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# **Government Operations Appropriations Subcommittee**

**Tuesday, January 31, 2012  
3:30 PM - 6:00 PM  
Morris Hall**

**Meeting Packet**

**Dean Cannon  
Speaker**

**Ed Hooper  
Chair**



**The Florida House of Representatives**  
**Appropriations Committee**  
**Government Operations Appropriations Subcommittee**

**Dean Cannon**  
**Speaker**

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**Chair**

**January 31, 2012**

**AGENDA**  
**3:30 PM – 6:00 PM**  
**Morris Hall**

**I. Call to Order/Roll Call**

**II. Consideration of Bills**

**HB 221 Business Enterprise Opportunities for Wartime Veterans – Rep. Nehr**

**CS/HB 887 Business and Professional Regulation – Rep. Ingram**

**HB 1127 Citizens Property Insurance Corporation – Rep. Albritton**

**III. Adjourn**





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 221 Business Enterprise Opportunities for Wartime Veterans

SPONSOR(S): Nehr and others

TIED BILLS: IDEN./SIM. BILLS: SB 152

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	15 Y, 0 N	Meadows	Williamson
2) Government Operations Appropriations Subcommittee		Lloyd 	Topp 
3) State Affairs Committee			

SUMMARY ANALYSIS

Florida law provides for a vendor preference in state contracting for service-disabled veteran business enterprises. To qualify for this preference, a veteran must certify that he or she is a permanent Florida resident with a service-connected disability as determined by the United States Department of Veterans Affairs or who has been terminated from military service by reason of disability by the United States Department of Defense.

The bill expands the vendor preference to include wartime veterans and veterans of a period of war. The bill provides definitions of wartime veteran and veterans of a period of war to identify eligible applicants for the Veteran Business Enterprise Opportunity program. In addition, the bill revises application and documentation requirements to qualify for the program.

The bill will have an insignificant fiscal impact on the Department of Management Services (DMS). Based on prior year reversions the costs to implement the provisions of HB 221, can be absorbed within existing resources.

The bill provides for an effective date of July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### Florida Service-Disabled Veteran Business Enterprise Opportunity Act

The intent of the Florida Service-Disabled Veteran Business Enterprise Opportunity Act<sup>1</sup> (act) is to

[R]ectify the economic disadvantage of service-disabled veterans, who are statistically the least likely to be self-employed when compared to the veteran population as a whole and who have made extraordinary sacrifices on behalf of the nation, the state, and the public, by providing opportunities for service-disabled veteran business enterprises as set forth in this section.<sup>2</sup>

Current law provides that a "service-disabled veteran" is a veteran who is a permanent Florida resident with a service-connected disability as determined by the United States Department of Veterans Affairs or who has been terminated from military service by reason of disability by the United States Department of Defense.<sup>3</sup>

In order for a service-disabled veteran business enterprise (SDVBE) to be certified, it must be an independently owned and operated business that:

- Employs 200 or fewer permanent full-time employees.
- Together with its affiliates has a net worth of \$5 million or less or, if a sole proprietorship, has a net worth of \$5 million or less including both personal and business investments.
- Is organized to engage in commercial transactions.
- Is domiciled in this state.
- Is at least 51 percent owned by one or more service-disabled veterans.
- Is managed and controlled by one or more service-disabled veterans or, for a service-disabled veteran with a permanent and total disability, by the spouse or permanent caregiver of the veteran.<sup>4</sup>

Florida law provides for a certification process that is administered by the Department of Management Services (DMS), in coordination with the Florida Department of Veterans' Affairs.<sup>5</sup> The certification process requires applicants to submit documentation<sup>6</sup> demonstrating that the business meets the requirements found in s. 295.187(3)(c), F.S. Certification is renewed biennially and may be revoked for one year if the SDVBE fails to inform DMS within 30 days of a change in circumstances that renders the business ineligible for certification.<sup>7</sup>

Currently, there are 222 certified service-disabled veteran business enterprises in Florida.<sup>8</sup>

Service-disabled veteran-owned businesses that are certified through DMS are eligible for benefits such as:

- First tier referrals to state agencies for contract opportunities;
- Business development guidance from established corporations;
- Participation at regional workshops, seminars, and corporate roundtables; and

<sup>1</sup> See s. 295.187, F.S.

<sup>2</sup> Section 295.187(2), F.S.

<sup>3</sup> Section 295.187(3)(b), F.S.

<sup>4</sup> Section 295.187(3)(c)1.-6., F.S.

<sup>5</sup> See s. 295.187(5) – (7), F.S.

<sup>6</sup> See 60A-9.005, F.A.C.

<sup>7</sup> See s. 295.187(5)(d) and (e), F.S.

<sup>8</sup> Information provided by telephone on January 19, 2012, by Mr. Thad Fortune, Certification Administrator (Senior Manager), Office of Supplier Diversity, DMS.

- Inclusion in an exclusive listing of state-certified minority business enterprises in an online directory.<sup>9</sup>

### Vendor Preference

Current law provides that a state agency, when considering two or more bids, proposals, or replies for the procurement of commodities or contractual services, and one is a certified SDVBE, the agency must award the procurement to the SDVBE if all relevant considerations<sup>10</sup> are equal.<sup>11</sup> However, if a certified SDVBE and one or more SDVBE or businesses eligible for another statutory vendor preference, such as a minority business enterprise<sup>12</sup>, submit bids or proposals that are equal with respect to all relevant considerations, the state agency must award the contract or proposal to the business having the smallest net worth.<sup>13</sup>

### **Effect of Proposed Changes**

#### Florida Veteran Business Enterprise Opportunity Act

The bill provides that the act may be cited as the "Florida Veteran Business Enterprise Opportunity Act." It also expands the intent of the act to include the recognition of wartime veterans and veterans of a period of war for their sacrifices.

The bill expands the Florida Veteran Business Opportunity Act to include "wartime veterans." It defines the term "wartime veteran" as:

- A wartime veteran as defined in s. 1.01(14), F.S.<sup>14</sup>; or
- A veteran of a period of war, as used in 38 U.S.C. 1521, who served in active military, naval, or air service:
  - For 90 days or more during a period of war;
  - During a period of war and was discharged or released from such service for a service-connected disability;
  - For a period of 90 consecutive days or more and such period began or ended during a period of war; or
  - For an aggregate of 90 days or more in two or more separate periods of service during more than one period of war.

The bill requires wartime veteran applicants to provide documentation of wartime service from the United States Department of Veterans Affairs or the United States Department of Defense during the veteran business enterprise certification process. The Department of Veterans' Affairs is tasked with assisting DMS in the expansion of the certification process.

### Vendor Preference

The bill expands the vendor preference for service-disabled veterans to include wartime veterans and veterans of a period of war whose businesses are certified as a veteran business enterprise by DMS.

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<sup>9</sup> See Office of Supplier Diversity Annual Report for Fiscal Year 2009-10. Available at: [http://www.dms.myflorida.com/other\\_programs/office\\_of\\_supplier\\_diversity\\_osd/publications/annual\\_reports](http://www.dms.myflorida.com/other_programs/office_of_supplier_diversity_osd/publications/annual_reports) (last visited January 19, 2012).

<sup>10</sup> Relevant considerations include price, quality, and service. See s. 295.187(4)(a), F.S.

<sup>11</sup> Section 295.187(4)(a), F.S.

<sup>12</sup> Section 288.703, F.S., defines the term "minority business enterprise" to mean any small business which is organized to engage in commercial transactions, which is domiciled in Florida, and which is at least 51 percent owned by minority persons who are members of an insular group that is of a particular racial, ethnic, or gender makeup or national origin, which has been subjected historically to disparate treatment due to identification in and with that group.

<sup>13</sup> Section 295.187(4)(b), F.S.

<sup>14</sup> As defined in s. 1.01(14), F.S., the term "wartime veteran" means a veteran who has served in a campaign or expedition for which a campaign badge has been authorized or a veteran who has served during one of the following periods of wartime service: Spanish-American War, Mexican Border period, World War I, World War II, Korean Conflict, Vietnam Era, Persian Gulf War, Operation Enduring Freedom, or Operation Iraqi Freedom.

**B. SECTION DIRECTORY:**

Section 1 amends s. 295.187, F.S., to revise the legislative intent; to expand vendor preferences to include wartime veterans and veterans of a period of war.

Section 2 provides an effective date of July 1, 2012.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The cost to implement HB 221 is expected to be insignificant. The DMS estimates the cost of implementing HB 221, to be approximately \$10,000 related to programming system updates and \$30,000 to hire temporary staff (Other Personal Services) to process the certification applications of wartime veterans.<sup>15</sup>

Based on prior year spending by the DMS, the cost to implement the provisions of HB 221 can be covered within existing resources. In FY 2010-11, DMS reverted over \$79,000 in Other Personal Services budget authority. A review of the first six months of FY 2011-12, indicates the department is estimated to revert in excess of \$60,000.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

This bill may assist wartime veterans in competing for state contracts by expanding the Service-Disable Veteran Business Enterprise certification program to include wartime veterans and veterans of a period of war. This bill may have a negative impact on the service-disable veteran enterprises as the bill may diminish their ability to secure contracts under the preference as it expands the pool of vendors by allowing wartime veterans and veterans of a period of war to be certified as a Veteran Business Enterprise.

**D. FISCAL COMMENTS:**

None.

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<sup>15</sup> Department of Management Services' Bill Analysis, September 15, 2011, on file with the House Government Operations Appropriations Subcommittee.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

Section 295.187(9), F.S., currently authorizes the Department of Veterans' Affairs and the Department of Management Services to adopt rules, as necessary, to administer the Florida Service-Disabled Veteran Business Enterprise program. The departments may need to adopt additional rules to account for the expansion of the Florida Veteran Business Enterprise Opportunity program.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Management Services provided the following comments:

At present time there are 1,650,876 veterans living in Florida - 1,229,096 are considered "war-time" veterans (around 74 percent). Also, there are 3256 Florida veteran owned businesses registered on the US Federal Contractor Registration – only registered contractors are allowed to contract with the federal government.<sup>16</sup>

The Office of Supplier Diversity of the Department of Management Services projects that including wartime veterans and veterans of a period of war in the Veteran Business Enterprise Program would result in the registration and certification of 1,500-2,000 veteran businesses.<sup>17</sup>

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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<sup>16</sup> *Id.* at 1.

<sup>17</sup> Information provided by telephone on January 19, 2012, by Mr. Thad Fortune, Certification Administrator (Senior Manager), Office of Supplier Diversity, DMS.





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29 (3) DEFINITIONS.—For the purpose of this section, the  
30 term:

31 (a) "Certified ~~service-disabled~~ veteran business  
32 enterprise" means a business that has been certified by the  
33 Department of Management Services to be a ~~service-disabled~~  
34 veteran business enterprise as defined in paragraph (c).

35 (b) "Service-disabled veteran" means a veteran who is a  
36 permanent Florida resident with a service-connected disability  
37 as determined by the United States Department of Veterans  
38 Affairs or who has been terminated from military service by  
39 reason of disability by the United States Department of Defense.

40 (c) "~~Service-disabled~~ Veteran business enterprise" means  
41 an independently owned and operated business that:

- 42 1. Employs 200 or fewer permanent full-time employees;
- 43 2. Together with its affiliates has a net worth of \$5  
44 million or less or, if a sole proprietorship, has a net worth of  
45 \$5 million or less including both personal and business  
46 investments;
- 47 3. Is organized to engage in commercial transactions;
- 48 4. Is domiciled in this state;
- 49 5. Is at least 51 percent owned by one or more wartime  
50 veterans or service-disabled veterans; and
- 51 6. The management and daily business operations of which  
52 are controlled by one or more wartime veterans or service-  
53 disabled veterans or, for a service-disabled veteran having with  
54 a permanent and total disability, by the spouse or permanent  
55 caregiver of the veteran.

56 (d) "Wartime veteran" means:

- 57 |       1. A wartime veteran as defined in s. 1.01(14); or  
 58 |       2. A veteran of a period of war, as used in 38 U.S.C. s.  
 59 | 1521, who served in the active military, naval, or air service:  
 60 |       a. For 90 days or more during a period of war;  
 61 |       b. During a period of war and was discharged or released  
 62 | from such service for a service-connected disability;  
 63 |       c. For a period of 90 consecutive days or more and such  
 64 | period began or ended during a period of war; or  
 65 |       d. For an aggregate of 90 days or more in two or more  
 66 | separate periods of service during more than one period of war.

67 |       (4) VENDOR PREFERENCE.—

68 |       (a) A state agency, when considering two or more bids,  
 69 | proposals, or replies for the procurement of commodities or  
 70 | contractual services, at least one of which is from a certified  
 71 | ~~service-disabled~~ veteran business enterprise, which ~~that~~ are  
 72 | equal with respect to all relevant considerations, including  
 73 | price, quality, and service, shall award such procurement or  
 74 | contract to the certified ~~service-disabled~~ veteran business  
 75 | enterprise.

76 |       (b) Notwithstanding s. 287.057(11), if a ~~service-disabled~~  
 77 | veteran business enterprise entitled to the vendor preference  
 78 | under this section and one or more businesses entitled to this  
 79 | preference or another vendor preference provided by law submit  
 80 | bids, proposals, or replies for procurement of commodities or  
 81 | contractual services which ~~that~~ are equal with respect to all  
 82 | relevant considerations, including price, quality, and service,  
 83 | ~~then~~ the state agency shall award the procurement or contract to  
 84 | the business having the smallest net worth.

85 (c) Political subdivisions of the state are encouraged to  
 86 offer a similar consideration to businesses certified under this  
 87 section.

88 (5) CERTIFICATION PROCEDURE.—

89 (a) The application for certification as a ~~service-~~  
 90 ~~disabled~~ veteran business enterprise must, at a minimum,  
 91 include:

92 1. The name of the business enterprise applying for  
 93 certification and the name of the ~~service-disabled~~ veteran  
 94 submitting the application on behalf of the business enterprise.

95 2. The names of all owners of the business enterprise,  
 96 including owners who are wartime veterans, service-disabled  
 97 veterans, and owners who are not a wartime veteran or a service-  
 98 disabled veteran ~~veterans~~, and the percentage of ownership  
 99 interest held by each owner.

100 3. The names of all persons involved in both the  
 101 management and daily operations of the business, including the  
 102 spouse or permanent caregiver of a veteran who has ~~with~~ a  
 103 permanent and total disability.

104 4. The service-connected disability rating of all persons  
 105 listed under subparagraphs 1., 2., and 3., as applicable, with  
 106 supporting documentation from the United States Department of  
 107 Veterans Affairs or the United States Department of Defense.

108 5. Documentation of the wartime service of all persons  
 109 listed under subparagraphs 1., 2., and 3., as applicable, from  
 110 the United States Department of Veterans Affairs or the United  
 111 States Department of Defense.

112 6.5. The number of permanent full-time employees.

113 7.6. The location of the business headquarters.

114 8.7. The total net worth of the business enterprise and  
 115 its affiliates. In the case of a sole proprietorship, the net  
 116 worth includes personal and business investments.

117 (b) To maintain certification, a ~~service-disabled~~ veteran  
 118 business enterprise shall renew its certification biennially.

119 (c) ~~The provisions of Chapter 120,~~ relating to  
 120 application, denial, and revocation procedures, applies shall  
 121 ~~apply~~ to certifications under this section.

122 (d) A certified ~~service-disabled~~ veteran business  
 123 enterprise must notify the Department of Management Services  
 124 within 30 business days after any event that may significantly  
 125 affect the certification of the business, including, but not  
 126 limited to, a change in ownership or change in management and  
 127 daily business operations.

128 (e) The certification of a ~~service-disabled~~ veteran  
 129 business enterprise shall be revoked for 12 months if the  
 130 Department of Management Services determines that the business  
 131 enterprise violated paragraph (d). An owner of a certified  
 132 ~~service-disabled~~ veteran business enterprise whose certification  
 133 is revoked may is not ~~permitted to~~ reapply for certification  
 134 under this section as an owner of any business enterprise during  
 135 the 12-month revocation period.

136 1. During the 12-month revocation period, a ~~service-~~  
 137 ~~disabled~~ veteran business enterprise whose certification has  
 138 been revoked may bid on state contracts but is not eligible for  
 139 any preference available under this section.

140 2. A ~~service-disabled~~ veteran business enterprise whose

141 certification has been revoked may apply for certification at  
 142 the conclusion of the 12-month revocation period by complying  
 143 with requirements applicable to initial certifications.

144 (6) DUTIES OF THE DEPARTMENT OF VETERANS' AFFAIRS.—The  
 145 department shall:

146 (a) Assist the Department of Management Services in  
 147 establishing a certification procedure, which shall be reviewed  
 148 biennially and updated as necessary.

149 (b) Identify eligible ~~service-disabled~~ veteran business  
 150 enterprises by any electronic means, including electronic mail  
 151 or Internet website, or by any other reasonable means.

152 (c) Encourage and assist eligible ~~service-disabled~~ veteran  
 153 business enterprises to apply for certification under this  
 154 section.

155 (d) Provide information regarding services that are  
 156 available from the Office of Veterans' Business Outreach of the  
 157 Florida Small Business Development Center to ~~service-disabled~~  
 158 veteran business enterprises.

159 (7) DUTIES OF THE DEPARTMENT OF MANAGEMENT SERVICES.—The  
 160 department shall:

161 (a) With assistance from the Department of Veterans'  
 162 Affairs, establish a certification procedure, which shall be  
 163 reviewed biennially and updated as necessary.

164 (b) Grant, deny, or revoke the certification of a ~~service-~~  
 165 ~~disabled~~ veteran business enterprise under this section.

166 (c) Maintain an electronic directory of certified ~~service-~~  
 167 ~~disabled~~ veteran business enterprises for use by the state,  
 168 political subdivisions of the state, and the public.

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169           (8) REPORT.—The Small Business Development Center shall  
 170 include in its report required by s. 288.705 the percentage of  
 171 certified ~~service-disabled~~ veteran business enterprises using  
 172 the statewide contracts register.

173           (9) RULES.—The Department of Veterans' Affairs and the  
 174 Department of Management Services, as appropriate, may adopt  
 175 rules as necessary to administer this section.

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





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 887 Business and Professional Regulation  
**SPONSOR(S):** Business & Consumer Affairs Subcommittee, Ingram and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1252

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee	14 Y, 0 N, As CS	Livingston	Creamer
2) Government Operations Appropriations Subcommittee		Topp	Topp <b>BOT</b>
3) Economic Affairs Committee			

### SUMMARY ANALYSIS

The bill reduces regulatory requirements for professions and businesses, and streamlines regulatory functions primarily for programs under the Department of Business and Professional Regulation (DBPR).

Specifically, the bill:

- waives initial licensure fees for recently discharged military veterans.
- authorizes the DBPR to approve continuing education providers and courses without board review, even when there is a regulatory board.
- authorizes the DBPR to reinstate void licenses due to illness or economic hardship of a former licensee.
- allows the DBPR to offer continuing education for real estate instructors through distance learning.
- requires licensees to notify the DBPR of their available e-mail addresses.
- allows the DBPR to serve non-disciplinary notices to a licensee's e-mail address of record.
- creates an exemption from the definition of appraisal management company for bank owned appraisal management companies.
- clarifies the definition of "Appraisal Management Company" and "Appraisal Management Services."
- removes the 24 month expiration of the appraiser national exam score for applicants.
- creates a violation for appraisal management companies to require appraisers agree to an indemnification agreement.
- amends barbering and cosmetology restrictions to allow services to be provided at locations outside of barbershops and salons.
- authorizes the cosmetology board to accept work experience in lieu of educational hours for endorsement applicants.
- exempts makeup service professionals from licensure as cosmetologists.
- re-opens and extends the period for grandfathering of "registered" contractors' licenses to state wide "certified" contractors' licenses until November 1, 2014.

The bill will have a positive impact on the department's revenues. The DBPR estimates that HB 887 will increase revenues to the Professional Regulation Trust Fund by \$573,009 in FY 2012-13 and \$286,709 in FY 2013-14, as a result of re-opening the time period registered contractors may grandfather their registered contractors' license to a state certified contractors' license, under part I of chapter 489, F.S.

The bill has an effective date of October 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Section 20.165, F.S., establishes the organizational structure of the Department of Business and Professional Regulation (DBPR) and includes the Division of Professions. The Division of Professions administers 14 professional boards and one council pursuant to s. 20.165, F.S.

Chapter 455, F.S., specifies the general powers of the DBPR. Each profession is administered either directly by the DBPR or through a separately appointed board, council, or commission. Section 455.01, F.S., defines the term "profession" to mean:

any activity, occupation, profession, or vocation regulated by the department in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.

##### Proposed Changes

The bill contains numerous modifications relating to several programs under the DBPR. The following section-by-section analysis includes the Present situation and Proposed changes for referenced sections of the bill where appropriate.

#### **Retired Armed Services Personnel Licensure**

##### Present situation

Currently, s. 455.02, F.S., applies to licensees who are members of the armed forces on active duty who are absent from the state and not practicing their profession in the private sector. The armed forces member/licensee is exempted from license renewal requirements for the duration of active duty while absent from the state of Florida, and for a period of six months after discharge or return to the state, but not practicing the profession. This statute applies to numerous professions regulated by the DBPR but not all professions.

Additionally, an out-of-state professional license may be used as the basis for the issuance of a temporary license for use in Florida by spouses of active duty members of the Armed Forces of the United States who have been assigned to a base/duty station in Florida.

Section 455.213, F.S., provides the general provisions for issuance of professional licensure by the DBPR. The current statute does not allow the DBPR to distinguish applicants based on their military service. Former members of the United State Armed Forces are required to meet all licensure requirements and pay all licensure fees despite their service to the United States military

##### Proposed changes

The bill amends s.455.213, F.S., to require the DBPR to waive the initial licensing fee, initial application fee and initial unlicensed activity fee for military veterans who have been honorably discharged from the United States Armed Forces within 24 months of applying for licensure.

#### **Continuing Education**

##### Present Situation

A licensee may practice a profession only if the licensee has an active status license. Section 455.2179, F.S., provides that if a board, or the department if there is no board, requires completion of continuing education as a requirement for renewal of a license, the board, or the department if there is

no board, must approve providers of the continuing education. This section also specifies that the approval of continuing education providers "and courses" must be for a specified period of time.

An inactive status licensee may change to active status provided the licensee meets requirements for active status, pays applicable fees and meets continuing education requirements. Generally, if a licensee allows their license to go inactive, they must complete enough continuing education to fulfill the continuing education cycle for each licensure cycle in which they were inactive.

### Proposed changes

The bill allows the DBPR, upon application, to approve continuing education providers and courses without board review, even when there is a regulatory board. The bill also specifies that if the DBPR determines that an applicant for approval as a course provider or approval of the content of courses requires additional evaluation or is denied by the DBPR then the application must be forwarded to the applicable board for final action.

The bill specifies that the DBPR is the only authority to determine the content of applications and supporting documents.

### **Void Licenses**

#### Present Situation

Section 455.271, F.S., provides the process for placing a professional license in an inactive or delinquent status. Licensees are permitted to choose, at the time of licensure renewal, whether to be in an active or inactive status. A licensee who is in an inactive status may change to active status at any time if the licensee meets requirements for active status, pays licensure fees necessary to equal those imposed on an active status licensee, pays any applicable reactivation fee, and meets continuing education requirements. A delinquent status licensee must apply for active or inactive status during the licensure cycle in which a licensee becomes delinquent. Failure by a delinquent status licensee to become active or inactive before the expiration of the current licensure cycle renders the license void without any further action by an appropriate board or the DBPR if there is no board.

An individual may apply for reinstatement of a void license if the board or department, as applicable, determines that the individual has made a good faith effort to comply with this section but has failed to comply because of illness or unusual hardship.

#### Proposed Changes

To reinstate a void license, the bill requires an applicant to establish that they were unable to renew their license due to illness or "economic" hardship. The bill removes the requirement that licensees establish that they made a good faith effort to renew and that their hardship was unusual. The bill also grants the DBPR the authority to approve applications for reinstatement of a void license, even where there is a board for that profession

### **E-mail Addresses**

#### Present Situation

Section 455.273, F.S., requires the DBPR to mail renewal and cancelation notifications to licensees' addresses of record 90 days prior to expiration or cancelation of the license. The statute does not specifically authorize the DBPR to forward the notices by e-mail. The DBPR is also required to include a notice stating that if a licensee remains on inactive status for more than two consecutive licensure cycles, the licensee may be required to sit for a special purpose examination or other reactivation requirements prior to reactivation of their license.

Section 455.275, F.S., requires licensees to provide the DBPR written notification of the licensee's current mailing address and place of practice. Notices and official communications to the licensees must be served by regular mail.

#### Proposed changes

The bill amends section 455.273, F.S., to allow the DBPR to forward renewal and cancellation notices to a licensee's e-mail address of record. The DBPR may still to use regular mail when a licensee does not maintain an e-mail address. The bill also amends this section to remove the requirement that the DBPR place a statement on each renewal and cancellation notice that a licensee may be required to complete a special purposes examination or other reactivation requirement prior to activating a license.

The bill amends section 455.275, F. S., to require licensees to keep the DBPR updated with their e-mail address, in addition to, their required mailing address and place of employment, and permits the DBPR to serve required notices by e-mail.

### **Distance Learning-Real Estate**

#### Present Situation

The regulation of real estate brokers and salespersons is administered by the Florida Real Estate Commission (commission) and the Division of Real Estate under the DBPR. Among other responsibilities, entities and individuals seeking to offer courses of study in real estate, and individuals teaching such courses, must be licensed by the DBPR. Courses that are required to be completed in order to qualify to be initially licensed as a real estate broker or salesperson or to meet education requirements for license renewal are available by distance learning in addition to traditional classroom instruction.

Distance learning educational courses are currently available for compliance with continuing education requirements and for circumstances where attending classroom courses creates an identifiable hardship. Section 475.451, F.S., requires real estate instructors to complete seven classroom hours of continuing education per license renewal cycle.

#### Proposed changes

The bill allows the DBPR to offer continuing education courses to real estate instructors through distance education instruction.

### **Appraisal Management Companies (AMC)**

#### Present Situation

Real estate appraisers are specialists in estimating the value of real property. Appraisals are made when property is bought, sold, assessed, taxed, condemned, insured, or mortgaged. Real estate appraisers prepare a written description of the property and make an estimate of its value. Individual real estate appraisers are currently regulated under part II of chapter 475, F.S. Section 475.6171, F.S., currently requires a national examination to be completed with the results continuing to be valid for a period of 24 months prior to application for licensure in the state of Florida.

No person may engage in appraisal management services or represent themselves as appraisal management companies or a title similar in meaning unless the person is registered with the DBPR as an appraisal management company. An employee of an AMC is not required to obtain a separate registration. Section 475.6235, F.S., does not exempt bank owned appraisal management companies from registration.

The DBPR may deny an application for registration; investigate actions, reprimand or impose an administrative fine, revoke or suspend a registration, or place an AMC on probation for violations of this part.

### Proposed changes

The bill:

- removes the 24 month expiration of the appraiser national examination score for applicants.
- creates an exemption from the definition of appraisal management company for bank owned appraisal management companies
- creates a violation for appraisal management companies to make appraisers agree to an indemnification agreement

## **Barber Services**

### Present Situation

Pursuant to chapter 476, F.S., in order to practice barbering services for compensation, an individual must have a barber license or restricted barber license approved by the Barbers' board and issued by the DBPR. A person holding a restricted barber's licenses is not permitted to provide services involving chemicals.

With exceptions, s. 476.188, F.S., specifies that barber services be performed only by licensed barbers in registered barbershops. Exceptions include a nursing home, hospital, or residence, when a client for reasons of ill health is unable to go to a registered barbershop. Additional allowances include a person who holds a barber's license in any state may perform barber services in a location other than a registered barbershop when services are performed in connection with a motion picture, fashion photography, theatrical, or television industry, a manufacturer trade show demonstration, or an educational seminar.

### Proposed changes

The bill creates additional exceptions to include providing barber services at any place of employment and any residence. Since the bill expands the location of services to be performed, the bill removes the limitation for services to be performed "when a client for reasons of ill health is unable to go to a registered barbershop."

## **Cosmetology Services**

### Present Situation

The Board of Cosmetology within the DBPR is responsible for the regulation of cosmetology under chapter 477, F.S. No person can practice cosmetology or use the name or title of a cosmetologist unless licensed. Additionally, s. 477.025, F.S., specifies that cosmetology salons and specialty salons are required to be licensed and cosmetology services can only be performed in a licensed salon unless specifically exempted.

Section 477.0135, F.S., exempts certain persons from the provisions of chapter 477, F.S., when a licensee applies cosmetic products in connection with the sale of the products at retail, providing makeup, special effects, or cosmetology services to an actor or other person, during a production, and makeup or special effects services in a theme park or entertainment complex.

Section 477.0263(3), F.S., allows any person with a cosmetology license to perform services in a location other than a licensed salon when the services are performed in connection with the motion picture, fashion photography, theatrical industry, television industry; a photograph studio salon, a manufacturer trade show demonstration, or an educational seminar.

## Proposed changes

The bill:

- amends s. 477.0135, F. S., to exempt all individuals who provide makeup services to the general public from licensure as cosmetologists.
- amends s. 477.019, F.S., to allow out-of-state endorsement applicants to substitute work experience for educational hours when applying for licensure.
- amends s. 477.0263, F. S., to create a new exemption to allow licensed cosmetologists to perform services at "special events" held outside of licensed salons.

## **Construction Industry Licensing**

### Present Situation

The Construction Industry Licensing Board (CILB) is the regulatory body mandated with implementing part I of chapter 489, F.S. The CILB regulates construction contractors who oversee the construction or demolition of a structure or other improvement to real estate.

Chapter 489, F.S., requires that all individuals who practice construction contracting (and electrical contracting) in Florida must either be "certified" or "registered." Certified contractors are authorized to engage in contracting on a statewide basis. "Registration" allows an individual to practice contracting only in the jurisdiction that issues that individual's local license. Registration is issued by the DBPR upon proof of local licensure. Such proof consists of a license issued by the local jurisdiction, and evidence of compliance with local licensing requirements, if a local licensing requirement exists. Some local jurisdictions have rigorous standards for license issuance, such as experience and insurance requirements, and passage of an examination. Other local jurisdictions will issue a license for a nominal fee and may have little or no experience or examination requirements.

Section 489.118, F.S., provides that the CILB issue a "certification" in an appropriate construction category to a contractor who is "registered" upon receipt of a completed application, payment of an appropriate fee, and can show that he or she meets statutorily specified criteria such as possessing a registered local license, passing an approved written examination, having at least five years of contracting, among others. Applicants wishing to obtain a "certificate" pursuant to this statutory "grandfather" allowance were required to make application by November 1, 2005.

### Proposed changes

The bill amends s. 489.118, F. S., to re-open and extend the period for grandfathering of "registered" contractors' licenses to state wide "certified" contractors' licenses until November 1, 2014.

## **B. SECTION DIRECTORY:**

Section 1 amends s. 455.213, F.S., to waive initial license fees for military veterans.

Section 2 amends s. 455.2179, F.S., to allow the DBPR to administratively approve continuing education providers and courses without board review, even when there is an applicable board.

Section 3 amends s.455.271, F.S., to require applicants to establish that they were unable to renew their license due to illness or economic hardship to reinstate a void license.

Section 4 amends s. 455.273, F.S., to allow the DBPR to forward renewal and cancellation notices to a licensee's e-mail address of record.

Section 5 amends s. 455.275, F.S., to require licensees to update their available e-mail address in addition to their required mailing address and place of employment.

Section 6 amends s. 475.451, F.S., to allow the DBPR to offer continuing education courses to real estate instructors through distance learning.

Section 7 amends s. 475.611, F.S., to clarify the definition of "Appraisal Management Company" and "Appraisal Management Services."

Section 8 amends s. 475.6171, F.S., to remove the 24 month expiration period of the national examination score for applicants as an appraiser.

Section 9 amends s. 475.6235(1), F.S., to create an exemption from the definition of appraisal management company for bank owned appraisal management companies.

Section 10 amends s. 475.6245, F.S., to make it a violation for appraisal management companies to require appraisers to agree to an indemnification agreement.

Section 11 amends s. 476.188, F. S., to expand the locations that a licensed barber may provide barbering services outside of a licensed barbershop.

Section 12 amends s. 477.0135, F.S., to exempt all individuals who provide makeup services to the general public from licensure as cosmetologists or specialists.

Section 13 amends s. 477.019, F.S., to allow out of state endorsement applicants to substitute work experience for educational hours when applying for licensure.

Section 14 amends s. 477.0263, F.S., to create a new exemption to allow licensed cosmetologists and specialists to perform services at special events held outside of a salon.

Section 15 amends s. 489.118, F.S., to re-open and extend the period for grandfathering of "registered" contractors' licenses to statewide "certified" contractors' licenses until November 1, 2014.

Section 16. provides an effective date of October 1, 2012.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The DBPR estimates that HB 887 will increase revenues to the Professional Regulation Trust Fund by \$573,009 in FY 2012-13 and \$286,709 in FY 2013-14, as a result of re-opening the time period registered contractors may grandfather their registered contractors' license to a state certified contractors' license, under part I of chapter 489, F.S.<sup>1</sup>

In addition, the DBPR estimates that any loss of revenue related to granting initial licensing fee waivers to recently discharged military veterans would likely be insignificant.<sup>2</sup>

#### **2. Expenditures:**

The DBPR estimates that re-opening the time period registered contractors may grandfather their registered contractors' license to a state certified contractors' license, under part I of chapter 489, F.S., may increase the workload on the department's Bureau of Central In-take (licensing/revenue

<sup>1</sup> Department of Business and Professional Regulation's Bill Analysis on HB 887, December 21, 2011.

<sup>2</sup> E-mail between DBPR staff and House Government Operations Appropriations staff, January 26, 2012.

section). The DBPR further indicates that the increase workload may require one additional full-time position. However, in FY 2010-11, the Bureau of Central In-take reverted over \$347,000 in budget authority. Based on current staffing levels and appropriations any workload increase associated with HB 887, will be covered from within current positions and existing appropriations.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Not anticipated to be significant.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that the counties or municipalities have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

NA

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES.**

None.



1 A bill to be entitled  
 2 An act relating to business and professional  
 3 regulation; amending s. 455.213, F.S.; waiving initial  
 4 licensing, application, and unlicensed activity fees  
 5 for certain military veterans; amending s. 455.2179,  
 6 F.S.; revising continuing education provider and  
 7 course approval procedures; amending s. 455.271, F.S.;  
 8 limiting to the department the authority to reinstate  
 9 a license that has become void under certain  
 10 circumstances; amending s. 455.273, F.S.; revising the  
 11 method of license renewal notification or notice of  
 12 pending cancellation of licensure to include an e-mail  
 13 address; deleting a requirement that a licensure  
 14 renewal notification and a notice of cancellation of  
 15 licensure include certain information regarding the  
 16 applicant; amending s. 455.275, F.S.; revising a  
 17 provision relating to maintenance of current address-  
 18 of-record information to include e-mail address;  
 19 revising a provision relating to notice to a licensee  
 20 to allow service of process by e-mail; amending s.  
 21 475.451, F.S.; authorizing distance learning courses  
 22 as an acceptable alternative to classroom instruction  
 23 for renewal of a real estate instructor permit;  
 24 providing that distance learning courses are under the  
 25 discretion of the school offering the real estate  
 26 course; requiring distance learning courses to adhere  
 27 to certain requirements; amending s. 475.611, F.S.;  
 28 revising the definition of the terms "appraisal

29 management company" and "appraisal management  
 30 services"; amending s. 475.6171, F.S.; revising  
 31 requirements for the issuance of registration or  
 32 certification upon receipt of proper documentation;  
 33 amending s. 475.6235, F.S.; revising provisions  
 34 relating to titles an appraisal management company  
 35 must be registered to use; providing exemptions from  
 36 registration requirements; amending s. 475.6245, F.S.;  
 37 providing additional grounds for discipline of  
 38 appraisal management companies, to which penalties  
 39 apply; amending s. 476.188, F.S.; revising the list of  
 40 locations for the performance of barber services not  
 41 in a registered barbershop; amending s. 477.0135,  
 42 F.S.; exempting from cosmetology licensure individuals  
 43 who perform makeup services to the general public;  
 44 amending s. 477.019, F.S.; revising procedures for  
 45 cosmetology licensure by endorsement to authorize work  
 46 experience as a substitute for educational hours;  
 47 amending s. 477.0263, F.S.; authorizing the  
 48 performance of cosmetology and specialty services in a  
 49 location other than a licensed salon under certain  
 50 circumstances; reenacting and amending s. 489.118,  
 51 F.S.; reviving grandfathering provisions and  
 52 establishing a new deadline for applications for  
 53 certification of certain registered contractors;  
 54 providing an effective date.

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

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Section 1. Subsection (12) is added to section 455.213, Florida Statutes, to read:

455.213 General licensing provisions.—

(12) The department shall waive the initial licensing fee, the initial application fee, and the initial unlicensed activity fee for a military veteran who applies to the department for a license, in a format prescribed by the department, within 24 months after discharge from any branch of the United States Armed Forces. To qualify for this waiver, the veteran must have been honorably discharged.

Section 2. Subsection (1) of section 455.2179, Florida Statutes, is amended to read:

455.2179 Continuing education provider and course approval; cease and desist orders.—

(1) If a board, or the department if there is no board, requires completion of continuing education as a requirement for renewal of a license, the board, or the department if there is no board, shall approve the providers and courses for ~~of~~ the continuing education. Notwithstanding this subsection or any other provision of law, the department may approve continuing education providers or courses even if there is a board. If the department determines that an application for a continuing education provider or course requires expert review or should be denied, the department shall forward the application to the appropriate board for review and approval or denial. The approval of continuing education providers and courses must be for a specified period of time, not to exceed 4 years. An

85 approval that does not include such a time limitation may remain  
 86 in effect pursuant to the applicable practice act or the rules  
 87 adopted under the applicable practice act. Notwithstanding this  
 88 subsection or any other provision of law, only the department  
 89 may determine the contents of any documents submitted for  
 90 approval of a continuing education provider or course.

91 Section 3. Paragraph (b) of subsection (6) of section  
 92 455.271, Florida Statutes, is amended to read:

93 455.271 Inactive and delinquent status.—

94 (6)

95 (b) Notwithstanding the provisions of the professional  
 96 practice acts administered by the department, ~~the board, or the~~  
 97 ~~department if there is no board,~~ may, at its discretion,  
 98 reinstate the license of an individual whose license has become  
 99 void if the ~~board or department, as applicable,~~ determines that  
 100 the individual ~~has made a good faith effort to comply with this~~  
 101 ~~section but has~~ failed to comply because of illness or ~~unusual~~  
 102 economic hardship. The individual must apply to ~~the board, or~~  
 103 the department ~~if there is no board,~~ for reinstatement ~~in a~~  
 104 ~~manner prescribed by rules of the board or the department, as~~  
 105 ~~applicable,~~ and shall pay an applicable fee in an amount  
 106 determined by rule. The ~~board, or the department if there is no~~  
 107 ~~board,~~ shall require that such individual meet all continuing  
 108 education requirements prescribed by law, pay appropriate  
 109 licensing fees, and otherwise be eligible for renewal of  
 110 licensure under this chapter.

111

112 This subsection does not apply to individuals subject to

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113 regulation under chapter 473.

114 Section 4. Section 455.273, Florida Statutes, is amended  
 115 to read:

116 455.273 Renewal and cancellation notices.—

117 ~~(1)~~ At least 90 days before the end of a licensure cycle,  
 118 the department ~~of Business and Professional Regulation~~ shall:

119 (1)(a) Forward a licensure renewal notification to an  
 120 active or inactive licensee at the licensee's last known address  
 121 of record or e-mail address provided to ~~with~~ the department.

122 (2)(b) Forward a notice of pending cancellation of  
 123 licensure to a delinquent status licensee at the licensee's last  
 124 known address of record or e-mail address provided to ~~with~~ the  
 125 department.

126 ~~(2) Each licensure renewal notification and each notice of~~  
 127 ~~pending cancellation of licensure must state conspicuously that~~  
 128 ~~a licensee who remains on inactive status for more than two~~  
 129 ~~consecutive biennial licensure cycles and who wishes to~~  
 130 ~~reactivate the license may be required to demonstrate the~~  
 131 ~~competency to resume active practice by sitting for a special~~  
 132 ~~purpose examination or by completing other reactivation~~  
 133 ~~requirements, as defined by rule of the board or the department~~  
 134 ~~when there is no board.~~

135 Section 5. Subsections (1) and (2) of section 455.275,  
 136 Florida Statutes, are amended to read:

137 455.275 Address of record.—

138 (1) Each licensee of the department is solely responsible  
 139 for notifying the department in writing of the licensee's  
 140 current mailing address, e-mail address, and place of practice,

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141 as defined by rule of the board or the department when there is  
 142 no board. A licensee's failure to notify the department of a  
 143 change of address constitutes a violation of this section, and  
 144 the licensee may be disciplined by the board or the department  
 145 when there is no board.

146 (2) Notwithstanding any other provision of law, service by  
 147 regular mail or e-mail to a licensee's last known mailing  
 148 address or e-mail address of record with the department  
 149 constitutes adequate and sufficient notice to the licensee for  
 150 any official communication to the licensee by the board or the  
 151 department except when other service is required pursuant to s.  
 152 455.225.

153 Section 6. Paragraph (c) of subsection (2) of section  
 154 475.451, Florida Statutes, is amended, present subsections (4)  
 155 through (8) are renumbered as subsections (5) through (9),  
 156 respectively, and a new subsection (4) is added to that section,  
 157 to read:

158 475.451 Schools teaching real estate practice.—

159 (2) An applicant for a permit to operate a proprietary  
 160 real estate school, to be a chief administrator of a proprietary  
 161 real estate school or a state institution, or to be an  
 162 instructor for a proprietary real estate school or a state  
 163 institution must meet the qualifications for practice set forth  
 164 in s. 475.17(1) and the following minimal requirements:

165 (c) "School instructor" means an individual who instructs  
 166 persons in the classroom in noncredit college courses in a  
 167 college, university, or community college or courses in a career  
 168 center or proprietary real estate school.

169 1. Before commencing to provide such instruction, the  
 170 applicant must certify the applicant's competency and obtain an  
 171 instructor permit by meeting one of the following requirements:

172 a. Hold a bachelor's degree in a business-related subject,  
 173 such as real estate, finance, accounting, business  
 174 administration, or its equivalent and hold a valid broker's  
 175 license in this state.

176 b. Hold a bachelor's degree, have extensive real estate  
 177 experience, as defined by rule, and hold a valid broker's  
 178 license in this state.

179 c. Pass an instructor's examination approved by the  
 180 commission.

181 2. Any requirement by the commission for a teaching  
 182 demonstration or practical examination must apply to all school  
 183 instructor applicants.

184 3. The department shall renew an instructor permit upon  
 185 receipt of a renewal application and fee. The renewal  
 186 application shall include proof that the permitholder has, since  
 187 the issuance or renewal of the current permit, successfully  
 188 completed a minimum of 7 classroom or distance learning hours of  
 189 instruction in real estate subjects or instructional techniques,  
 190 as prescribed by the commission. The commission shall adopt  
 191 rules providing for the renewal of instructor permits at least  
 192 every 2 years. Any permit that ~~which~~ is not renewed at the end  
 193 of the permit period established by the department ~~shall~~  
 194 automatically reverts ~~revert~~ to involuntarily inactive status.

195

196 The department may require an applicant to submit names of

197 persons having knowledge concerning the applicant and the  
 198 enterprise; may propound interrogatories to such persons and to  
 199 the applicant concerning the character of the applicant,  
 200 including the taking of fingerprints for processing through the  
 201 Federal Bureau of Investigation; and shall make such  
 202 investigation of the applicant or the school or institution as  
 203 it may deem necessary to the granting of the permit. If an  
 204 objection is filed, it shall be considered in the same manner as  
 205 objections or administrative complaints against other applicants  
 206 for licensure by the department.

207 (4) A real estate school may offer any course through  
 208 distance learning if the course complies with s. 475.17(2).

209 Section 7. Paragraphs (c) and (d) of subsection (1) of  
 210 section 475.611, Florida Statutes, are amended to read:

211 475.611 Definitions.—

212 (1) As used in this part, the term:

213 (c) "Appraisal management company" means a person who  
 214 performs appraisal management services regardless of the use of  
 215 the term "appraisal management company," "appraiser  
 216 cooperative," "appraiser portal," "mortgage technology company,"  
 217 or other term.

218 (d) "Appraisal management services" means the coordination  
 219 or management of appraisal services for compensation by:

220 1. Employing, contracting with, or otherwise retaining one  
 221 or more licensed or certified appraisers to perform appraisal  
 222 services for a client; or

223 2. Acting as a broker or intermediary between a client and  
 224 one or more licensed or certified appraisers to facilitate the



225 client's employing, contracting with, or otherwise retaining the  
 226 appraisers.

227 Section 8. Subsection (4) of section 475.6171, Florida  
 228 Statutes, is amended to read:

229 475.6171 Issuance of registration or certification.—The  
 230 registration or certification of an applicant may be issued upon  
 231 receipt by the board of the following:

232 (4) If required, proof of passing a written examination as  
 233 specified in s. 475.616. ~~No certification shall be issued based~~  
 234 ~~upon any examination results obtained more than 24 months after~~  
 235 ~~the date of examination.~~

236 Section 9. Subsection (1) of section 475.6235, Florida  
 237 Statutes, is amended, and subsection (9) is added to that  
 238 section, to read:

239 475.6235 Registration of appraisal management companies  
 240 required; exemptions.—

241 (1) A person may not engage, or offer to engage, in  
 242 appraisal management services for compensation in this state,  
 243 advertise or represent herself or himself as an appraisal  
 244 management company, ~~or use the titles "appraisal management~~  
 245 ~~company," "appraiser cooperative," "appraiser portal," or~~  
 246 ~~"mortgage technology company," or any abbreviation or words to~~  
 247 ~~that effect,~~ unless the person is registered with the department  
 248 as an appraisal management company under this section. However,  
 249 an employee of an appraisal management company is not required  
 250 to obtain a separate registration.

251 (9) This section does not apply to any bank, credit union,  
 252 or other lending institution that owns and operates an internal

253 appraisal office, business unit, or department.

254 Section 10. Paragraph (v) is added to subsection (1) of  
 255 section 475.6245, Florida Statutes, to read:

256 475.6245 Discipline of appraisal management companies.—

257 (1) The board may deny an application for registration of  
 258 an appraisal management company; may investigate the actions of  
 259 any appraisal management company registered under this part; may  
 260 reprimand or impose an administrative fine not to exceed \$5,000  
 261 for each count or separate offense against any such appraisal  
 262 management company; and may revoke or suspend, for a period not  
 263 to exceed 10 years, the registration of any such appraisal  
 264 management company, or place any such appraisal management  
 265 company on probation, if the board finds that the appraisal  
 266 management company or any person listed in s. 475.6235(2)(f):

267 (v) Has required or attempted to require an appraiser to  
 268 sign any indemnification agreement that would require the  
 269 appraiser to hold harmless the appraisal management company or  
 270 its owners, agents, employees, or independent contractors from  
 271 any liability, damage, loss, or claim arising from the services  
 272 performed by the appraisal management company or its owners,  
 273 agents, employees, or independent contractors and not the  
 274 services performed by the appraiser.

275 Section 11. Subsection (2) of section 476.188, Florida  
 276 Statutes, is amended to read:

277 476.188 Barber services to be performed in registered  
 278 barbershop; exception.—

279 (2) Pursuant to rules established by the board, barber  
 280 services may be performed by a licensed barber in a location

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281 other than a registered barbershop, including, but not limited  
 282 to, a nursing home, hospital, place of employment, or residence,  
 283 ~~when a client for reasons of ill health is unable to go to a~~  
 284 ~~registered barbershop~~. Arrangements for the performance of  
 285 barber services in a location other than a registered barbershop  
 286 shall be made only through a registered barbershop.

287 Section 12. Subsection (7) is added to section 477.0135,  
 288 Florida Statutes, to read:

289 477.0135 Exemptions.—

290 (7) A license is not required of any individual providing  
 291 makeup services to the general public.

292 Section 13. Subsection (6) of section 477.019, Florida  
 293 Statutes, is amended to read:

294 477.019 Cosmetologists; qualifications; licensure;  
 295 supervised practice; license renewal; endorsement; continuing  
 296 education.—

297 (6) The board shall adopt rules specifying procedures for  
 298 the licensure by endorsement of practitioners desiring to be  
 299 licensed in this state who hold a current active license in  
 300 another state and who have met qualifications substantially  
 301 similar to, equivalent to, or greater than the qualifications  
 302 required of applicants from this state. For purposes of  
 303 qualifying for licensure by endorsement under this subsection,  
 304 work experience may be substituted for required educational  
 305 hours in the amount and manner provided by board rule.

306 Section 14. Subsection (4) is added to section 477.0263,  
 307 Florida Statutes, to read:

308 477.0263 Cosmetology services to be performed in licensed

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309 | salon; exceptions ~~exception~~.-

310 |       (4) Pursuant to rules adopted by the board, any  
 311 | cosmetology or specialty service may be performed in a location  
 312 | other than a licensed salon when the service is performed in  
 313 | connection with a special event and is performed by a person who  
 314 | is employed by a licensed salon and who holds the proper license  
 315 | or specialty registration. An appointment for the performance of  
 316 | any such service in a location other than a licensed salon must  
 317 | be made through a licensed salon.

318 |       Section 15. Section 489.118, Florida Statutes, is  
 319 | reenacted and amended to read:

320 |       489.118 Certification of registered contractors;  
 321 | grandfathering provisions.-The board shall, upon receipt of a  
 322 | completed application and appropriate fee, issue a certificate  
 323 | in the appropriate category to any contractor registered under  
 324 | this part who makes application to the board and can show that  
 325 | he or she meets each of the following requirements:

326 |       (1) Currently holds a valid registered local license in  
 327 | one of the contractor categories defined in s. 489.105(3)(a)-  
 328 | (p).

329 |       (2) Has, for that category, passed a written examination  
 330 | that the board finds to be substantially similar to the  
 331 | examination required to be licensed as a certified contractor  
 332 | under this part. For purposes of this subsection, a written,  
 333 | proctored examination such as that produced by the National  
 334 | Assessment Institute, Block and Associates, NAI/Block, Experior  
 335 | Assessments, Professional Testing, Inc., or Assessment Systems,  
 336 | Inc., shall be considered to be substantially similar to the

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337 examination required to be licensed as a certified contractor.  
 338 The board may not impose or make any requirements regarding the  
 339 nature or content of these cited examinations.

340 (3) Has at least 5 years of experience as a contractor in  
 341 that contracting category, or as an inspector or building  
 342 administrator with oversight over that category, at the time of  
 343 application. For contractors, only time periods in which the  
 344 contractor license is active and the contractor is not on  
 345 probation shall count toward the 5 years required by this  
 346 subsection.

347 (4) Has not had his or her contractor's license revoked at  
 348 any time, had his or her contractor's license suspended within  
 349 the last 5 years, or been assessed a fine in excess of \$500  
 350 within the last 5 years.

351 (5) Is in compliance with the insurance and financial  
 352 responsibility requirements in s. 489.115(5).

353

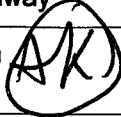
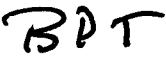
354 Applicants wishing to obtain a certificate pursuant to this  
 355 section must make application by November 1, 2014 ~~2005~~.

356 Section 16. This act shall take effect October 1, 2012.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1127 Citizens Property Insurance Corporation  
**SPONSOR(S):** Albritton  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1346

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	11 Y, 2 N	Callaway	Cooper
2) Government Operations Appropriations Subcommittee		Keith 	Topp 
3) Economic Affairs Committee			

**SUMMARY ANALYSIS**

Citizens Property Insurance Corporation (Citizens or corporation) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. It is not a private insurance company. As of November 30, 2011, Citizens is the largest property insurer in Florida with almost 1.5 million policies extending over \$515 billion of property coverage to Floridians. Citizens writes various types of property insurance coverage for its policyholders. The types of coverage are divided into three separate accounts within the corporation: the Personal Lines Account, the Commercial Lines Account, and the Coastal Account.

In the event Citizens incurs a deficit, the corporation can levy assessments on most of Florida's property and casualty insurance policyholders in the following sequence set by statute:

- Citizens Policyholder Assessments: Citizens assess its policyholders of up to 15% of premium per account in deficit, for a maximum total of 45%.
- Regular Assessments: Upon the exhaustion of the Citizens Policyholder Assessment for a particular account, Citizens levies a regular assessment of up to 6% of premium or 6% of the deficit per account, for a maximum total of 18%. The regular assessment is levied on virtually all property and casualty policies in the state, but is not levied on Citizens' policies.
- Emergency Assessments: Upon the exhaustion of the Citizens Policyholder Assessment and regular assessment for a particular account, Citizens levies an emergency assessment of up to 10% of premium or 10% of the deficit per account, for a maximum total of 30%. This assessment can be collected for as many years as is necessary to cure a deficit. Emergency assessments are levied on virtually all property and casualty policies in the state, including Citizens' own policies.

The bill eliminates the regular assessment for the Personal Lines Account and the Commercial Lines Account and reduces the assessment amount for the Coastal Account from 6% to 2%. The bill does not change the amount of or collection process for the Citizens Policyholder Surcharge. The bill also does not change the amount of or collection process for the emergency assessment, but specifies the Office of Insurance Regulation (OIR) cannot order policyholders to pay this assessment sooner than 90 days after Citizens levies the assessment. The bill also extends the time period limited apportionment companies have to pay a regular assessment to Citizens from 12 months to 15 months. Generally, limited apportionment companies are property insurers with less than \$25 million in surplus.

The bill has no fiscal impact on state or local governments, but does impact the private sector. For example, the bill increases the amount of assessments paid by Citizens' policyholders. It prevents a drain on the surplus of property insurers in the private market caused by the insurers having to prepay a Citizens' regular assessment and recoup it from policyholders over the following year. Citizens may issue more pre-event and post-event bonds than it does currently to ensure the corporation has sufficient cash to pay claims as the corporation will no longer receive the quick influx of cash the regular assessment levy provides. A more detailed fiscal impact on the private sector is provided in the Fiscal Analysis.

The bill is effective July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

Citizens Property Insurance Corporation (Citizens or corporation) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. It is not a private insurance company. As of November 30, 2011, Citizens is the largest property insurer in Florida with almost 1.5 million policies extending over \$515 billion of property coverage to Floridians.<sup>1</sup>

Citizens was created by the Legislature in 2002 by the merger of two existing property insurance associations that provided property insurance to those homeowners and businesses who could not find coverage in the private market.

Citizens writes various types of property insurance coverage for its policyholders. The types of coverage are divided into three separate accounts within the corporation:

1. **Personal Lines Account (PLA) – Multi-peril Policies<sup>2</sup>**  
Consists of homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners and similar policies;
2. **Commercial Lines Account (CLA) – Multi-peril Policies**  
Consists of condominium association, apartment building, homeowner's association policies, and commercial non-residential multi-peril policies on property located outside the Coastal Account area; and
3. **Coastal Account – Wind-only<sup>3</sup> and Multi-peril Policies**  
Consists of wind-only and multi-peril policies for personal residential, commercial residential, and commercial non-residential issued in limited eligible coastal areas.

Citizens' financial resources to pay property insurance claims include both resources typically available to private insurance companies and resources uniquely available to Citizens as a governmental entity with the statutory authority to levy assessments in the event of a deficit in Citizens' financial resources. Like typical private insurance companies, Citizens' financial resources include:

- insurance premiums;
- investment income;
- accumulated surplus;
- reimbursements from the Florida Hurricane Catastrophe Fund due to Citizens' purchase of reinsurance from the Florida Hurricane Catastrophe Fund; and
- reimbursements from private reinsurance companies if Citizens purchases private reinsurance.

Financial resources unique to Citizens include: Citizens Policyholder Surcharges, regular assessments, and emergency assessments.

In the event Citizens incurs a deficit (i.e., its obligations to pay claims exceeds its capital plus reinsurance recoveries), it can levy assessments on most of Florida's property and casualty insurance policyholders in a specific sequence set by statute.<sup>4</sup> The three Citizens' accounts calculate deficits and resulting assessment needs independently, so assessments can be levied when any one or more of the three Citizens' accounts has a deficit.

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<sup>1</sup> <https://www.citizensfla.com/>

<sup>2</sup> A multi-peril policy is defined as a package policy, such as a homeowners or business insurance policy that provides coverage against several different perils. It also refers to the combination of property and liability coverage in one policy. (<http://www2.iii.org/glossary/>) Multi-peril property insurance policies include coverage for damage from windstorm and from other perils, such as fire, theft, and liability.

<sup>3</sup> A wind-only policy is a property insurance policy that provides coverage against windstorm damage only. Coverage against non-windstorm events such as fire, theft, and liability are available in a separate policy.

<sup>4</sup> s. 627.351(6)(b)3.a.,d., and i., F.S.



The Citizens' assessment scheme is as follows:

1. **Citizens Policyholder Assessments:** If Citizens incurs a deficit, Citizens will first levy surcharges on its policyholders of up to 15% of premium per account in deficit, for a maximum total of 45%.<sup>5</sup> This surcharge is collected over twelve months and is collected at the time a new Citizens' policy is written or an existing Citizens' policy is renewed.
2. **Regular Assessments:** Upon the exhaustion of the Citizens Policyholder Assessment for a particular account, Citizens levies a regular assessment of up to 6% of premium or 6% of the deficit per account, for a maximum total of 18%.<sup>6</sup> The regular assessment is levied on virtually all property and casualty policies in the state, but is not levied on Citizens' policies. The assessment is also not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies. Mechanically, property casualty insurers with policies subject to the regular assessment "front" the assessment to Citizens and recover it from their policyholders at the issuance of a new policy or at renewal of existing policies. Thus, Citizens will collect funds raised by a regular assessment quickly after the assessment is levied, usually within 30 days after levy.
3. **Emergency Assessments:** Upon the exhaustion of the Citizens Policyholder Assessment and regular assessment for a particular account, Citizens levies an emergency assessment of up to 10% of premium or 10% of the deficit per account, for a maximum total of 30%.<sup>7</sup> This assessment can be collected for as many years as is necessary to cure a deficit. Emergency assessments are levied on virtually all property and casualty policies in the state, including Citizens' own policies. However, this assessment is not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies. Mechanically, property and casualty insurers with policies subject to the emergency assessment collect the assessment from policyholders at the issuance of a new policy or at renewal of existing policies and then remit the assessments periodically to Citizens. Thus, Citizens will not collect funds raised by an emergency assessment immediately after the assessment is levied but will collect funds intermittently throughout the collection period as policies are renewed and new policies written.

Citizens projects the corporation will have over \$5.7 billion in surplus to pay claims during the 2011 hurricane season.<sup>8</sup> In addition, Citizens could be reimbursed another \$6.5 billion for claims paid by the Florida Hurricane Catastrophe Fund. Citizens purchased private reinsurance for the Coastal Account that would reimburse the corporation up to \$575 million for claims paid in this Account. Thus, the maximum amount Citizens has to pay claims in all accounts for the 2011 hurricane season is approximately \$12.775 billion.<sup>9</sup>

As of November 30, 2011, Citizens' total exposure is over \$515 billion. Citizens estimates the 1-in-100 year hurricane would cost over \$23.2 billion.<sup>10</sup> The \$10.4 billion difference between Citizens' resources to pay claims (\$12.775 billion) and its 1-in-100 year exposure (\$23.2 billion) would be covered by assessments levied by Citizens on its own policyholders and on policyholders of most property and casualty insurance. Specifically, Citizens is able to assess the following maximum amounts with their current assessment authority:

1. **Citizens Policyholder Surcharge** – approximately \$1.172 billion (\$391 million for the Coastal Account and \$781 million for the PLA/CLA).
2. **Regular Assessment** – approximately \$5.580 billion (\$1.860 billion for the Coastal Account and \$3.720 billion for the PLA/CLA).

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<sup>5</sup> s. 627.351(6)(b)3.i., F.S.

<sup>6</sup> s. 627.351(6)(b)3.a. and b., F.S.

<sup>7</sup> s. 627.352(6)(b)3.d., F.S.

<sup>8</sup> Data as of July 13, 2011. Information on file with the Insurance & Banking Subcommittee.

<sup>9</sup> Although Citizens has another \$3.82 billion in pre-event bonding for the Coastal Account that would be available to pay claims, this bonding would have to be repaid through assessments, so is not included in the calculations. If this amount were included, Citizens would have \$16.5 billion to pay claims during the 2011 hurricane season.

<sup>10</sup> A 1-in-100 year hurricane has a 1% probability of occurring. Information obtained from Citizens' presentation to the Financial Services Commission dated November 1, 2011.

3. **Emergency Assessment** –Unlimited maximum assessment in the aggregate because the length of the assessment is not limited. However, yearly assessments are limited to 10% of premium or 10% of the deficit per account.

### **Effect of Proposed Changes**

The bill eliminates the regular assessment for the PLA and CLA and reduces the assessment amount for the Coastal Account from 6% to 2%. The bill does not change the amount of or collection process for the Citizens Policyholder Surcharge. The bill also does not change the amount of or collection process for the emergency assessment, but specifies the Office of Insurance Regulation (OIR) cannot order policyholders to pay this assessment sooner than 90 days after Citizens levies the assessment. No time frame is given in current law for the OIR to order payment of emergency assessments. Nevertheless, for the emergency assessment levied by Citizens in 2007 due to losses from the 2005 hurricanes, Citizens requested, and OIR approved, a start date for the levy of emergency assessments over six months after the date the levy was requested and approved.<sup>11</sup>

The bill also makes revisions designed to assist Citizens in the promulgation and collection of assessments. The bill authorizes Citizens' Board of Governors to levy Citizens Policyholder Surcharges and regular and emergency assessments upon their projection that a Citizens' account will incur a deficit. Current law requires the Citizens' account to actually incur a deficit prior to the levy of the Citizens Policyholder Surcharge or assessments.

Under current law, a limited apportionment property insurance company<sup>12</sup> must pay the regular assessment to Citizens within 12 months after Citizens levies the assessment. Generally, limited apportionment companies are property insurers with less than \$25 million in surplus. All other types of insurers subject to the regular assessment pay the assessment amount to Citizens within 30 days after Citizens levies the assessment. The bill extends the time period limited apportionment companies have to pay a regular assessment to Citizens from 12 months to 15 months. Because regular assessments for the PLA and CLA are eliminated by the bill, the 15 month payment timeframe would apply to only regular assessments for the Coastal Account.

### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 627.351, F.S., relating to Citizens Property Insurance Corporation.

**Section 2:** Provides an effective date of July 1, 2012.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

According to the Office of Insurance Regulation, there may be an increase in workload associated with the additional regulatory oversight and tasks that must be performed based on the provisions

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<sup>11</sup>Due to the 2005 hurricanes, Citizens sustained a deficit of almost \$1.8 billion. In the 2006 Legislative Session, the Legislature appropriated \$715 million to defray the Citizens' deficit associated with the 2005 hurricanes, making the deficit amount passed on to property owners in Florida over \$887 million. To cover the deficit, in addition to a one-time regular assessment of 2.04%, Citizens levied an emergency assessment 1.4% for 10 years. Citizens requested the emergency assessment levy on December 7, 2006 and the OIR approved the levy on January 1, 2007. The start date of the levy, as stated in the request and approved by the OIR, was July 1, 2007. On July 1, 2011 the 1.4% assessment amount was reduced to 1% due to an increase in the assessment premium base.

(see <http://www.flair.com/sections/pandc/CitizensEmergencyAssessment.aspx>; OIR 11-03M (Informational Memorandum issued by OIR April 4, 2011 available at <http://www.flair.com/Office/Memoranda/index.aspx>)).

<sup>12</sup>Generally, a limited apportionment insurance company is an insurer with a surplus of \$25 million or less writing 25% or more of its total countrywide property insurance premiums in Florida. (see s. 627.351(6)(c)13., F.S.)

of this bill. However, OIR indicates any costs associated with HB 1127 are insignificant and can be absorbed within current resources<sup>13</sup>.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The elimination of regular assessments for the PLA and CLA and the reduction of these assessments for the Coastal Account impacts Citizens' policyholders because they could pay more in assessments under the bill than under current law. Because regular assessments are eliminated for the PLA and CLA and reduced for the Coastal Account and the Citizens Policyholder Surcharge is unchanged, if a deficit occurs, amounts that would be collected by regular assessments to offset the deficit will no longer be collected (or will be reduced for Coastal Account deficits). Thus, the deficit amount that must be collected with emergency assessments is potentially greater than it would be under current law, leading to a larger emergency assessment or a longer assessment levy. Citizens' policyholders pay only the Citizens Policyholder Surcharge and the emergency assessment. Consequently, if there is a larger emergency assessment, then Citizens' policyholders could pay more in emergency assessments or could pay emergency assessments for a longer period under the bill than they would under current law. However, if all three Citizens' accounts levied assessments in the first year after a storm, under the bill, a Citizens' policyholder would pay less in assessments for that year due to the bill's reduction of the regular assessment in the Coastal Account and elimination of the regular assessment in the PLA and CLA, which are paid for one year only. But, in this scenario, the Citizens' policyholder would likely pay assessments over a longer period of time under the bill than under current law because the amount of deficit to be cured with emergency assessments would be larger and the time period emergency assessments can be levied is not limited.

The timing of payment of Citizens' assessments by non-Citizens' policyholders will change under the bill. Non-Citizens' property and casualty policyholders have assessments spread out over multiple years under the bill because the amount they would pay in regular assessments under current law, which is paid in one year, is transferred to emergency assessments, which are paid over multiple years. However, the total assessment amount to be paid by non-Citizens' policyholders should not change under the bill, just the timing of the payment changes.

The bill allows limited apportionment property insurance companies three additional months to pay regular assessments, from 12 months after the assessment is levied, to 15 months.

Because the bill eliminates regular assessments in the PLA and CLA, property insurers would not have to prepay these assessments up front to Citizens and recover the amount prepaid from their policyholders. Similarly, because the bill reduces the maximum regular assessment percentage in the Coastal Account, the amount prepaid by insurers for this assessment is lower than under current law. Accordingly, the drain on insurer surplus from having to prepay regular assessments up front and collecting the assessments over a year from policyholders is avoided for the PLA and CLA and reduced for the Coastal Account.

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<sup>13</sup> Information from Email correspondence with OIR on file with the House Government Operations Appropriations Staff.

In addition, a 2011 change to statutory accounting principles relating to how regular assessments are treated on an insurer's financial statement now negatively impacts some insurer's net worth.<sup>14</sup> The bill reduces that impact. Most insurers produce financial statements using both statutory and generally accepted accounting principles. Insurer financial information prepared in accordance with Generally Accepted Accounting Principles (GAAP) are typically used by investors, whereas, insurer financial information prepared in accordance with statutory accounting is used by the OIR. Citizens' levy of regular assessments *reduces an insurer's net worth under both statutory and GAAP accounting. Under both GAAP and statutory accounting*, insurers incur a liability in the form of a direct charge to surplus (i.e., a loss in surplus) in the amount of the regular assessment when the company is billed for the assessment. However, GAAP and statutory accounting treat an asset to offset that liability differently. Under GAAP accounting, the full regular assessment paid by the insurer to Citizens is a direct charge to surplus (i.e. reduces surplus) and there is no an offsetting asset allowed, which immediately reduces the insurer's net worth in the amount of the assessment. Under statutory accounting, however, the full regular assessment is also a direct charge to surplus, but there is an offsetting asset that is included on the insurer's financial statement when the assessment is paid to Citizens.<sup>15</sup> Limited apportionment companies are allowed 12 months to pay a regular assessment to Citizens, so these companies can incur a direct charge to surplus with an offsetting asset incrementally booked over a 12 month period, decreasing the net worth of the insurer until the offsetting asset is booked in full.

The bill's elimination of the regular assessment for the PLA and CLA will prevent the impact on insurer net worth associated with the assessments. The reduction of the regular assessment for the Coastal Account will reduce the impact on insurer net worth. Insurers who are not limited apportionment companies pay the regular assessment within 30 days of levy, so their net worth is not impacted as much by the accounting principles. Citizens' emergency assessments are treated the same under statutory and GAAP accounting and are not a direct charge to an insurer's surplus, thus do not impact an insurer's net worth.

Representatives from Citizens state the bill will not have a negative impact on the corporation's ability to timely pay claims in the event of a hurricane that triggers emergency assessments. Because Citizens will no longer collect assessments from insurers within 30 days of a levy and instead will collect assessments as they are paid by policyholders throughout the year, in order to obtain liquidity needed to pay claims in the event of a hurricane, Citizens may issue more pre-event bonds than is currently issued. The bond proceeds would be invested by Citizens and the interest income used to pay the debt service on the bonds. However, if the interest income earned is not enough to pay the debt service, Citizens would use surplus to pay the difference. Surplus is used to pay claims, so if surplus is used for debt service, less is available to pay claims.

Because the bill eliminates the regular assessment for the PLA and CLA, Citizens no longer has a source for a quick influx of cash to pay claims (i.e., regular assessments paid by insurers within 30 days of levy) and may instead obtain cash to pay claims after a hurricane by issuing post-event bonds supported by emergency assessments paid over multiple years. If the Florida Hurricane Catastrophe Fund is also issuing post-event bonds to raise additional funds to pay their claims after a hurricane, then both entities could receive less favorable bonding terms which, in turn, results in higher assessments levied by both entities to support the debt service on the bonds.

Insurers having to prepay regular assessments up front to Citizens could imperil the solvency of insurers that do not have sufficient funds on hand or the ability to borrow the funds to pay the regular assessment to Citizens. If an insurer becomes insolvent, it cannot pay the claims filed by its own policyholders and the Florida Insurance Guaranty Fund (FIGA) would likely take over the insurer and pay its claims. To raise funds to pay claims of insolvent insurers, FIGA can levy regular and emergency assessments against property and casualty insurers which are passed through to policyholders to raise funds to pay claims.

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<sup>14</sup> The changes to the statutory accounting principles that negatively impact insurer net worth paying regular assessments to Citizens were effective January 1, 2011.

<sup>15</sup> Prior to January 1, 2011, insurers were allowed to book an offsetting asset of an account receivable to the direct charge to surplus from a regular assessment when the charge was booked, rather than waiting to book the offsetting asset when the assessment is paid by the insurer.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

None provided in the bill and none repealed by the bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Representatives from the OIR report that some non-admitted property and casualty insurers have cited the requirement that insurers prepay the regular assessment up front to Citizens as the reason they have chosen not to write residential property insurance in Florida.

Representatives from multiple Florida admitted insurance companies assert the requirement that property and casualty insurers with policies subject to the regular assessment prepay the assessment to Citizens up front and subsequently recoup it from their policyholders may delay the ability of some insurers to timely pay claims of their own policyholders.

Allowing Citizens to levy surcharges and assessments upon a projection by the Citizens Board of Governors that a deficit exists in a Citizens account will allow Citizens to begin the process of collecting those levies at an earlier time than under current law.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

1 A bill to be entitled  
 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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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

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 1/2 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 1/2 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 1/2 percent of the  
 164 | projected deficit or 2 1/2 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.~~

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.

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

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

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. 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.

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.

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.

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

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

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



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

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.

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

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

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

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

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

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

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

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

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.