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HB 1127

2012 Legislature

1  
2 An act relating to Citizens Property Insurance  
3 Corporation; amending s. 627.351, F.S.; conforming  
4 cross-references; reducing to 2 percent from 6 percent  
5 the amount of the projected deficit in the coastal  
6 account for the prior calendar year which is recovered  
7 through regular assessments; requiring that remaining  
8 projected deficits in personal and commercial lines  
9 accounts be recovered through emergency assessments  
10 after accounting for the Citizens policyholder  
11 surcharge; requiring the Office of Insurance  
12 Regulation of the Financial Services Commission to  
13 notify assessable insurers and the Florida Surplus  
14 Lines Service Office of the dates assessable insurers  
15 shall collect and pay emergency assessments; removing  
16 reference to recoupment of residual market deficit  
17 assessments; requiring the board of governors to make  
18 a determination that an account has a projected  
19 deficit before it levies a Citizens policy holder  
20 surcharge; requiring that a limited apportionment  
21 company begin collecting regular assessments within 90  
22 days and pay in full within 15 months after the  
23 assessment is levied; authorizing the Office of  
24 Insurance Regulation to assist the Citizens Property  
25 Insurance Corporation in the collection of  
26 assessments; replacing the term "market equalization  
27 surcharge" with the term "policyholder surcharge";  
28 providing an effective date.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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

Section 1. Paragraphs (b), (c), (q), and (w) of subsection (6) of section 627.351, Florida Statutes, are amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(b)1. All insurers authorized to write one or more subject lines of business in this state are subject to assessment by the corporation and, for the purposes of this subsection, are referred to collectively as "assessable insurers." Insurers writing one or more subject lines of business in this state pursuant to part VIII of chapter 626 are not assessable insurers, but insureds who procure one or more subject lines of business in this state pursuant to part VIII of chapter 626 are subject to assessment by the corporation and are referred to collectively as "assessable insureds." An insurer's assessment liability begins on the first day of the calendar year following the year in which the insurer was issued a certificate of authority to transact insurance for subject lines of business in this state and terminates 1 year after the end of the first calendar year during which the insurer no longer holds a certificate of authority to transact insurance for subject lines of business in this state.

2.a. All revenues, assets, liabilities, losses, and expenses of the corporation shall be divided into three separate accounts as follows:

(I) A personal lines account for personal residential

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57 | policies issued by the corporation, or issued by the Residential  
58 | Property and Casualty Joint Underwriting Association and renewed  
59 | by the corporation, which provides comprehensive, multiperil  
60 | coverage on risks that are not located in areas eligible for  
61 | coverage by the Florida Windstorm Underwriting Association as  
62 | those areas were defined on January 1, 2002, and for policies  
63 | that do not provide coverage for the peril of wind on risks that  
64 | are located in such areas;

65 |       (II) A commercial lines account for commercial residential  
66 | and commercial nonresidential policies issued by the  
67 | corporation, or issued by the Residential Property and Casualty  
68 | Joint Underwriting Association and renewed by the corporation,  
69 | which provides coverage for basic property perils on risks that  
70 | are not located in areas eligible for coverage by the Florida  
71 | Windstorm Underwriting Association as those areas were defined  
72 | on January 1, 2002, and for policies that do not provide  
73 | coverage for the peril of wind on risks that are located in such  
74 | areas; and

75 |       (III) A coastal account for personal residential policies  
76 | and commercial residential and commercial nonresidential  
77 | property policies issued by the corporation, or transferred to  
78 | the corporation, which provides coverage for the peril of wind  
79 | on risks that are located in areas eligible for coverage by the  
80 | Florida Windstorm Underwriting Association as those areas were  
81 | defined on January 1, 2002. The corporation may offer policies  
82 | that provide multiperil coverage and the corporation shall  
83 | continue to offer policies that provide coverage only for the  
84 | peril of wind for risks located in areas eligible for coverage

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85 | in the coastal account. In issuing multiperil coverage, the  
86 | corporation may use its approved policy forms and rates for the  
87 | personal lines account. An applicant or insured who is eligible  
88 | to purchase a multiperil policy from the corporation may  
89 | purchase a multiperil policy from an authorized insurer without  
90 | prejudice to the applicant's or insured's eligibility to  
91 | prospectively purchase a policy that provides coverage only for  
92 | the peril of wind from the corporation. An applicant or insured  
93 | who is eligible for a corporation policy that provides coverage  
94 | only for the peril of wind may elect to purchase or retain such  
95 | policy and also purchase or retain coverage excluding wind from  
96 | an authorized insurer without prejudice to the applicant's or  
97 | insured's eligibility to prospectively purchase a policy that  
98 | provides multiperil coverage from the corporation. It is the  
99 | goal of the Legislature that there be an overall average savings  
100 | of 10 percent or more for a policyholder who currently has a  
101 | wind-only policy with the corporation, and an ex-wind policy  
102 | with a voluntary insurer or the corporation, and who obtains a  
103 | multiperil policy from the corporation. It is the intent of the  
104 | Legislature that the offer of multiperil coverage in the coastal  
105 | account be made and implemented in a manner that does not  
106 | adversely affect the tax-exempt status of the corporation or  
107 | creditworthiness of or security for currently outstanding  
108 | financing obligations or credit facilities of the coastal  
109 | account, the personal lines account, or the commercial lines  
110 | account. The coastal account must also include quota share  
111 | primary insurance under subparagraph (c)2. The area eligible for  
112 | coverage under the coastal account also includes the area within

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113 Port Canaveral, which is bordered on the south by the City of  
114 Cape Canaveral, bordered on the west by the Banana River, and  
115 bordered on the north by Federal Government property.

116       b. The three separate accounts must be maintained as long  
117 as financing obligations entered into by the Florida Windstorm  
118 Underwriting Association or Residential Property and Casualty  
119 Joint Underwriting Association are outstanding, in accordance  
120 with the terms of the corresponding financing documents. If the  
121 financing obligations are no longer outstanding, the corporation  
122 may use a single account for all revenues, assets, liabilities,  
123 losses, and expenses of the corporation. Consistent with this  
124 subparagraph and prudent investment policies that minimize the  
125 cost of carrying debt, the board shall exercise its best efforts  
126 to retire existing debt or obtain the approval of necessary  
127 parties to amend the terms of existing debt, so as to structure  
128 the most efficient plan to consolidate the three separate  
129 accounts into a single account.

130       c. Creditors of the Residential Property and Casualty  
131 Joint Underwriting Association and the accounts specified in  
132 sub-sub-subparagraphs a.(I) and (II) may have a claim against,  
133 and recourse to, those accounts and no claim against, or  
134 recourse to, the account referred to in sub-sub-subparagraph  
135 a.(III). Creditors of the Florida Windstorm Underwriting  
136 Association have a claim against, and recourse to, the account  
137 referred to in sub-sub-subparagraph a.(III) and no claim  
138 against, or recourse to, the accounts referred to in sub-sub-  
139 subparagraphs a.(I) and (II).

140       d. Revenues, assets, liabilities, losses, and expenses not

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141 | attributable to particular accounts shall be prorated among the  
142 | accounts.

143 |       e. The Legislature finds that the revenues of the  
144 | corporation are revenues that are necessary to meet the  
145 | requirements set forth in documents authorizing the issuance of  
146 | bonds under this subsection.

147 |       f. ~~No part of~~ The income of the corporation may not inure  
148 | to the benefit of any private person.

149 |       3. With respect to a deficit in an account:

150 |       a. After accounting for the Citizens policyholder  
151 | surcharge imposed under sub-subparagraph i. ~~h.~~, if the remaining  
152 | projected deficit incurred in the coastal account in a  
153 | particular calendar year:

154 |       (I) Is not greater than 2 ½ percent of the aggregate  
155 | statewide direct written premium for the subject lines of  
156 | business for the prior calendar year, the entire deficit shall  
157 | be recovered through regular assessments of assessable insurers  
158 | under paragraph (q) and assessable insureds.

159 |       (II) Exceeds 2 ½ percent of the aggregate statewide direct  
160 | written premium for the subject lines of business for the prior  
161 | calendar year, the corporation shall levy regular assessments on  
162 | assessable insurers under paragraph (q) and on assessable  
163 | insureds in an amount equal to the greater of 2 ½ percent of the  
164 | projected deficit or 2 ½ percent of the aggregate statewide  
165 | direct written premium for the subject lines of business for the  
166 | prior calendar year. Any remaining projected deficit shall be  
167 | recovered through emergency assessments under sub-subparagraph  
168 | d. ~~e.~~

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169           b. Each assessable insurer's share of the amount being  
170 assessed under sub-subparagraph a. must be in the proportion  
171 that the assessable insurer's direct written premium for the  
172 subject lines of business for the year preceding the assessment  
173 bears to the aggregate statewide direct written premium for the  
174 subject lines of business for that year. The assessment  
175 percentage applicable to each assessable insured is the ratio of  
176 the amount being assessed under sub-subparagraph a. to the  
177 aggregate statewide direct written premium for the subject lines  
178 of business for the prior year. Assessments levied by the  
179 corporation on assessable insurers under sub-subparagraph a.  
180 must be paid as required by the corporation's plan of operation  
181 and paragraph (q). Assessments levied by the corporation on  
182 assessable insureds under sub-subparagraph a. shall be collected  
183 by the surplus lines agent at the time the surplus lines agent  
184 collects the surplus lines tax required by s. 626.932, and paid  
185 to the Florida Surplus Lines Service Office at the time the  
186 surplus lines agent pays the surplus lines tax to that office.  
187 Upon receipt of regular assessments from surplus lines agents,  
188 the Florida Surplus Lines Service Office shall transfer the  
189 assessments directly to the corporation as determined by the  
190 corporation.

191           c. After accounting for the Citizens policyholder  
192 surcharge imposed under sub-subparagraph i., the remaining  
193 projected deficits in the personal lines account and in the  
194 commercial lines account in a particular calendar year shall be  
195 recovered through emergency assessments under sub-subparagraph  
196 d.

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197        ~~d.e.~~ Upon a determination by the board of governors that a  
 198 projected deficit in an account exceeds the amount that is  
 199 expected to ~~will~~ be recovered through regular assessments under  
 200 sub-subparagraph a., plus the amount that is expected to be  
 201 recovered through surcharges under sub-subparagraph i. ~~h.~~, the  
 202 board, after verification by the office, shall levy emergency  
 203 assessments for as many years as necessary to cover the  
 204 deficits, to be collected by assessable insurers and the  
 205 corporation and collected from assessable insureds upon issuance  
 206 or renewal of policies for subject lines of business, excluding  
 207 National Flood Insurance policies. The amount collected in a  
 208 particular year must be a uniform percentage of that year's  
 209 direct written premium for subject lines of business and all  
 210 accounts of the corporation, excluding National Flood Insurance  
 211 Program policy premiums, as annually determined by the board and  
 212 verified by the office. The office shall verify the arithmetic  
 213 calculations involved in the board's determination within 30  
 214 days after receipt of the information on which the determination  
 215 was based. The office shall notify assessable insurers and the  
 216 Florida Surplus Lines Service Office of the date on which  
 217 assessable insurers shall begin to collect and assessable  
 218 insureds shall begin to pay such assessment. The date may be not  
 219 less than 90 days after the date the corporation levies  
 220 emergency assessments pursuant to this sub-subparagraph.  
 221 Notwithstanding any other provision of law, the corporation and  
 222 each assessable insurer that writes subject lines of business  
 223 shall collect emergency assessments from its policyholders  
 224 without such obligation being affected by any credit,



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225 limitation, exemption, or deferment. Emergency assessments  
226 levied by the corporation on assessable insureds shall be  
227 collected by the surplus lines agent at the time the surplus  
228 lines agent collects the surplus lines tax required by s.  
229 626.932 and paid to the Florida Surplus Lines Service Office at  
230 the time the surplus lines agent pays the surplus lines tax to  
231 that office. The emergency assessments collected shall be  
232 transferred directly to the corporation on a periodic basis as  
233 determined by the corporation and held by the corporation solely  
234 in the applicable account. The aggregate amount of emergency  
235 assessments levied for an account under this sub-subparagraph in  
236 any calendar year may be less than but not exceed the greater of  
237 10 percent of the amount needed to cover the deficit, plus  
238 interest, fees, commissions, required reserves, and other costs  
239 associated with financing the original deficit, or 10 percent of  
240 the aggregate statewide direct written premium for subject lines  
241 of business and all accounts of the corporation for the prior  
242 year, plus interest, fees, commissions, required reserves, and  
243 other costs associated with financing the deficit.

244 ~~e.d.~~ The corporation may pledge the proceeds of  
245 assessments, projected recoveries from the Florida Hurricane  
246 Catastrophe Fund, other insurance and reinsurance recoverables,  
247 policyholder surcharges and other surcharges, and other funds  
248 available to the corporation as the source of revenue for and to  
249 secure bonds issued under paragraph (q), bonds or other  
250 indebtedness issued under subparagraph (c)3., or lines of credit  
251 or other financing mechanisms issued or created under this  
252 subsection, or to retire any other debt incurred as a result of

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253 | deficits or events giving rise to deficits, or in any other way  
254 | that the board determines will efficiently recover such  
255 | deficits. The purpose of the lines of credit or other financing  
256 | mechanisms is to provide additional resources to assist the  
257 | corporation in covering claims and expenses attributable to a  
258 | catastrophe. As used in this subsection, the term "assessments"  
259 | includes regular assessments under sub-subparagraph a. or  
260 | subparagraph (q)1. and emergency assessments under sub-  
261 | subparagraph d. Emergency assessments collected under sub-  
262 | subparagraph d. are not part of an insurer's rates, are not  
263 | premium, and are not subject to premium tax, fees, or  
264 | commissions; however, failure to pay the emergency assessment  
265 | shall be treated as failure to pay premium. The emergency  
266 | assessments under sub-subparagraph d. ~~e.~~ shall continue as long  
267 | as any bonds issued or other indebtedness incurred with respect  
268 | to a deficit for which the assessment was imposed remain  
269 | outstanding, unless adequate provision has been made for the  
270 | payment of such bonds or other indebtedness pursuant to the  
271 | documents governing such bonds or indebtedness.

272 | f.e. As used in this subsection for purposes of any  
273 | deficit incurred on or after January 25, 2007, the term "subject  
274 | lines of business" means insurance written by assessable  
275 | insurers or procured by assessable insureds for all property and  
276 | casualty lines of business in this state, but not including  
277 | workers' compensation or medical malpractice. As used in this  
278 | sub-subparagraph, the term "property and casualty lines of  
279 | business" includes all lines of business identified on Form 2,  
280 | Exhibit of Premiums and Losses, in the annual statement required

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281 of authorized insurers under s. 624.424 and any rule adopted  
 282 under this section, except for those lines identified as  
 283 accident and health insurance and except for policies written  
 284 under the National Flood Insurance Program or the Federal Crop  
 285 Insurance Program. For purposes of this sub-subparagraph, the  
 286 term "workers' compensation" includes both workers' compensation  
 287 insurance and excess workers' compensation insurance.

288 ~~g.f.~~ The Florida Surplus Lines Service Office shall  
 289 determine annually the aggregate statewide written premium in  
 290 subject lines of business procured by assessable insureds and  
 291 report that information to the corporation in a form and at a  
 292 time the corporation specifies to ensure that the corporation  
 293 can meet the requirements of this subsection and the  
 294 corporation's financing obligations.

295 ~~h.g.~~ The Florida Surplus Lines Service Office shall verify  
 296 the proper application by surplus lines agents of assessment  
 297 percentages for regular assessments and emergency assessments  
 298 levied under this subparagraph on assessable insureds and assist  
 299 the corporation in ensuring the accurate, timely collection and  
 300 payment of assessments by surplus lines agents as required by  
 301 the corporation.

302 ~~i.h.~~ ~~If a deficit is incurred in any account~~ In 2008 or  
 303 thereafter, upon a determination by the board of governors that  
 304 an account has a projected deficit, the board shall levy a  
 305 Citizens policyholder surcharge against all policyholders of the  
 306 corporation.

307 (I) The surcharge shall be levied as a uniform percentage  
 308 of the premium for the policy of up to 15 percent of such

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309 premium, which funds shall be used to offset the deficit.

310 (II) The surcharge is payable upon cancellation or  
 311 termination of the policy, upon renewal of the policy, or upon  
 312 issuance of a new policy by the corporation within the first 12  
 313 months after the date of the levy or the period of time  
 314 necessary to fully collect the surcharge amount.

315 (III) The corporation may not levy any regular assessments  
 316 under paragraph (q) pursuant to sub-subparagraph a. or sub-  
 317 subparagraph b. with respect to a particular year's deficit  
 318 until the corporation has first levied the full amount of the  
 319 surcharge authorized by this sub-subparagraph.

320 (IV) The surcharge is not considered premium and is not  
 321 subject to commissions, fees, or premium taxes. However, failure  
 322 to pay the surcharge shall be treated as failure to pay premium.

323 ~~j.i.~~ If the amount of any assessments or surcharges  
 324 collected from corporation policyholders, assessable insurers or  
 325 their policyholders, or assessable insureds exceeds the amount  
 326 of the deficits, such excess amounts shall be remitted to and  
 327 retained by the corporation in a reserve to be used by the  
 328 corporation, as determined by the board of governors and  
 329 approved by the office, to pay claims or reduce any past,  
 330 present, or future plan-year deficits or to reduce outstanding  
 331 debt.

332 (c) The corporation's plan of operation:

333 1. Must provide for adoption of residential property and  
 334 casualty insurance policy forms and commercial residential and  
 335 nonresidential property insurance forms, which must be approved  
 336 by the office before use. The corporation shall adopt the

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337 following policy forms:

338 a. Standard personal lines policy forms that are  
339 comprehensive multiperil policies providing full coverage of a  
340 residential property equivalent to the coverage provided in the  
341 private insurance market under an HO-3, HO-4, or HO-6 policy.

342 b. Basic personal lines policy forms that are policies  
343 similar to an HO-8 policy or a dwelling fire policy that provide  
344 coverage meeting the requirements of the secondary mortgage  
345 market, but which is more limited than the coverage under a  
346 standard policy.

347 c. Commercial lines residential and nonresidential policy  
348 forms that are generally similar to the basic perils of full  
349 coverage obtainable for commercial residential structures and  
350 commercial nonresidential structures in the admitted voluntary  
351 market.

352 d. Personal lines and commercial lines residential  
353 property insurance forms that cover the peril of wind only. The  
354 forms are applicable only to residential properties located in  
355 areas eligible for coverage under the coastal account referred  
356 to in sub-subparagraph (b)2.a.

357 e. Commercial lines nonresidential property insurance  
358 forms that cover the peril of wind only. The forms are  
359 applicable only to nonresidential properties located in areas  
360 eligible for coverage under the coastal account referred to in  
361 sub-subparagraph (b)2.a.

362 f. The corporation may adopt variations of the policy  
363 forms listed in sub-subparagraphs a.-e. which contain more  
364 restrictive coverage.

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365           2. Must provide that the corporation adopt a program in  
366 which the corporation and authorized insurers enter into quota  
367 share primary insurance agreements for hurricane coverage, as  
368 defined in s. 627.4025(2)(a), for eligible risks, and adopt  
369 property insurance forms for eligible risks which cover the  
370 peril of wind only.

371           a. As used in this subsection, the term:

372           (I) "Quota share primary insurance" means an arrangement  
373 in which the primary hurricane coverage of an eligible risk is  
374 provided in specified percentages by the corporation and an  
375 authorized insurer. The corporation and authorized insurer are  
376 each solely responsible for a specified percentage of hurricane  
377 coverage of an eligible risk as set forth in a quota share  
378 primary insurance agreement between the corporation and an  
379 authorized insurer and the insurance contract. The  
380 responsibility of the corporation or authorized insurer to pay  
381 its specified percentage of hurricane losses of an eligible  
382 risk, as set forth in the agreement, may not be altered by the  
383 inability of the other party to pay its specified percentage of  
384 losses. Eligible risks that are provided hurricane coverage  
385 through a quota share primary insurance arrangement must be  
386 provided policy forms that set forth the obligations of the  
387 corporation and authorized insurer under the arrangement,  
388 clearly specify the percentages of quota share primary insurance  
389 provided by the corporation and authorized insurer, and  
390 conspicuously and clearly state that the authorized insurer and  
391 the corporation may not be held responsible beyond their  
392 specified percentage of coverage of hurricane losses.

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393 (II) "Eligible risks" means personal lines residential and  
394 commercial lines residential risks that meet the underwriting  
395 criteria of the corporation and are located in areas that were  
396 eligible for coverage by the Florida Windstorm Underwriting  
397 Association on January 1, 2002.

398 b. The corporation may enter into quota share primary  
399 insurance agreements with authorized insurers at corporation  
400 coverage levels of 90 percent and 50 percent.

401 c. If the corporation determines that additional coverage  
402 levels are necessary to maximize participation in quota share  
403 primary insurance agreements by authorized insurers, the  
404 corporation may establish additional coverage levels. However,  
405 the corporation's quota share primary insurance coverage level  
406 may not exceed 90 percent.

407 d. Any quota share primary insurance agreement entered  
408 into between an authorized insurer and the corporation must  
409 provide for a uniform specified percentage of coverage of  
410 hurricane losses, by county or territory as set forth by the  
411 corporation board, for all eligible risks of the authorized  
412 insurer covered under the agreement.

413 e. Any quota share primary insurance agreement entered  
414 into between an authorized insurer and the corporation is  
415 subject to review and approval by the office. However, such  
416 agreement shall be authorized only as to insurance contracts  
417 entered into between an authorized insurer and an insured who is  
418 already insured by the corporation for wind coverage.

419 f. For all eligible risks covered under quota share  
420 primary insurance agreements, the exposure and coverage levels

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421 for both the corporation and authorized insurers shall be  
422 reported by the corporation to the Florida Hurricane Catastrophe  
423 Fund. For all policies of eligible risks covered under such  
424 agreements, the corporation and the authorized insurer must  
425 maintain complete and accurate records for the purpose of  
426 exposure and loss reimbursement audits as required by fund  
427 rules. The corporation and the authorized insurer shall each  
428 maintain duplicate copies of policy declaration pages and  
429 supporting claims documents.

430 g. The corporation board shall establish in its plan of  
431 operation standards for quota share agreements which ensure that  
432 there is no discriminatory application among insurers as to the  
433 terms of the agreements, pricing of the agreements, incentive  
434 provisions if any, and consideration paid for servicing policies  
435 or adjusting claims.

436 h. The quota share primary insurance agreement between the  
437 corporation and an authorized insurer must set forth the  
438 specific terms under which coverage is provided, including, but  
439 not limited to, the sale and servicing of policies issued under  
440 the agreement by the insurance agent of the authorized insurer  
441 producing the business, the reporting of information concerning  
442 eligible risks, the payment of premium to the corporation, and  
443 arrangements for the adjustment and payment of hurricane claims  
444 incurred on eligible risks by the claims adjuster and personnel  
445 of the authorized insurer. Entering into a quota sharing  
446 insurance agreement between the corporation and an authorized  
447 insurer is voluntary and at the discretion of the authorized  
448 insurer.



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449           3.a. May provide that the corporation may employ or  
450 otherwise contract with individuals or other entities to provide  
451 administrative or professional services that may be appropriate  
452 to effectuate the plan. The corporation may borrow funds by  
453 issuing bonds or by incurring other indebtedness, and shall have  
454 other powers reasonably necessary to effectuate the requirements  
455 of this subsection, including, without limitation, the power to  
456 issue bonds and incur other indebtedness in order to refinance  
457 outstanding bonds or other indebtedness. The corporation may  
458 seek judicial validation of its bonds or other indebtedness  
459 under chapter 75. The corporation may issue bonds or incur other  
460 indebtedness, or have bonds issued on its behalf by a unit of  
461 local government pursuant to subparagraph (q)2. in the absence  
462 of a hurricane or other weather-related event, upon a  
463 determination by the corporation, subject to approval by the  
464 office, that such action would enable it to efficiently meet the  
465 financial obligations of the corporation and that such  
466 financings are reasonably necessary to effectuate the  
467 requirements of this subsection. The corporation may take all  
468 actions needed to facilitate tax-free status for such bonds or  
469 indebtedness, including formation of trusts or other affiliated  
470 entities. The corporation may pledge assessments, projected  
471 recoveries from the Florida Hurricane Catastrophe Fund, other  
472 reinsurance recoverables, policyholder surcharges ~~market~~  
473 ~~equalization~~ and other surcharges, and other funds available to  
474 the corporation as security for bonds or other indebtedness. In  
475 recognition of s. 10, Art. I of the State Constitution,  
476 prohibiting the impairment of obligations of contracts, it is

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477 the intent of the Legislature that no action be taken whose  
478 purpose is to impair any bond indenture or financing agreement  
479 or any revenue source committed by contract to such bond or  
480 other indebtedness.

481 b. To ensure that the corporation is operating in an  
482 efficient and economic manner while providing quality service to  
483 policyholders, applicants, and agents, the board shall  
484 commission an independent third-party consultant having  
485 expertise in insurance company management or insurance company  
486 management consulting to prepare a report and make  
487 recommendations on the relative costs and benefits of  
488 outsourcing various policy issuance and service functions to  
489 private servicing carriers or entities performing similar  
490 functions in the private market for a fee, rather than  
491 performing such functions in-house. In making such  
492 recommendations, the consultant shall consider how other  
493 residual markets, both in this state and around the country,  
494 outsource appropriate functions or use servicing carriers to  
495 better match expenses with revenues that fluctuate based on a  
496 widely varying policy count. The report must be completed by  
497 July 1, 2012. Upon receiving the report, the board shall develop  
498 a plan to implement the report and submit the plan for review,  
499 modification, and approval to the Financial Services Commission.  
500 Upon the commission's approval of the plan, the board shall  
501 begin implementing the plan by January 1, 2013.

502 4. Must require that the corporation operate subject to  
503 the supervision and approval of a board of governors consisting  
504 of eight individuals who are residents of this state, from

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505 different geographical areas of this state.

506       a. The Governor, the Chief Financial Officer, the  
507 President of the Senate, and the Speaker of the House of  
508 Representatives shall each appoint two members of the board. At  
509 least one of the two members appointed by each appointing  
510 officer must have demonstrated expertise in insurance and is  
511 deemed to be within the scope of the exemption provided in s.  
512 112.313(7)(b). The Chief Financial Officer shall designate one  
513 of the appointees as chair. All board members serve at the  
514 pleasure of the appointing officer. All members of the board are  
515 subject to removal at will by the officers who appointed them.  
516 All board members, including the chair, must be appointed to  
517 serve for 3-year terms beginning annually on a date designated  
518 by the plan. However, for the first term beginning on or after  
519 July 1, 2009, each appointing officer shall appoint one member  
520 of the board for a 2-year term and one member for a 3-year term.  
521 A board vacancy shall be filled for the unexpired term by the  
522 appointing officer. The Chief Financial Officer shall appoint a  
523 technical advisory group to provide information and advice to  
524 the board in connection with the board's duties under this  
525 subsection. The executive director and senior managers of the  
526 corporation shall be engaged by the board and serve at the  
527 pleasure of the board. Any executive director appointed on or  
528 after July 1, 2006, is subject to confirmation by the Senate.  
529 The executive director is responsible for employing other staff  
530 as the corporation may require, subject to review and  
531 concurrence by the board.

532       b. The board shall create a Market Accountability Advisory

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533 Committee to assist the corporation in developing awareness of  
534 its rates and its customer and agent service levels in  
535 relationship to the voluntary market insurers writing similar  
536 coverage.

537 (I) The members of the advisory committee consist of the  
538 following 11 persons, one of whom must be elected chair by the  
539 members of the committee: four representatives, one appointed by  
540 the Florida Association of Insurance Agents, one by the Florida  
541 Association of Insurance and Financial Advisors, one by the  
542 Professional Insurance Agents of Florida, and one by the Latin  
543 American Association of Insurance Agencies; three  
544 representatives appointed by the insurers with the three highest  
545 voluntary market share of residential property insurance  
546 business in the state; one representative from the Office of  
547 Insurance Regulation; one consumer appointed by the board who is  
548 insured by the corporation at the time of appointment to the  
549 committee; one representative appointed by the Florida  
550 Association of Realtors; and one representative appointed by the  
551 Florida Bankers Association. All members shall be appointed to  
552 3-year terms and may serve for consecutive terms.

553 (II) The committee shall report to the corporation at each  
554 board meeting on insurance market issues which may include rates  
555 and rate competition with the voluntary market; service,  
556 including policy issuance, claims processing, and general  
557 responsiveness to policyholders, applicants, and agents; and  
558 matters relating to depopulation.

559 5. Must provide a procedure for determining the  
560 eligibility of a risk for coverage, as follows:

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561 a. Subject to s. 627.3517, with respect to personal lines  
562 residential risks, if the risk is offered coverage from an  
563 authorized insurer at the insurer's approved rate under a  
564 standard policy including wind coverage or, if consistent with  
565 the insurer's underwriting rules as filed with the office, a  
566 basic policy including wind coverage, for a new application to  
567 the corporation for coverage, the risk is not eligible for any  
568 policy issued by the corporation unless the premium for coverage  
569 from the authorized insurer is more than 15 percent greater than  
570 the premium for comparable coverage from the corporation. If the  
571 risk is not able to obtain such offer, the risk is eligible for  
572 a standard policy including wind coverage or a basic policy  
573 including wind coverage issued by the corporation; however, if  
574 the risk could not be insured under a standard policy including  
575 wind coverage regardless of market conditions, the risk is  
576 eligible for a basic policy including wind coverage unless  
577 rejected under subparagraph 8. However, a policyholder of the  
578 corporation or a policyholder removed from the corporation  
579 through an assumption agreement until the end of the assumption  
580 period remains eligible for coverage from the corporation  
581 regardless of any offer of coverage from an authorized insurer  
582 or surplus lines insurer. The corporation shall determine the  
583 type of policy to be provided on the basis of objective  
584 standards specified in the underwriting manual and based on  
585 generally accepted underwriting practices.

586 (I) If the risk accepts an offer of coverage through the  
587 market assistance plan or through a mechanism established by the  
588 corporation before a policy is issued to the risk by the

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589 corporation or during the first 30 days of coverage by the  
 590 corporation, and the producing agent who submitted the  
 591 application to the plan or to the corporation is not currently  
 592 appointed by the insurer, the insurer shall:

593 (A) Pay to the producing agent of record of the policy for  
 594 the first year, an amount that is the greater of the insurer's  
 595 usual and customary commission for the type of policy written or  
 596 a fee equal to the usual and customary commission of the  
 597 corporation; or

598 (B) Offer to allow the producing agent of record of the  
 599 policy to continue servicing the policy for at least 1 year and  
 600 offer to pay the agent the greater of the insurer's or the  
 601 corporation's usual and customary commission for the type of  
 602 policy written.

603  
 604 If the producing agent is unwilling or unable to accept  
 605 appointment, the new insurer shall pay the agent in accordance  
 606 with sub-sub-sub-subparagraph (A).

607 (II) If the corporation enters into a contractual  
 608 agreement for a take-out plan, the producing agent of record of  
 609 the corporation policy is entitled to retain any unearned  
 610 commission on the policy, and the insurer shall:

611 (A) Pay to the producing agent of record, for the first  
 612 year, an amount that is the greater of the insurer's usual and  
 613 customary commission for the type of policy written or a fee  
 614 equal to the usual and customary commission of the corporation;  
 615 or

616 (B) Offer to allow the producing agent of record to

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617 | continue servicing the policy for at least 1 year and offer to  
618 | pay the agent the greater of the insurer's or the corporation's  
619 | usual and customary commission for the type of policy written.

620 |

621 | If the producing agent is unwilling or unable to accept  
622 | appointment, the new insurer shall pay the agent in accordance  
623 | with sub-sub-sub-subparagraph (A).

624 |       b. With respect to commercial lines residential risks, for  
625 | a new application to the corporation for coverage, if the risk  
626 | is offered coverage under a policy including wind coverage from  
627 | an authorized insurer at its approved rate, the risk is not  
628 | eligible for a policy issued by the corporation unless the  
629 | premium for coverage from the authorized insurer is more than 15  
630 | percent greater than the premium for comparable coverage from  
631 | the corporation. If the risk is not able to obtain any such  
632 | offer, the risk is eligible for a policy including wind coverage  
633 | issued by the corporation. However, a policyholder of the  
634 | corporation or a policyholder removed from the corporation  
635 | through an assumption agreement until the end of the assumption  
636 | period remains eligible for coverage from the corporation  
637 | regardless of an offer of coverage from an authorized insurer or  
638 | surplus lines insurer.

639 |       (I) If the risk accepts an offer of coverage through the  
640 | market assistance plan or through a mechanism established by the  
641 | corporation before a policy is issued to the risk by the  
642 | corporation or during the first 30 days of coverage by the  
643 | corporation, and the producing agent who submitted the  
644 | application to the plan or the corporation is not currently

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645 appointed by the insurer, the insurer shall:

646 (A) Pay to the producing agent of record of the policy,  
647 for the first year, an amount that is the greater of the  
648 insurer's usual and customary commission for the type of policy  
649 written or a fee equal to the usual and customary commission of  
650 the corporation; or

651 (B) Offer to allow the producing agent of record of the  
652 policy to continue servicing the policy for at least 1 year and  
653 offer to pay the agent the greater of the insurer's or the  
654 corporation's usual and customary commission for the type of  
655 policy written.

656  
657 If the producing agent is unwilling or unable to accept  
658 appointment, the new insurer shall pay the agent in accordance  
659 with sub-sub-sub-subparagraph (A).

660 (II) If the corporation enters into a contractual  
661 agreement for a take-out plan, the producing agent of record of  
662 the corporation policy is entitled to retain any unearned  
663 commission on the policy, and the insurer shall:

664 (A) Pay to the producing agent of record, for the first  
665 year, an amount that is the greater of the insurer's usual and  
666 customary commission for the type of policy written or a fee  
667 equal to the usual and customary commission of the corporation;  
668 or

669 (B) Offer to allow the producing agent of record to  
670 continue servicing the policy for at least 1 year and offer to  
671 pay the agent the greater of the insurer's or the corporation's  
672 usual and customary commission for the type of policy written.



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673  
674 If the producing agent is unwilling or unable to accept  
675 appointment, the new insurer shall pay the agent in accordance  
676 with sub-sub-sub-subparagraph (A).

677 c. For purposes of determining comparable coverage under  
678 sub-subparagraphs a. and b., the comparison must be based on  
679 those forms and coverages that are reasonably comparable. The  
680 corporation may rely on a determination of comparable coverage  
681 and premium made by the producing agent who submits the  
682 application to the corporation, made in the agent's capacity as  
683 the corporation's agent. A comparison may be made solely of the  
684 premium with respect to the main building or structure only on  
685 the following basis: the same coverage A or other building  
686 limits; the same percentage hurricane deductible that applies on  
687 an annual basis or that applies to each hurricane for commercial  
688 residential property; the same percentage of ordinance and law  
689 coverage, if the same limit is offered by both the corporation  
690 and the authorized insurer; the same mitigation credits, to the  
691 extent the same types of credits are offered both by the  
692 corporation and the authorized insurer; the same method for loss  
693 payment, such as replacement cost or actual cash value, if the  
694 same method is offered both by the corporation and the  
695 authorized insurer in accordance with underwriting rules; and  
696 any other form or coverage that is reasonably comparable as  
697 determined by the board. If an application is submitted to the  
698 corporation for wind-only coverage in the coastal account, the  
699 premium for the corporation's wind-only policy plus the premium  
700 for the ex-wind policy that is offered by an authorized insurer

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701 to the applicant must be compared to the premium for multiperil  
702 coverage offered by an authorized insurer, subject to the  
703 standards for comparison specified in this subparagraph. If the  
704 corporation or the applicant requests from the authorized  
705 insurer a breakdown of the premium of the offer by types of  
706 coverage so that a comparison may be made by the corporation or  
707 its agent and the authorized insurer refuses or is unable to  
708 provide such information, the corporation may treat the offer as  
709 not being an offer of coverage from an authorized insurer at the  
710 insurer's approved rate.

711 6. Must include rules for classifications of risks and  
712 rates.

713 7. Must provide that if premium and investment income for  
714 an account attributable to a particular calendar year are in  
715 excess of projected losses and expenses for the account  
716 attributable to that year, such excess shall be held in surplus  
717 in the account. Such surplus must be available to defray  
718 deficits in that account as to future years and used for that  
719 purpose before assessing assessable insurers and assessable  
720 insureds as to any calendar year.

721 8. Must provide objective criteria and procedures to be  
722 uniformly applied to all applicants in determining whether an  
723 individual risk is so hazardous as to be uninsurable. In making  
724 this determination and in establishing the criteria and  
725 procedures, the following must be considered:

726 a. Whether the likelihood of a loss for the individual  
727 risk is substantially higher than for other risks of the same  
728 class; and

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729           b. Whether the uncertainty associated with the individual  
 730 risk is such that an appropriate premium cannot be determined.

731  
 732 The acceptance or rejection of a risk by the corporation shall  
 733 be construed as the private placement of insurance, and the  
 734 provisions of chapter 120 do not apply.

735           9. Must provide that the corporation make its best efforts  
 736 to procure catastrophe reinsurance at reasonable rates, to cover  
 737 its projected 100-year probable maximum loss as determined by  
 738 the board of governors.

739           10. The policies issued by the corporation must provide  
 740 that if the corporation or the market assistance plan obtains an  
 741 offer from an authorized insurer to cover the risk at its  
 742 approved rates, the risk is no longer eligible for renewal  
 743 through the corporation, except as otherwise provided in this  
 744 subsection.

745           11. Corporation policies and applications must include a  
 746 notice that the corporation policy could, under this section, be  
 747 replaced with a policy issued by an authorized insurer which  
 748 does not provide coverage identical to the coverage provided by  
 749 the corporation. The notice must also specify that acceptance of  
 750 corporation coverage creates a conclusive presumption that the  
 751 applicant or policyholder is aware of this potential.

752           12. May establish, subject to approval by the office,  
 753 different eligibility requirements and operational procedures  
 754 for any line or type of coverage for any specified county or  
 755 area if the board determines that such changes are justified due  
 756 to the voluntary market being sufficiently stable and

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757 competitive in such area or for such line or type of coverage  
 758 and that consumers who, in good faith, are unable to obtain  
 759 insurance through the voluntary market through ordinary methods  
 760 continue to have access to coverage from the corporation. If  
 761 coverage is sought in connection with a real property transfer,  
 762 the requirements and procedures may not provide an effective  
 763 date of coverage later than the date of the closing of the  
 764 transfer as established by the transferor, the transferee, and,  
 765 if applicable, the lender.

766 13. Must provide that, with respect to the coastal  
 767 account, any assessable insurer with a surplus as to  
 768 policyholders of \$25 million or less writing 25 percent or more  
 769 of its total countrywide property insurance premiums in this  
 770 state may petition the office, within the first 90 days of each  
 771 calendar year, to qualify as a limited apportionment company. A  
 772 regular assessment levied by the corporation on a limited  
 773 apportionment company for a deficit incurred by the corporation  
 774 for the coastal account may be paid to the corporation on a  
 775 monthly basis as the assessments are collected by the limited  
 776 apportionment company from its insureds ~~pursuant to s. 627.3512,~~  
 777 but a limited apportionment company must begin collecting the  
 778 regular assessments not later than 90 days after the regular  
 779 assessments are levied by the corporation, and the regular  
 780 assessments ~~assessment~~ must be paid in full within 15 ~~12~~ months  
 781 after being levied by the corporation. A limited apportionment  
 782 company shall collect from its policyholders any emergency  
 783 assessment imposed under sub-subparagraph (b)3.d. The plan must  
 784 provide that, if the office determines that any regular

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785 assessment will result in an impairment of the surplus of a  
786 limited apportionment company, the office may direct that all or  
787 part of such assessment be deferred as provided in subparagraph  
788 (q)4. However, an emergency assessment to be collected from  
789 policyholders under sub-subparagraph (b)3.d. may not be limited  
790 or deferred.

791 14. Must provide that the corporation appoint as its  
792 licensed agents only those agents who also hold an appointment  
793 as defined in s. 626.015(3) with an insurer who at the time of  
794 the agent's initial appointment by the corporation is authorized  
795 to write and is actually writing personal lines residential  
796 property coverage, commercial residential property coverage, or  
797 commercial nonresidential property coverage within the state.

798 15. Must provide a premium payment plan option to its  
799 policyholders which, at a minimum, allows for quarterly and  
800 semiannual payment of premiums. A monthly payment plan may, but  
801 is not required to, be offered.

802 16. Must limit coverage on mobile homes or manufactured  
803 homes built before 1994 to actual cash value of the dwelling  
804 rather than replacement costs of the dwelling.

805 17. May provide such limits of coverage as the board  
806 determines, consistent with the requirements of this subsection.

807 18. May require commercial property to meet specified  
808 hurricane mitigation construction features as a condition of  
809 eligibility for coverage.

810 19. Must provide that new or renewal policies issued by  
811 the corporation on or after January 1, 2012, which cover  
812 sinkhole loss do not include coverage for any loss to

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813 appurtenant structures, driveways, sidewalks, decks, or patios  
 814 that are directly or indirectly caused by sinkhole activity. The  
 815 corporation shall exclude such coverage using a notice of  
 816 coverage change, which may be included with the policy renewal,  
 817 and not by issuance of a notice of nonrenewal of the excluded  
 818 coverage upon renewal of the current policy.

819 20. As of January 1, 2012, must require that the agent  
 820 obtain from an applicant for coverage from the corporation an  
 821 acknowledgement signed by the applicant, which includes, at a  
 822 minimum, the following statement:

823  
 824 ACKNOWLEDGEMENT OF POTENTIAL SURCHARGE  
 825 AND ASSESSMENT LIABILITY:  
 826

827 1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE  
 828 CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A  
 829 DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON,  
 830 MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND  
 831 PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE  
 832 POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT  
 833 OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA  
 834 LEGISLATURE.

835 2. I ALSO UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY  
 836 ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER  
 837 INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE  
 838 FLORIDA LEGISLATURE.

839 3. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE  
 840 CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE

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841 STATE OF FLORIDA.

842

843 a. The corporation shall maintain, in electronic format or  
 844 otherwise, a copy of the applicant's signed acknowledgement and  
 845 provide a copy of the statement to the policyholder as part of  
 846 the first renewal after the effective date of this subparagraph.

847 b. The signed acknowledgement form creates a conclusive  
 848 presumption that the policyholder understood and accepted his or  
 849 her potential surcharge and assessment liability as a  
 850 policyholder of the corporation.

851 (q)1. The corporation shall certify to the office its  
 852 needs for annual assessments as to a particular calendar year,  
 853 and for any interim assessments that it deems to be necessary to  
 854 sustain operations as to a particular year pending the receipt  
 855 of annual assessments. Upon verification, the office shall  
 856 approve such certification, and the corporation shall levy such  
 857 annual or interim assessments. Such assessments shall be  
 858 prorated as provided in paragraph (b). The corporation shall  
 859 take all reasonable and prudent steps necessary to collect the  
 860 amount of assessments ~~assessment~~ due from each assessable  
 861 insurer, including, if prudent, filing suit to collect the  
 862 assessments, and the office may provide such assistance to the  
 863 corporation it deems appropriate ~~such assessment~~. If the  
 864 corporation is unable to collect an assessment from any  
 865 assessable insurer, the uncollected assessments shall be levied  
 866 as an additional assessment against the assessable insurers and  
 867 any assessable insurer required to pay an additional assessment  
 868 as a result of such failure to pay shall have a cause of action

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869 | against such nonpaying assessable insurer. Assessments shall be  
 870 | included as an appropriate factor in the making of rates. The  
 871 | failure of a surplus lines agent to collect and remit any  
 872 | regular or emergency assessment levied by the corporation is  
 873 | considered to be a violation of s. 626.936 and subjects the  
 874 | surplus lines agent to the penalties provided in that section.

875 |         2. The governing body of any unit of local government, any  
 876 | residents of which are insured by the corporation, may issue  
 877 | bonds as defined in s. 125.013 or s. 166.101 from time to time  
 878 | to fund an assistance program, in conjunction with the  
 879 | corporation, for the purpose of defraying deficits of the  
 880 | corporation. In order to avoid needless and indiscriminate  
 881 | proliferation, duplication, and fragmentation of such assistance  
 882 | programs, any unit of local government, any residents of which  
 883 | are insured by the corporation, may provide for the payment of  
 884 | losses, regardless of whether or not the losses occurred within  
 885 | or outside of the territorial jurisdiction of the local  
 886 | government. Revenue bonds under this subparagraph may not be  
 887 | issued until validated pursuant to chapter 75, unless a state of  
 888 | emergency is declared by executive order or proclamation of the  
 889 | Governor pursuant to s. 252.36 making such findings as are  
 890 | necessary to determine that it is in the best interests of, and  
 891 | necessary for, the protection of the public health, safety, and  
 892 | general welfare of residents of this state and declaring it an  
 893 | essential public purpose to permit certain municipalities or  
 894 | counties to issue such bonds as will permit relief to claimants  
 895 | and policyholders of the corporation. Any such unit of local  
 896 | government may enter into such contracts with the corporation



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897 | and with any other entity created pursuant to this subsection as  
898 | are necessary to carry out this paragraph. Any bonds issued  
899 | under this subparagraph shall be payable from and secured by  
900 | moneys received by the corporation from emergency assessments  
901 | under sub-subparagraph (b)3.d., and assigned and pledged to or  
902 | on behalf of the unit of local government for the benefit of the  
903 | holders of such bonds. The funds, credit, property, and taxing  
904 | power of the state or of the unit of local government shall not  
905 | be pledged for the payment of such bonds.

906 |       3.a. The corporation shall adopt one or more programs  
907 | subject to approval by the office for the reduction of both new  
908 | and renewal writings in the corporation. Beginning January 1,  
909 | 2008, any program the corporation adopts for the payment of  
910 | bonuses to an insurer for each risk the insurer removes from the  
911 | corporation shall comply with s. 627.3511(2) and may not exceed  
912 | the amount referenced in s. 627.3511(2) for each risk removed.  
913 | The corporation may consider any prudent and not unfairly  
914 | discriminatory approach to reducing corporation writings, and  
915 | may adopt a credit against assessment liability or other  
916 | liability that provides an incentive for insurers to take risks  
917 | out of the corporation and to keep risks out of the corporation  
918 | by maintaining or increasing voluntary writings in counties or  
919 | areas in which corporation risks are highly concentrated and a  
920 | program to provide a formula under which an insurer voluntarily  
921 | taking risks out of the corporation by maintaining or increasing  
922 | voluntary writings will be relieved wholly or partially from  
923 | assessments under sub-subparagraphs (b)3.a. and b. However, any  
924 | "take-out bonus" or payment to an insurer must be conditioned on

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925 the property being insured for at least 5 years by the insurer,  
926 unless canceled or nonrenewed by the policyholder. If the policy  
927 is canceled or nonrenewed by the policyholder before the end of  
928 the 5-year period, the amount of the take-out bonus must be  
929 prorated for the time period the policy was insured. When the  
930 corporation enters into a contractual agreement for a take-out  
931 plan, the producing agent of record of the corporation policy is  
932 entitled to retain any unearned commission on such policy, and  
933 the insurer shall either:

934 (I) Pay to the producing agent of record of the policy,  
935 for the first year, an amount which is the greater of the  
936 insurer's usual and customary commission for the type of policy  
937 written or a policy fee equal to the usual and customary  
938 commission of the corporation; or

939 (II) Offer to allow the producing agent of record of the  
940 policy to continue servicing the policy for a period of not less  
941 than 1 year and offer to pay the agent the insurer's usual and  
942 customary commission for the type of policy written. If the  
943 producing agent is unwilling or unable to accept appointment by  
944 the new insurer, the new insurer shall pay the agent in  
945 accordance with sub-sub-subparagraph (I).

946 b. Any credit or exemption from regular assessments  
947 adopted under this subparagraph shall last no longer than the 3  
948 years following the cancellation or expiration of the policy by  
949 the corporation. With the approval of the office, the board may  
950 extend such credits for an additional year if the insurer  
951 guarantees an additional year of renewability for all policies  
952 removed from the corporation, or for 2 additional years if the

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953 insurer guarantees 2 additional years of renewability for all  
954 policies so removed.

955 c. There shall be no credit, limitation, exemption, or  
956 deferment from emergency assessments to be collected from  
957 policyholders pursuant to sub-subparagraph (b)3.d.

958 4. The plan shall provide for the deferment, in whole or  
959 in part, of the assessment of an assessable insurer, other than  
960 an emergency assessment collected from policyholders pursuant to  
961 sub-subparagraph (b)3.d., if the office finds that payment of  
962 the assessment would endanger or impair the solvency of the  
963 insurer. In the event an assessment against an assessable  
964 insurer is deferred in whole or in part, the amount by which  
965 such assessment is deferred may be assessed against the other  
966 assessable insurers in a manner consistent with the basis for  
967 assessments set forth in paragraph (b).

968 5. Effective July 1, 2007, in order to evaluate the costs  
969 and benefits of approved take-out plans, if the corporation pays  
970 a bonus or other payment to an insurer for an approved take-out  
971 plan, it shall maintain a record of the address or such other  
972 identifying information on the property or risk removed in order  
973 to track if and when the property or risk is later insured by  
974 the corporation.

975 6. Any policy taken out, assumed, or removed from the  
976 corporation is, as of the effective date of the take-out,  
977 assumption, or removal, direct insurance issued by the insurer  
978 and not by the corporation, even if the corporation continues to  
979 service the policies. This subparagraph applies to policies of  
980 the corporation and not policies taken out, assumed, or removed

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981 from any other entity.

982 (w) Notwithstanding any other provision of law:

983 1. The pledge or sale of, the lien upon, and the security  
984 interest in any rights, revenues, or other assets of the  
985 corporation created or purported to be created pursuant to any  
986 financing documents to secure any bonds or other indebtedness of  
987 the corporation shall be and remain valid and enforceable,  
988 notwithstanding the commencement of and during the continuation  
989 of, and after, any rehabilitation, insolvency, liquidation,  
990 bankruptcy, receivership, conservatorship, reorganization, or  
991 similar proceeding against the corporation under the laws of  
992 this state.

993 2. The ~~No such~~ proceeding does not shall relieve the  
994 corporation of its obligation, or otherwise affect its ability  
995 to perform its obligation, to continue to collect, or levy and  
996 collect, assessments, policyholder surcharges ~~market~~  
997 ~~equalization~~ or other surcharges under sub-subparagraph (b)3.i.  
998 ~~subparagraph (c)10.~~, or any other rights, revenues, or other  
999 assets of the corporation pledged pursuant to any financing  
1000 documents.

1001 3. Each such pledge or sale of, lien upon, and security  
1002 interest in, including the priority of such pledge, lien, or  
1003 security interest, any such assessments, policyholder surcharges  
1004 ~~market equalization~~ or other surcharges, or other rights,  
1005 revenues, or other assets which are collected, or levied and  
1006 collected, after the commencement of and during the pendency of,  
1007 or after, any such proceeding shall continue unaffected by such  
1008 proceeding. As used in this subsection, the term "financing

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1009 documents" means any agreement or agreements, instrument or  
1010 instruments, or other document or documents now existing or  
1011 hereafter created evidencing any bonds or other indebtedness of  
1012 the corporation or pursuant to which any such bonds or other  
1013 indebtedness has been or may be issued and pursuant to which any  
1014 rights, revenues, or other assets of the corporation are pledged  
1015 or sold to secure the repayment of such bonds or indebtedness,  
1016 together with the payment of interest on such bonds or such  
1017 indebtedness, or the payment of any other obligation or  
1018 financial product, as defined in the plan of operation of the  
1019 corporation related to such bonds or indebtedness.

1020 4. Any such pledge or sale of assessments, revenues,  
1021 contract rights, or other rights or assets of the corporation  
1022 shall constitute a lien and security interest, or sale, as the  
1023 case may be, that is immediately effective and attaches to such  
1024 assessments, revenues, or contract rights or other rights or  
1025 assets, whether or not imposed or collected at the time the  
1026 pledge or sale is made. Any such pledge or sale is effective,  
1027 valid, binding, and enforceable against the corporation or other  
1028 entity making such pledge or sale, and valid and binding against  
1029 and superior to any competing claims or obligations owed to any  
1030 other person or entity, including policyholders in this state,  
1031 asserting rights in any such assessments, revenues, or contract  
1032 rights or other rights or assets to the extent set forth in and  
1033 in accordance with the terms of the pledge or sale contained in  
1034 the applicable financing documents, whether or not any such  
1035 person or entity has notice of such pledge or sale and without  
1036 the need for any physical delivery, recordation, filing, or

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1037 other action.

1038         5. As long as the corporation has any bonds outstanding,  
1039 the corporation may not file a voluntary petition under chapter  
1040 9 of the federal Bankruptcy Code or such corresponding chapter  
1041 or sections as may be in effect, from time to time, and a public  
1042 officer or any organization, entity, or other person may not  
1043 authorize the corporation to be or become a debtor under chapter  
1044 9 of the federal Bankruptcy Code or such corresponding chapter  
1045 or sections as may be in effect, from time to time, during any  
1046 such period.

1047         6. If ordered by a court of competent jurisdiction, the  
1048 corporation may assume policies or otherwise provide coverage  
1049 for policyholders of an insurer placed in liquidation under  
1050 chapter 631, under such forms, rates, terms, and conditions as  
1051 the corporation deems appropriate, subject to approval by the  
1052 office.

1053         Section 2. This act shall take effect July 1, 2012.