for a term ending June thirtieth, two thousand thirteen; two of the members appointed by the governor shall each serve for a term ending June thirtieth, two thousand fourteen, two of the members appointed by the governor shall each serve for a term ending June thirtieth, two thousand fifteen, and two of the members appointed by the governor shall serve for a term ending June thirtieth, two thousand sixteen.

(2) Vacancies occurring otherwise than by expiration of term shall be filled in the same manner as original appointments for the balance of the unexpired term.

(b) The chair shall be paid a salary in the amount determined by the authority; the other members shall not receive a salary or other compensation. Each member, including the chair, shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of his or her official duties.

(c) A majority of the whole number of members of the authority then in office shall constitute a quorum for the transaction of any business or the exercise of any power of the authority. Except as otherwise specified in this article, for the transaction of any business or the exercise of any power of the authority, the authority shall have power to act by a majority vote of the members present at any meeting at which a quorum is in attendance and except further, that in the event of a tie vote the chair shall cast one additional vote.

(d) The chair shall be the chief executive officer of the authority and shall be responsible for the discharge of the executive and administrative functions and powers of the authority. On recommendation of the chair, the authority shall appoint an executive director who shall be responsible for the administration and the day-to-day operations of the authority and who shall not be a member of the authority. The chair shall be empowered to delegate any one or more of his or her functions or powers to the executive director, provided, however, that the chair shall delegate to the executive director such functions and powers, including, without limitation, that of appointment, discipline and removal of officers or employees, as are necessary for the executive director to discharge his or her responsibilities.

(e) The authority shall be a "state agency" for the purposes of sections seventy-three and seventy-four of the public officers law.

(f) The governor may remove any member of the authority for inefficiency, neglect of duty or misconduct in office after giving him or her a copy of the charges against him or her and an opportunity to be heard, in person or by counsel in his or her defense, upon not less than ten days' notice. If any member shall be so removed, the governor shall file in the office of the department of state a complete statement of charges made against such member, and his or her findings thereon, together with a complete record of the proceedings.

§ 9202-b. General powers of the authority. Except as otherwise limited by this article, the authority shall have the power:

(a) To sue and be sued;

(b) To have a seal and alter the same at pleasure;

(c) To borrow money and issue negotiable notes, bonds or other obligations and to provide for the rights of the holders thereof;

(d) To invest any funds held in reserve or sinking funds, or any monies not required for immediate use or disbursement, at the discretion of the authority, in (1) obligations of the state or the United States government, (2) reasonably prudent catastrophe notes, bonds, options, swaps and risk futures or other prudent financial instruments to maximize the financial capacity of the fund, (3) obligations the principal and interest of which are guaranteed by the state or the United States government, (4) certificates of deposit of banks or trust companies in this state, secured, if the authority shall so require, by obligations of the United States or of the state of a market value equal at all times to the amount of the deposit, and (5) as to the said reserve and sinking funds, other securities in which the trustee or trustees of any public retirement system or pension fund has the power to invest the moneys thereof pursuant to article four-A of the retirement and social security law, each such reserve and sinking fund being treated as a separate fund for the purposes of article four-A of such law;

(e) To make and alter by-laws for its organization and internal management, and rules and regulations governing the exercise of its powers and the fulfillment of its purposes under this article;

(f) To enter into contracts and leases and to execute all necessary instruments;

(g) To acquire, hold and dispose of real or personal property in the exercise of its powers;

(h) To appoint such officers and employees as it may require for the performance of its duties, and to fix and determine their qualifications, duties, and compensation and to retain or employ counsel, auditors, engineers and private consultants on a contract basis or otherwise for rendering professional or technical services and advice;

(i) To be a "participating employer" in the New York state and local employees' retirement system with respect to one or more classes of officers and employees of such authority, as may be provided by resolution of such authority, or any subsequent amendment thereof, filed with the comptroller and accepted by him or her pursuant to section thirty-one of the retirement and social security law; and

(j) To do all things necessary to carry out its purposes and for the exercise of the powers granted in this article.

§ 9203. Reimbursement contracts. (a) The authority shall enter into a 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 nine thousand two hundred four 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 authority to reimburse the insurer for the first, second or third percentage coverage level for its losses from each covered event in excess of the insurer's retention, plus five percent of the reimbursed losses to cover loss adjustment expenses.

(2) The insurer must elect one of the three coverage levels specified in this subsection and may, upon renewal of a reimbursement contract:

(A) Elect a lower percentage coverage level if no revenue bonds issued under subsection (a) of section nine thousand two hundred five of this article after a covered event are outstanding; or

(B) Elect a higher percentage coverage level.

(3) All members of an insurer group must elect the same coverage level. The New York property insurance underwriting association must elect the first percentage coverage level.

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(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, shall 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 authority with respect to all contracts covering a particular year shall not exceed the balance of the fund as of December thirty-first of the particular year, together with the maximum amount that the authority is able to raise through the issuance of revenue bonds under section nine thousand two hundred five of this article. The contract shall require the authority to annually notify insurers of the fund's anticipated borrowing capacity at year end, the projected year end balance of the fund, and the insurer's estimated share of total reimbursement premium to be paid to the fund for the contract year. For all regulatory and reinsurance purposes, an insurer may calculate its projected payout from the fund as its share of the total fund premium for the current contract year multiplied by the sum of projected year-end fund balance and bonding capacity as reported under this subsection. In May and October of each year, the authority shall publish in the state register a statement of the fund's anticipated borrowing capacity and the projected year-end balance of the fund for the current contract year.

(d) (1) The contract shall require the insurer to report to the authority, as directed, no later than December thirty-first of each year, and quarterly thereafter, the insurer's losses from covered events for the year. The contract shall require the authority to determine and pay, as soon as practicable after receiving these reports, the initial amount of reimbursement due on a paid basis and adjustments to this amount based on later loss information. The adjustments to reimbursement amounts shall require the authority to pay, or the insurer to return, amounts reflecting the most recent calculation of losses.

(2) If the authority determines that the projected year-end balance of the fund, together with the amount that the authority determines that it is possible to raise through revenue bonds issued under section nine thousand two hundred five of this article, are insufficient to pay reimbursement to all insurers at the level promised in the contract, the authority shall:

(A) Pay to each insurer the amount of reimbursement it is owed, up to an amount equal to the insurer's share of the actual premium paid for that contract year, multiplied by the actual claims-paying capacity available for that contract year.

(B) Thereafter, establish, based on reimbursable losses, 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 authority that it is likely to qualify for reimbursement under the contract, and demonstrates to the authority that the immediate receipt of moneys is likely to prevent the insurer from becoming insolvent, the authority shall advance to the insurer, at market interest rates, the amounts necessary to maintain the solvency of the insurer, up to fifty percent of the authority's estimate of the reimbursement due the insur-

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er. The insurer's reimbursement shall be reduced by an amount equal to the amount of the advance and interest thereon.

(f) The contract shall provide that in the event of the insolvency of an insurer, the fund shall pay directly to the property/casualty insurance security fund provided for in section seven thousand six hundred one of this chapter 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 property/casualty insurance security fund provided for in section seven thousand six hundred one of this chapter, notwithstanding any other provision of law to the contrary. The guaranty association 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 authority shall after consultation with the superintendent adopt the initial contract form no later than December first, two thousand seven and must adopt the initial premium formula no later than January first, two thousand eight. Initial reimbursement contracts under this article must be entered into no earlier than February first, two thousand eight and no later than May first, two thousand eight.

§ 9204. 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 authority, in consultation with the superintendent, shall select an independent consultant to develop a formula to determine 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 authority, in consultation with the superintendent, shall consider the coverage level elected under subsection (b) of section nine thousand two hundred three 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, and other such factors deemed to be appropriate. The formula may provide for a procedure to determine the premiums to be paid by new insurers that begin writing covered policies after the beginning of a contract year, taking into consideration when the insurer starts writing covered policies, the potential exposure of the insurer, the potential exposure of the fund, the administrative costs to the insurer and to the fund, and any other factors deemed appropriate. The authority, after consultation with the superintendent may, at any time, revise the formula pursuant to the procedure provided in this subsection.

(c) No later than August first of each year, each insurer shall notify the authority and the superintendent of its insured values under covered policies by zip code or other limited geographical area, as of May thirtieth of that year. On the basis of these reports, the authority, in consultation with the superintendent, 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

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to a periodic payment plan specified in the contract. The authority 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 start-up 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 November thirtieth, two thousand seven. The authority shall collect the advance premium payments required by this subsection. The insurer shall receive a credit against future premiums for the advance payment.

§ 9205. 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 authority may enter into agreements with local governments for the issuance of revenue bonds for the benefit of the fund or issue revenue bonds in the authority's own right. The term of the bonds shall not exceed thirty years. The authority shall pledge all future revenues under section nine thousand two hundred four of this article and under subsection (c) of this section, 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 authority 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.

(b) Any local government may issue bonds pursuant to the applicable provisions of the state finance law 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 local government are able to recover under residential and commercial property/casualty insurance policies after a covered event. Revenue bonds shall not be issued until validated pursuant to the applicable provisions of the state finance law. The local government shall enter into such contracts with the fund as are necessary to carry out the provisions of this section. Any bonds issued under this section shall be payable from and secured by moneys received by the fund under section nine thousand two hundred four of this article, and assigned and pledged to or on behalf of the local government for the benefit of the holders of such bonds. The funds, credit, property, and taxing power of the state or of the local government shall not be pledged for the payment of such bonds.

(c) If the authority, after consultation with the superintendent, determines that the amount of revenue produced under subsection (a) of this section is insufficient to fund the obligations, costs, and expenses of the fund, including repayment of revenue bonds, the authority may levy an emergency assessment on each insurer writing property and casualty business in this state or a portion of this state for residential and commercial properties. Pursuant to the emergency assessment, each such insurer shall pay to the fund by July first of each year an amount set by the authority not exceeding two percent of its gross direct written premium for the prior year from all property and casualty business in this state or for a designated region of this state except for workers' compensation, except that, if the governor has declared a state of emergency under this article due to the occurrence of a covered event, the amount of the assessment may be increased to an amount not exceeding four percent of such premium per covered event. Under no circumstance shall the aggregate assessment for more than three covered events in one year be more than ten percent. As used in this subsection, the term "property and casualty business" includes all lines of business identified on the form provided by the superintendent, in the annual statement required by this article and any rules adopted under this article. The annual assessments under this subsection shall continue as long as the revenue bonds issued with respect to which the assessment was imposed are outstanding, unless adequate provision has been made for the payment of such bonds pursuant to the documents authorizing issuance of the bonds. An insurer shall not at any time be subject to aggregate annual assessments under this subsection of more than two percent of premium, except that in the case of a declared emergency, an insurer shall not at any time be subject to aggregate annual assessments under this subsection of more than four percent for one covered event, nor more than ten percent of premium for three or more covered events that occur in one year. 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 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.

§ 9206. Additional powers and duties. (a) The authority, after consultation with the superintendent may procure: (1) reinsurance from reinsurers for the purpose of maximizing the capacity of the fund, and (2) catastrophe notes, bonds, options, swaps, risk futures or other financial instruments to maximize the capacity of the fund.

(b) In addition to borrowing under this article, the authority may also borrow from, or enter into other financing arrangements with, any market sources at prevailing interest rates.

(c) The authority, after consultation with the superintendent, shall develop new financing mechanisms or instruments to maximize the capacity of the fund. Such mechanisms or instruments should attract private investment from insurers and reinsurers that wish to fully or partially shelter their capital from income taxation and increase the ability of insurers, banks, reinsurers and other financial institutions to place capital with the fund and receive commensurate federal and state income and franchise tax deductions, credits or deferrals for its contributors.

(d) In each fiscal year after April first, two thousand eleven, the authority shall appropriate from the investment income of the fund the sum of ten million dollars for the purpose of providing funding for state agencies, local governments, other municipal corporations, 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, increase communications capabilities among local law enforcement, state militia, the armed forces of the United States, first responders, insurance carriers and adjusters and common carriers so that such individuals can easily communicate within each organization and with other organizations during and immediately following a covered event, or protect local infrastructure from potential damage from a covered event. In addition, such monies may be used to increase participating insurer ability to share and rapidly shift claims adjusters to natural disaster ravaged areas so that accurate claims loss information can be gathered and individual loss claims processed and paid as soon as practicable. Moneys shall first be available for appropriation under this subsection in fiscal year two thousand eleven. The moneys specified in this subsection shall not be available for appropriation under this subsection if the authority finds that an appropriation of investment income from the fund would jeopardize the actuarial soundness of the fund.

(e) The authority 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 article.

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

§ 9206-a. Notes and bonds of the authority. (a) (1) The authority shall have power and is hereby authorized from time to time to issue its negotiable bonds and notes in such principal amount as, in the opinion of the authority, shall be necessary to provide sufficient funds for achieving its purposes, including the payment of interest on bonds and notes of the authority and the establishment of reserves to secure such bonds and notes.

(2) The authority shall have power, from time to time, to issue renewal notes, to issue bonds to pay notes and whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds then outstanding and partly for any other purpose. The refunding bonds shall be sold and the proceeds applied to the purchase, redemption or payment of the bonds to be refunded.

(3) Except as may otherwise be expressly provided by the authority, every issue of its notes or bonds shall be general obligations of the authority payable out of any revenues or moneys of the authority, subject only to any agreements with the holders of particular notes or bonds pledging any particular receipts or revenues.

(b) The notes and bonds shall be authorized by resolution approved by not less than a two-thirds majority vote of the whole number of members of the authority then in office, except that in the event of a tie vote the chair shall cast one additional vote. The notes and bonds shall bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places and be subject to such terms of redemption as such resolution or resolutions may provide. The notes and bonds of the authority may be sold by the authority, at public or private sale, at such price or prices as the authority shall determine. No notes or bonds of the authority shall be sold by the authority at private sale, however, unless such sale and the terms thereof have been approved in writing by (1) the comptroller, where such sale is not to the comptroller, or (2) the director of the budget, where such sale is to the comptroller.

(c) Any resolution or resolutions authorizing any notes or bonds or any issue thereof may contain provisions, which shall be a part of the contract with the holders thereof, as to:

(1) pledging all or any part of the premiums, charges and other fees made or received by the authority, and other money received or to be received, to secure the payment of the notes or bonds or of any issue thereof, subject to such agreements with bondholders or noteholders as may then exist;

(2) pledging all or any part of the assets of the authority to secure the payment of the notes or bonds or of any issue of notes or bonds, subject to such agreements with noteholders or bondholders as may then exist;

(3) the setting aside of reserves or sinking funds and the regulation and disposition thereof; and

(4) any other matters, of like or different character, which in any way affect the security or protection of the notes or bonds.

§ 9206-b. Agreement of the state. The state does hereby pledge to and agree with the holders of any notes or bonds or lease obligations issued or incurred under this article, that the state will not limit or alter the denial of authority under this article, or the rights hereby vested in the authority to fulfill the terms of any agreements made with the holders thereof, or in any way impair the rights and remedies of such holders until such notes or bonds or lease obligations, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses for which the authority is liable in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged. The authority shall include this pledge and agreement of the state in any agreement with the holders of such notes or bonds or lease obligations.

§ 9206-c. Notes and bonds as legal investment. The notes and bonds of the authority are hereby made securities in which all public officers and bodies of the state and all municipalities and political subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or who may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds including capital in their control or belonging to them. Notwithstanding any other provisions of law, the bonds of the authority are also hereby made securities which may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and political subdivisions for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized.

§ 9207. Advisory council. (a) An advisory council consisting of twenty members shall be established to provide the authority with information and advice in connection with its duties. The members shall be selected from the following categories: representatives with expertise in actuarial, meteorology, land-use planning and engineering; and a representative of insurers, insurance agents, reinsurers, law enforcement, firefighters, the state emergency management office, the division of code enforcement of the department of state, the superintendent, the department of transportation, the department of taxation and finance, the

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department of audit and control and consumers who shall also be representatives of other affected professions and industries. Eight members shall be appointed by the governor, three by the temporary president of the senate, three by the speaker of the assembly, and one each by the minority leader of the senate and the minority leader of the assembly.

(b) The advisory council shall, in cooperation with state agencies such as the department of state, the department of transportation, the department of health, the department, and the state emergency management office, develop prevention and mitigation standards to minimize potential damage that may occur from a natural disaster before a covered event and minimize actual damage that may occur during a covered event and immediately after such an event. Such prevention and mitigation standards shall include:

(1) a review and update of the state building and fire prevention code and municipal land-use plans to ensure that building standards and municipal zoning and subdivision regulations are satisfactory to mitigate damage from a catastrophic event. Further, such standards may contemplate the use of appropriate building materials and construction methods to mitigate potential damage;

(2) suggested changes in procedures to ensure that all building codes and municipal land-use plans are enforced;

(3) suggestions to minimize the loss of life via expedited evacuation procedures for all affected residents, particularly those who are economically, physically or mentally unable to get out of harms way;

(4) suggestions and procedures to accelerate the recovery and rebuilding process;

(5) suggestions and procedures to assist adversely affected businesses so that such businesses can quickly commence operations and minimize short and long term job losses; and

(6) a study of and suggestions on the development of additional actuarially appropriate insurance premium discounts to be offered to insureds to encourage residents, businesses and municipalities to build or retrofit their homes, businesses and municipal facilities in a way to minimize damage.

The advisory council shall report its initial findings to the chair of the authority, the governor, the superintendent, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate and the minority leader of the assembly on or before June first, two thousand eight, and shall thereafter issue and submit reports annually on or before June first.

§ 9208. Violations. Any violation of this article or of the rules adopted under this article shall constitute a violation of this chapter.

§ 9209. International, federal, state, regional or multistate catastrophe funds. The authority, in the conduct of its business and operation, shall actively attempt to integrate and coordinate its activities and operations with other existing or newly established international, federal, state, regional or multistate catastrophe funds or programs, or other reinsurance programs that serve purposes that are similar to all or some of the goals to be carried out by the fund established by this article. The superintendent shall promptly make recommendations to the authority, the governor and legislature on methods to encourage the integration, consolidation or coordination of activities and operations of the various existing or newly established federal, state, regional or multistate catastrophe funds or other reinsurance programs. The authority, upon the approval of the legislature, may integrate, coordinate or terminate the fund and consolidate such fund with other operating catastrophe or reinsurance funds or merge, take over or acquire other already operating catastrophe or reinsurance funds to create a larger and more diverse catastrophe fund.

The authority shall investigate the integration and coordination of the payment of premiums for the coverage from catastrophic covered events and the timely payment of claims with other existing federal and state insurance programs such as the National Flood Insurance Program, payments to be made by the Federal Emergency Management Agency, and state sponsored FAIR plans such as the New York Property Insurance Underwriting Association, and state sponsored insurance guarantee funds.

§ 9210. Fund assets upon termination. The fund and the duties of the authority under this article may be terminated only by law. Upon the full or partial termination of the operation of the fund, all or a portion of such assets of the fund shall be transferred to any successor federal or multistate catastrophe fund or the property/casualty insurance security fund.

§ 4. The sum of ten million dollars ($10,000,000), or so much thereof as may be necessary, is hereby appropriated to the New York state catastrophe fund out of any moneys in the state treasury in the general fund to the credit of the state purposes account not otherwise appropriated for its expenses, including personal services, maintenance and operation, in carrying out the provisions of this act.

§ 5. This act shall take effect immediately.