Insurance & Banking Subcommittee

Tuesday, January 17, 2012
3:30 PM
404 HOB

Dean Cannon
Speaker

Bryan Nelson
Chair

The Florida House of Representatives

Economic Affairs Committee

Insurance & Banking Subcommittee

Dean Cannon
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AGENDA

January 17, 2012
404 House Office Building
3:30 p.m. - 6:00 p.m.

I. Introductory Remarks

II. HB 645 **Pub. Rec./Title Insurance Data/DFS** *by Rep. Moraitis*

III. HB 941 **Commercial Lines Insurance Policies** *by Rep. Holder*

IV. HB 1011 **Warranty Associations** *by Rep. Abruzzo*

V. PCS for HB 643 **Title Insurance**

VI. Workshop on the following:

a. HB 833 **Florida Hurricane Catastrophe Fund** *by Rep. Hager*
b. HB 1127 **Citizens Property Insurance Corporation** *by Rep. Albritton*

VII. Adjournment

204 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 645 Pub. Rec./Title Insurance Data/DFS
SPONSOR(S): Moraitis, Jr.
TIED BILLS: HB 643 **IDEN./SIM. BILLS:** SB 1406

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Reilly	Cooper
2) Government Operations Subcommittee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill provides for title insurers, their affiliated businesses in Florida, and title insurance agencies to annually submit data to the Department of Financial Services (DFS) to assist in the analysis of title insurance premium rates, title search costs, and the condition of Florida's title insurance industry. The DFS is authorized to adopt rules to administer the collection of the data. The bill also creates a public records exemption for financial information that is submitted to the DFS.

The bill provides for repeal of the exemption on October 2, 2017, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new exemption; thus, it requires a two-thirds vote for final passage.

The bill is effective on the date that HB 643, or similar legislation adopted by the Legislature during the 2012 Regular Legislative Session and subsequently enacted into law, takes effect.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose. A bill enacting an exemption or substantially amending an existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[1]

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[2] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

Effect of the Bill

The bill provides for title insurers, their affiliated businesses in Florida, and title insurance agencies to annually submit data to the Department of Financial Services (DFS) to assist in the analysis of title insurance premium rates, title search costs, and the condition of Florida's title insurance industry. The DFS is authorized to adopt rules to administer the collection of the data.

The bill also creates a public records exemption for financial information provided to the Department of Financial Services (DFS) by title insurance agencies and title insurers. The bill sets forth Legislative findings of public necessity for proprietary business information to be made confidential and exempt from public records disclosure, and provides examples of such information, including trade secrets and other specified information. The exemption does not preclude the reporting of such statistics in the aggregate, or the release of the names of title insurance agencies and title insurers that submitted data.

B. SECTION DIRECTORY:

[1] Section 24(c), Art. I of the State Constitution.
[2] Section 119.15, F.S.

Section 1. Creates s. 626.84195, F.S., providing for the annual submission of title insurance data to the DFS, and creating a public records exemption for financial information.
Section 2. Sets forth legislative findings that a public records exemption for financial information is a public necessity.
Section 3. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires title insurers and title agencies to annually submit information to the OIR relevant to a review of title insurance premium rates. To comply with the requirements, some insurers and agencies may incur programming and other technology-related costs.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill creates both substantive law and a public records exemption in a single bill. It provides a public records exemption for financial information, but includes a public necessity statement relating to proprietary business information. The Florida Constitution provides that a bill enacting an exemption or substantially amending an existing exemption may not contain other substantive provisions. The bill also makes reference to the department (DFS) when it appears that reference to the office (OIR) is intended. An amendment will be filed to address these issues.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to public records; creating s. 626.84195, F.S.; providing an exemption from public records requirements for financial information, such as revenue, loss, and expense data, which is supplied periodically by a licensed title insurance agency to the Department of Financial Services in order to assist the department in analyzing title insurance premium rates, title search costs, and the financial viability of the title insurance industry in the state; requiring that the information be supplied to the department by a specified date; requiring the department to adopt rules; authorizing the department to disclose the total combined responses of all agencies and reporting entities; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 626.84195, Florida Statutes, is created to read:

626.84195 Collection of title insurance information; confidential information.—

(1)(a) Each title insurance agency licensed to do business in this state and each insurer doing direct, retail, or

affiliated business in this state shall maintain and submit information, including revenue, loss, and expense data, as the department determines necessary to assist in the analysis of title insurance premium rates, title search costs, and the financial viability of the title insurance industry in this state.

(b) This information must be transmitted to the department no later than March 31 of each year following the reporting year.

(c) The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 to administer this section.

(2) The financial information supplied by each title insurance agency or insurer is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution in order to prevent disclosure of private information of that agency or insurer to the public. However, the total combined responses of all the agencies and reporting insurers may be disclosed to the public as long as the specific identities of the agencies or insurers are not revealed.

(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that proprietary business information relating to the title insurance industry, title insurers, and title insurance agents, including, but not limited to, trade secrets, be made confidential and exempt from the requirements of s. 119.07(1),

Florida Statutes, and s. 24(a), Article I of the State Constitution. The disclosure of information, such as revenue, loss expense data, analyses of gross receipts, the amount of taxes paid, the amount of capital investment, customer identification, the amount of employee wages paid, and the detailed documentation to substantiate such performance information, could injure a business in the marketplace by providing its competitors with detailed insights into the financial status and the strategic plans of the business, thereby diminishing the advantage that the business maintains over competitors that do not possess such information. Without this exemption, title insurance agencies and title insurers, whose records are generally not required to be open to the public, may refrain from providing accurate and unbiased data and would thus impair the Department of Financial Services in setting fair and adequate title insurance rates. Proprietary business information derives actual or potential independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can derive economic value from its disclosure or use. The Department of Financial Services, or any subsidiary or contractor of the department, in performing its lawful duties and responsibilities, may need to obtain information from the proprietary business information. Without an exemption from public records requirements for proprietary business information held by the department or its designee, such information becomes a public record when received and must be divulged upon request. Divulgence of any proprietary business information under public

records laws would destroy the value of that property to the proprietor, causing a financial loss not only to the proprietor but also to the residents of this state due to the loss of reliable financial data necessary for fair and adequate rate regulation. Release of proprietary business information would give business competitors an unfair advantage and weaken the position of the proprietor of the proprietary business information in the marketplace. The harm to businesses in the marketplace and to the effective administration of the ratemaking function caused by the public disclosure of such information far outweighs the public benefits derived from its release. In addition, the confidentiality provided by this act does not preclude the reporting of statistics in the aggregate concerning the collection of data, as well as the names of the title insurance agencies and title insurers participating in the data collection. Such aggregate reported data is available to the public and is important to an assessment of the setting of title insurance premiums. Thus, the Legislature declares that it is a public necessity that proprietary business information of title insurers, title insurance agents, and the title insurance industry held by the Department of Financial Services, or any subsidiary, contractor, or agent of the department, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

Section 3. This act shall take effect on the same date that HB 643 or similar legislation takes effect, if such legislation is adopted in the same legislative session, or an extension thereof, and becomes law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 941 Commercial Lines Insurance Policies
SPONSOR(S): Holder
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Callaway	Cooper
2) Economic Affairs Committee			

SUMMARY ANALYSIS

Commercial lines insurance (commercial insurance) is insurance designed for and bought by a business to cover losses sustained by the business. Some commercial insurance, such as workers' compensation, is required to be purchased by businesses; however, most commercial insurance is purchased by businesses on a voluntary basis. The commercial insurance a business purchases also depends, in part, on the business type and industry.

The bill allows insurance companies writing commercial lines insurance policies to transfer these insurance policies to a different Florida licensed insurance company that is directly or indirectly owned, managed, or controlled by the first insurer. The policy transfer is a renewal of the policy, rather than a cancellation or nonrenewal of the policy. Allowing policies to be transferred between affiliated insurers, rather than requiring policies to be nonrenewed by the original insurer and reissued by an affiliated insurer, allows insurers to more easily manage their book of business and eliminates confusion among policyholders associated with policy nonrenewal and subsequent reissuance.

The bill is very similar to s. 627.728(4)(d), F.S., which allows an insurance company to transfer automobile insurance policies to a new insurer under the same ownership or management of first insurer instead of canceling and nonrenewing the policies at the end of the policy term.

The bill has no fiscal impact.

The bill is effective July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Commercial lines insurance (commercial insurance) is insurance designed for and bought by a business to cover losses sustained by the business.[1] Major types of commercial insurance are: boiler and machinery, business income, commercial auto, comprehensive general liability, directors and officers liability, medical malpractice liability, product liability, professional liability, and workers' compensation.

Some commercial insurance, such as workers' compensation, is required to be purchased by businesses;[2] however, most commercial insurance is purchased by businesses on a voluntary basis. The commercial insurance a business purchases also depends, in part, on the business type and industry.

The bill allows insurance companies writing commercial lines insurance policies to transfer these insurance policies to a different Florida licensed insurance company that is directly or indirectly owned, managed, or controlled by the first insurer. The policy transfer is a renewal of the policy, rather than a cancellation or nonrenewal of the policy. Thus, insurers will not have to provide 100 days' notice[3] of nonrenewal, or notice by June 1st, whichever is earlier, because the policy will be transferred, rather than nonrenewed. However, insurers transferring policies must still comply with current law relating to renewal notices which generally requires insurers to give policyholders 45 days advance written notice of the renewal premium for workers' compensation, employer's liability, property, and casualty insurance.[4] Allowing policies to be transferred between affiliated insurers, rather than requiring policies to be nonrenewed by the original insurer and reissued by an affiliated insurer, allows insurers to more easily manage their book of business and eliminates confusion among policyholders associated with policy nonrenewal and subsequent reissuance.

The bill is very similar to s. 627.728(4)(d), F.S., which allows an insurance company to transfer automobile insurance policies to a new insurer under the same ownership or management of first insurer instead of canceling and nonrenewing the policies at the end of the policy term. Insurers wanting to transfer automobile policies to an associated insurer must give 45-days notice to the policyholder and must notify the policyholder of the policy premium and any reasons for an increase in premium. The 45-day transfer notice requirement for automobile policy transfers is consistent with the notice requirement in current law for cancellation or nonrenewal of automobile policies.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.4133, F.S., relating to notice of cancellation, nonrenewal, or renewal premium.

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

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[1] http://www2.iii.org/glossary/ (defining commercial lines) (last viewed December 11, 2011).

[2] Generally, non-construction businesses employing four or more employees have to buy workers' compensation insurance. Construction businesses must buy workers' compensation insurance if the business has one or more employees.

[3] Under current law, policyholders whose residential structure has been insured by the same insurer for at least the five years before the date of nonrenewal receive 120 days' notice of nonrenewal, rather than 100 days.

[4] See s. 627.4133(1), F.S. Personal lines or commercial residential property insurance policies that are renewed also have a 45-day renewal notice under s. 627.4133(2), F.S. Mortgage guaranty, surety, and marine insurance are exempt from the 45 day notice of renewal premium provision in current law (s. 627.4133(1), F.S.). Automobile insurance renewal provisions are found in s. 627.728, F.S. and are not governed by the 45-day notice provision in s. 627.4133(1), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to commercial lines insurance policies; amending s. 627.4133, F.S.; authorizing an insurer to transfer a commercial lines policy under certain circumstances; providing construction; providing an effective date.

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

Section 1. Subsection (8) is added to section 627.4133, Florida Statutes, to read:

627.4133 Notice of cancellation, nonrenewal, or renewal premium.—

(8) An insurer issuing a commercial lines policy, may, at the expiration of the policy term, transfer the policy to another authorized insurer under the same direct or indirect ownership, management, or control as the transferring insurer. The transfer constitutes a renewal of the policy and may not be treated as a cancellation or a nonrenewal of the policy.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1011 Warranty Associations
SPONSOR(S): Abruzzo
TIED BILLS: **IDEN./SIM. BILLS:** SB 1262

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Cooper TRC	Cooper TRC
2) Rulemaking & Regulation Subcommittee			
3) Government Operations Appropriations Subcommittee			
4) Economic Affairs Committee			

SUMMARY ANALYSIS

Chapter 634, F.S., governs the regulation of warranty associations, which are motor vehicle service agreement companies, home warranty associations and service warranty associations. Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. Home warranty associations indemnify warranty holders against the cost of repairs or replacement of any structural component or appliance in a home. Service warranty contracts for consumer electronics and appliances allow consumers to extend the product protection beyond the manufacturer's warranty terms.

Although a warranty is not considered a traditional insurance product, it protects purchasers from future risks and associated costs. In Florida, warranty associations are regulated by the Office of Insurance Regulation (OIR). The OIR's regulatory authority includes approval of forms, investigation of complaints, and monitoring of reserve requirements, among other duties. However, OIR is not required to approve rates for warranties.

Under current law, warranties offered by the three types of warranty associations are cancelable by the purchaser who is entitled to a refund. For motor vehicle service agreements, refunds may be effectuated through the automobile dealer that originally sold the service agreement to the customer, although the service agreement company still remains responsible for the full refund. For home and service warranties, refunds are made by the respective associations.

The bill maintains the authority for automobile dealers to effectuate the refunds but codifies some of the documentation regarding refunds currently required by OIR. For home warranty and service warranty products, the bill specifies that the associations may provide refunds through the issuing sales representatives. Specific to service warranty associations, the bill permits refunds to be made by cash, check, store credit, gift card, or other similar means.

Currently, OIR is required to conduct periodic examinations regarding the financial and market conduct affairs of warranty associations. The bill eliminates this requirement, but authorizes OIR to examine them at its discretion. Unlike current law, which allows (but does not require) OIR to use independent examiners and levy the companies for the costs of their services, the bill removes that option, meaning that OIR's own staff will perform the examinations. The bill retains current law which allows OIR to recoup its costs.

The bill authorizes entities to provide donations and grants to the existing anti-fraud fund maintained by the Department of Financial Services. The bill authorizes funds to be used by the department to pursue unauthorized entities operating in violation of the statutory provisions relating to warranty associations.

By removing the required OIR examinations, warranty associations should experience cost savings. Also, some associations will no longer have to pay a $2,000 filing fee when seeking an examination exemption.

The bill takes effect on July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Chapter 634, F.S., governs the regulation of warranty associations, which are motor vehicle service agreement companies, home warranty associations and service warranty associations. Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. Home warranty associations indemnify warranty holders against the cost of repairs or replacement of any structural component or appliance in a home. Service warranty contracts for consumer electronics and appliances allow consumers to extend the product protection beyond the manufacturer's warranty terms.

While a warranty is not considered a traditional insurance product, it protects purchasers from future risks and associated costs. In Florida, warranty associations are regulated by the Office of Insurance Regulation (OIR). The OIR's regulatory authority of warranty associations includes approval of forms, investigation of complaints, and monitoring of reserve requirements, among other duties. However, OIR is not required to approve rates for warranties.

Motor Vehicle Service Agreements

Under current law, a motor vehicle service agreement indemnifies the vehicle owner (or holder of the agreement) against loss caused by failure of any mechanical or other component part, or any mechanical or other component part that does not function as it was originally intended. It also includes agreements that provide for: the coverage or protection which is issued or provided in conjunction with an additive product applied to the motor vehicle; payment of vehicle protection expenses; and, the payment for paintless dent-removal services. [1]

To offer motor vehicle service agreements in Florida one must be licensed and pay an annual nonrefundable license fee to OIR. All applicants for licensure must meet certain solvency requirements and, once licensed, must report to OIR certain financial and statistical information on a quarterly basis. Companies are also required to file with the office the rates, rating schedules, or rating manuals used, including all modifications of rates and premiums, to be paid by the service agreement holder. The office does not have authority to approve rates but they are required to review and approve forms used in the state. [2]

Cancellation of Service Agreements

The bill makes several changes in the regulatory framework of motor vehicle service agreements, including cancellation provisions. Currently, any service agreement is cancelable by the purchaser within 60 days after purchase. The individual is also entitled to a refund which must be 100 percent of the gross premium paid, less any claims paid on the agreement. A reasonable administrative fee may be charged, not to exceed 5 percent of the gross premium paid by the agreement holder. After the service agreement has been in effect for 60 days, it may not be canceled by the insurer or service agreement company unless:

1) there has been a material misrepresentation or fraud at the time of sale of the service agreement;
2) the agreement holder has failed to maintain the motor vehicle as prescribed by the manufacturer;
3) the odometer has been tampered with or disabled and the agreement holder has failed to repair the odometer; or
4) for nonpayment of premium by the agreement holder.[3]

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[1] s.634.011(8), F.S.
[2] ss. 634.011-634.289, F.S.
[3] s. 634.121(3)(b), F.S.

Additionally, current law states that if the service agreement is canceled by the insurer or service agreement company, the return of premium must not be less than 100 percent of the paid unearned pro rata premium, less any claims paid on the agreement. Current law also provides that if, after 60 days, the service agreement is canceled by the service agreement holder, the insurer or service agreement company must return directly to the agreement holder not less than 90 percent of the unearned pro rata premium and may also deduct from the refund the amount of any claims paid on the agreement. Under current law, the service agreement company remains responsible for full refunds to the consumer on canceled service agreements. However, the salesperson and agent are responsible for the refund of the unearned pro rata commission. A service agreement company may effectuate refunds through the issuing salesperson or agent.[4]

The bill provides that if the service agreement company effectuates refunds through the issuing salesperson or agent, the service agreement company must send the unearned pro rata premium refund due, less any unearned pro rata commission, to the salesperson or agent effectuating the refund. Upon receipt, the salesperson or agent must refund the unearned pro rata premium, including any unearned pro rata commission, and the sales tax refund owed to the service agreement holder.

The bill requires the salesperson or agent to maintain copies of certain documents to demonstrate that the refund has occurred and shall provide those copies to the service agreement company within 45 days after a request is made by the department.[5] If OIR finds that a salesperson or agent exhibits a pattern or practice of failing to properly provide refunds or fails to maintain or remit the specified documentation, the office must then notify the Department of Financial Service (DFS).

Examination of Companies

Currently, OIR may periodically examine motor vehicle service agreement companies in the same manner and subject to the same terms and conditions as applies to insurers under part II of chapter 624. Consequently, the office may examine each insurer as often as may be warranted for the protection of the policyholders and in the public interest, but must examine each company not less frequently than once every 5 years.[6] Criteria are provided in statute for OIR to consider in determining whether to conduct examinations. Also, rules are authorized, but not required, to establish provisions for exemptions from examination.

Current law also provides that the examinations may be conducted by independent certified public accountants, actuaries, investment specialists, information technology specialists, and reinsurance specialists with the costs paid for by the companies.[7] A similar provision exists for market conduct examinations.[8]

The bill makes several changes regarding examinations. It removes the option to use independent examiners and thereby the requirement to pay for their services. The bill also specifies that OIR is not required to conduct periodic examinations, but may examine a service agreement company at its discretion. Criteria for OIR to use in determining whether to use that discretion are eliminated. It also states that an examination may cover a period of only the most recent 5 years.

Gifts and Grants to Combat Unauthorized Entities

In 2011, the Legislature created s. 626.9894, F.S., which authorizes DFS to accept, for purposes of anti-fraud efforts, any donation or grant of property or moneys from any governmental unit, public agency, institution, person, firm, or corporation. Any such gift or grant is immediately vested in the Division of Insurance Fraud and deposited into the Insurance Regulatory Trust Fund. Donations are

[4] s. 634.121, F.S.

[5] The required documentation is based, in part, on guidance provided by OIR in *Informational Memorandum, OIR-11-04M,* issued April 11, 2011.

[6] s. 634.141, F.S. and s. 624.316, F.S.

[7] s. 624.316, F.S.

[8] s. 624.3161, F.S

separately accounted for and may be used by the division to carry out its duties and responsibilities, or for the subgranting of such funds to state attorneys for the purpose of funding or defraying the costs of dedicated fraud prosecutors. The law also provides that moneys deposited into the Insurance Regulatory Trust Fund may be appropriated by the Legislature for the purpose of enabling the division to carry out its duties and responsibilities, or for the purpose of funding or defraying the costs of dedicated fraud prosecutors.

The bill provides that a governmental unit, public agency, institution, person, firm, or legal entity may provide property or money to DFS in accordance with s. 626.9894, F.S., to enable the department to pursue unauthorized entities operating in violation of provisions relating to motor vehicle service agreement companies. The department is also authorized to transfer funds or property to OIR to administer this section. The effects of these new provisions are unclear.

The purpose of the current law is to use funds to fight fraud. Although some unauthorized providers of service agreements may commit fraud, the language in the bill is broad and appears to conflict with the provisions of s. 626.9894, F.S. It allows DFS to "pursue" unauthorized entities for apparently any violation relating to motor vehicle service agreements thereby permitting DFS to take actions beyond fighting fraud. Furthermore, the department currently can take action against agents or salespersons but OIR is the entity that investigates and disciplines unauthorized providers. The bill's attempt to authorize DFS to transfers funds to OIR "to administer this section" is ambiguous and very likely inadequate.

According to DFS, another issue is that this section does not provide for the disposal or liquidation of "property" that may have been donated since there is no mechanism within current law to transfer title. Moreover, according to the department, the new provision does not prevent more money to be taken out of the Trust Fund than what was put into the account for the stated purposes, and as a result, those entities that donated money or property for anti-fraud prevention could lose that money to warranty association regulation and possibly, in the view of DFS, create a cause for litigation.[9]

Home Warranty Associations

Home warranty associations are organizations, other than authorized insurers, that issue home warranties. A home warranty is a contract or agreement whereby a person undertakes to indemnify the warranty holder against the cost of repair or replacement, or actually furnishes repair or replacement, of any structural component or appliance of a home, necessitated by wear and tear or an inherent defect of any such structural component or appliance or necessitated by the failure of an inspection to detect the likelihood of any such loss.[10]

The regulatory framework of home warranty associations is similar to the oversight of motor vehicle service agreement companies. Regarding cancellations, any home warranty agreement may be canceled by the purchaser within 10 days after purchase. The refund must be 100 percent of the gross premium paid, less any claims paid on the agreement. A reasonable administrative fee may be charged, not to exceed 5 percent of the gross premium paid by the warranty agreement holder. After the home warranty agreement has been in effect for 10 days, if the contract is canceled by the warranty holder, a return of premium must be based upon 90 percent of unearned pro rata premium less any claims that have been paid. If the contract is canceled by the association for any reason other than for fraud or misrepresentation, a return of premium must be based upon 100 percent of unearned pro rata premium, less any claims paid on the agreement.[11]

Unlike the current law for motor vehicle service agreements which allow refunds by the issuing salesperson or agent, the current law for home warranty associations does not explicitly authorize that practice. The bill does, by stating that an association may effectuate a refund through the issuing sales

[9] Department of Financial Services, Bill Analysis & Fiscal Impact Statement, HB 1011, 12/29/2011, on file with the Insurance & Banking Subcommittee.
[10] s. 634.301, F.S.
[11] s. 634.312, F.S.

representative. However, unlike the changes for motor vehicle service agreements, the bill does not provide detail or require documentation for home warranty associations regarding the effectuation of their refunds.

Regarding examinations of home warranty associations by OIR, the bill makes the same changes made for motor vehicle service agreements. The only difference is that currently there is no examination exemption process for home warranty associations as there is for motor vehicle service agreements. Hence, there is no rule authorization to repeal.

Also, the bill creates the same process for donating money or property to DFS in accordance with s. 626.9894, F.S. In this case it is to be used to pursue unauthorized entities providing home warranties. The provision results in the same issues of concern.

Service Warranty Associations

Service warranty associations are entities, other than insurers, which issue service warranties. A service warranty is an agreement or maintenance service contract equal to or greater than 1 year in length to repair, replace, or maintain a consumer product, or for indemnification[12] for repair, replacement, or maintenance, for operational or structural failure due to a defect in materials or workmanship, normal wear and tear, power surge, or accidental damage from handling in return for the payment of a segregated charge by the consumer.[13]

As with the other two types of warranty associations, service warranty entities must meet certain regulatory requirements to offer their products in Florida. Regarding cancellations, current law provides that each service warranty contract shall contain a cancellation provision. If the contract is canceled by the warranty holder, return of premium must be based upon no less than 90 percent of unearned pro rata premium less any claims that have been paid or less the cost of repairs made on behalf of the warranty holder. If the contract is canceled by the association, return of premium must be based upon 100 percent of unearned pro rata premium, less any claims paid or the cost of repairs made on behalf of the warranty holder.[14]

Like the provision in the bill for home warranty associations, service warranty associations may effectuate refunds through the issuing sales representative. No additional detail or documentation is provided. A provision is added to current law regarding the form of a refund (which now is apparently cash or check). The bill provides that a refund owed to a warranty holder may be in the form of cash, check, store credit, gift card, or other similar means. There is no requirement that the consumer has to agree with a refund when it is provided in a form other than in cash or by check.

The examination provisions in the bill are the same as with the other two warranty associations. For service warranty associations, current language specific to the rate charged for service warranty providers is deleted, as well as a filing fee of $2,000 which accompanies Form 10-K as filed with the United States Securities and Exchange Commission. Currently, companies may file the Form 10-K with the office to have the examination requirement waived or, at the very least, the costs associated with their examinations, adjusted. However, to utilize this option the associations must pay a filing fee of $2,000 with Form 10-K. Because OIR is not required to examine these companies on a regularly scheduled basis, but rather on an as needed one, businesses that sell service warranties should experience cost savings.

Finally, the bill authorizes entities to provide property or money to DFS in accordance with s.626.9894, F.S., to enable the department to pursue unauthorized parties operating in violation with the provisions

[12] Pursuant to s. 634.401 (5), F.S.,"Indemnify" means to undertake repair or replacement of a consumer product, or pay compensation for such repair or replacement by cash, check, store credit, gift card, or other similar means, in return for the payment of a segregated premium, when such consumer product suffers operational failure.

[13] s. 634.401(13), F.S.

[14] s. 634.414, F.S.

relating to service warranty associations. The same issues are present here as with the other two changes in the bill relating to the other warranty associations.

B. SECTION DIRECTORY:

Section 1: Amends s. 634.121, F. S., relating to forms, required procedures, and provisions.

Section 2: Amends s. 634.141, F.S., relating to examination of motor vehicle service agreement companies.

Section 3: Creates s. 634.2855, F.S., relating to unauthorized entities; gifts and grants.

Section 4: Amends s. 634.312, F. S., relating to forms, required provisions, and procedures for home warranty associations.

Section 5: Amends s. 634.314, F. S., relating to examination of home warranty associations.

Section 6: Creates s. 634.3385, F.S., relating to unauthorized entities; gifts and grants.

Section 7: Amends s. 634.414, F. S., relating to forms; required provisions, for service warranty associations.

Section8: Amends s. 634.416, F. S., relating to examination of service warranty associations.

Section 9: Creates s. 634.4385, F.S., relating to unauthorized entities; gifts and grants.

Section 10: Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   No specific amount known but see FISCAL COMMENTS.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Because regularly scheduled examinations by OIR will no longer be required for warranty associations, companies will save costs associated with preparing for and actually undergoing those examinations. Also, companies will no longer, on a regular basis, have to pay for OIR's costs associated with the examinations. Entities that currently apply for examination exemptions will experience a cost reduction of a $2,000 filing fee.

D. FISCAL COMMENTS:

According to OIR, the fiscal impact to the office is "None." Also in their bill analysis, OIR stated:

> Pursuant to Section 634.416, F.S., with regards to financial examinations of a service warranty association and Rule 69O-200.014, FAC., with regards to a motor vehicle service agreement company, these entities can file a request to the Office for an exemption from the financial examination.
>
> Currently, there are approximately 15 entities with exemption requests.
>
> One of the requirements for the exemption is that the entity remits an exemption fee of $2,000 to be deposited into the Insurance Regulatory Trust Fund.

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:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

The title for the bill as filed is defective. References to "the Office of Financial Regulation" need to be replaced with "the Office of Insurance Regulation."

The term "service agreement company" on lines 222 and 280 need to be replaced with the terms "home warranty association" and "service warranty association," respectively.

In its bill analysis, DFS noted that Section 7, relating to service warranty associations, provides that refunds owed may be made by cash, check, store credit, gift card or other similar means. The department stated that it "feels that the refund should be made to the agreement holder in a like manner that the premium was paid cash or check." The department also suggested that lines 260-261 which permits refunds in a form other than in cash or check be deleted.[15]

Regarding the same provision on line 261, OIR in its bill analysis, raised a concern that following the types of refunds delineated, the wording "or other similar means" is vague.[16]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[15] Department of Financial Services, Bill Analysis & Fiscal Impact Statement, HB 1011, 12/29/2011, on file with the Insurance & Banking Subcommittee.

[16] Florida Office of Insurance Regulation, Bill Analysis, HB 1011, 01/13/2011, on file with the Insurance & Banking Subcommittee.

A bill to be entitled

An act relating to warranty associations; amending s. 634.121, F.S.; providing criteria for a motor vehicle service agreement company to effectuate refunds through the issuing salesperson or agent; requiring the salesperson, agent, or service agreement company to maintain a copy of certain documents; requiring a salesperson or agent to provide a copy of a document to the service agreement company if requested by the Department of Financial Services; requiring the Office of Financial Regulation to provide to the department findings that a salesperson or agent exhibits a pattern or practice of failing to effectuate refunds or to maintain and remit to the service agreement company the required documentation; amending s. 634.141, F.S.; providing an exception to the requirement that motor vehicle service agreement companies undergo periodic examinations; authorizing rather than requiring the Office of Financial Regulation to examine service agreement companies; limiting the examination period to the most recent 5 years; removing the requirement that the Financial Services Commission establish rules for conducting examinations; removing the criteria for determining whether an examination is warranted; creating s. 634.2855, F.S.; authorizing a governmental entity, public agency, institution, person, firm, or legal entity to provide property or money to the Department

of Financial Services to pursue unauthorized entities operating as motor vehicle service agreement companies; amending s. 634.312, F.S.; authorizing a home warranty association to effectuate a refund through the issuing sales representative; amending s. 634.314, F.S.; providing an exception to the requirement that home warranty associations undergo periodic examinations; authorizing rather than requiring the Office of Financial Regulation to examine home warranty associations; limiting the examination period to the most recent 5 years; removing the requirement that the Financial Services Commission establish rules for conducting examinations; removing the criteria for determining whether an examination is warranted; creating s. 634.3385, F.S.; authorizing a governmental entity, public agency, institution, person, firm, or legal entity to provide property or money to the Department of Financial Services to pursue unauthorized entities operating as home warranty associations; amending s. 634.414, F.S.; authorizing service warranty associations to effectuate refunds through the issuing sales representative; authorizing a service warranty association to issue refunds by cash, check, store credit, gift card, or other similar means; amending s. 634.416, F.S.; providing an exception to the requirement that service warranty associations undergo periodic examinations; authorizing rather than

requiring the Office of Financial Regulation to examine service warranty associations; limiting the examination period to the most recent 5 years; removing the requirement that the Financial Services Commission establish rules for conducting examinations; removing the criteria for determining whether an examination is warranted; removing provisions relating to the rates charged a to service warranty association for examinations; removing the provision authorizing the Office of Financial Regulation to waive the examination requirement upon receipt and review of the Form 10-K; creating s. 634.4385, F.S.; authorizing a governmental entity, public agency, institution, person, firm, or legal entity to provide property or money to the Department of Financial Services to pursue unauthorized entities operating as service warranty associations; providing an effective date.

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

Section 1. Paragraph (b) of subsection (3) of section 634.121, Florida Statutes, is amended, and paragraphs (c), (d), and (e) are added to that subsection, to read:

634.121 Forms, required procedures, provisions.—

(3)

(b) After the service agreement has been in effect for 60 days, it may not be canceled by the insurer or service agreement

company unless:

1. There has been a material misrepresentation or fraud at the time of sale of the service agreement;

2. The agreement holder has failed to maintain the motor vehicle as prescribed by the manufacturer;

3. The odometer has been tampered with or disabled and the agreement holder has failed to repair the odometer; or

4. For nonpayment of premium by the agreement holder, in which case the service agreement company shall provide the agreement holder notice of cancellation by certified mail.

If the service agreement is canceled by the insurer or service agreement company, the return of premium must not be less than 100 percent of the paid unearned pro rata premium, less any claims paid on the agreement. If, after 60 days, the service agreement is canceled by the service agreement holder, the insurer or service agreement company shall return directly to the agreement holder not less than 90 percent of the unearned pro rata premium, less any claims paid on the agreement. The service agreement company remains responsible for full refunds to the consumer on canceled service agreements. However, the salesperson and agent are responsible for the refund of the unearned pro rata commission. A service agreement company may effectuate refunds through the issuing salesperson or agent in accordance with paragraphs (c) and (d).

(c) If the service agreement company effectuates refunds through the issuing salesperson or agent, the service agreement company must send the unearned pro rata premium refund due, less

any unearned pro rata commission, to the salesperson or agent effectuating the refund. Upon receipt, the salesperson or agent must refund the unearned pro rata premium, including any unearned pro rata commission, and the sales tax refund owed to the service agreement holder.

(d) The salesperson, agent, or service agreement company shall maintain a copy of one of the following documents, as applicable, demonstrating that the refund owed pursuant to paragraph (c) has been refunded:

1. A copy of the front and back of the cancelled check for the applicable refund amount owed to the service agreement holder;

2. A copy of the front of the check for the applicable refund amount owed to the service agreement holder and a copy of the statement from the bank account on which the check was drawn showing that the check was cashed;

3. A copy of the front of the check issued by the service agreement company to the salesperson or agent in the amount of the service agreement company's portion of the refund owed to the service agreement holder and a copy of the statement from the bank account on which the check was drawn showing that the check was cashed;

4. A copy of a completed buyer's order demonstrating that the applicable refund amount owed to the service agreement holder was credited toward the purchase or lease of another vehicle;

5. Any document received from or sent to a lender, finance company, or creditor demonstrating that a loan or amount

financed by the agreement holder was decreased by the amount of the applicable refund amount owed to the service agreement holder; or

6. Any other evidence approved by the office in a written communication to a person licensed pursuant to this part demonstrating that the applicable refund amount due to the service agreement holder was properly made.

A salesperson or agent effectuating a refund shall maintain a copy of the documentation required by this paragraph, and shall provide a copy to the service agreement company within 45 days after a request is made by the department.

(e) If the office finds that a salesperson or agent exhibits a pattern or practice of failing to properly effectuate refunds owed or to maintain and remit to the service agreement company the documentation required by paragraph (d), the office shall notify the department of its finding.

Section 2. Section 634.141, Florida Statutes, is amended to read:

634.141 Examination of companies.—

~~(1)~~ Motor vehicle service agreement companies licensed under this part may be subject to periodic examination by the office in the same manner and subject to the same terms and conditions as applies to insurers under part II of chapter 624, with the exception of ss. 624.316(2)(e) and 624.3161(3), which do not apply to examinations conducted pursuant to this section. The office is not required to conduct periodic examinations pursuant to this section, but may examine a service agreement

company at its discretion. An examination conducted pursuant to this section may cover a period of only the most recent 5 years. ~~The commission may by rule establish provisions whereby a company may be exempted from examination.~~

~~(2) The office shall determine whether to conduct an examination of a company by considering:~~

~~(a) The amount of time that the company has been continuously licensed and operating under the same management and control.~~

~~(b) The company's history of compliance with applicable law.~~

~~(c) The number of consumer complaints against the company.~~

~~(d) The financial condition of the company, demonstrated by the financial reports submitted pursuant to s. 634.137.~~

Section 3. Section 634.2855, Florida Statutes, is created to read:

634.2855 Unauthorized entities; gifts and grants.—A governmental unit, public agency, institution, person, firm, or legal entity may provide property or money to the department in accordance with s. 626.9894 to enable the department to pursue unauthorized entities operating in violation of this part. The department may transfer funds or property to the office to administer this section.

Section 4. Subsection (5) of section 634.312, Florida Statutes, is amended to read:

634.312 Forms; required provisions and procedures.—

(5) Each home warranty contract shall contain a cancellation provision. Any home warranty agreement may be

canceled by the purchaser within 10 days after purchase. The refund must be 100 percent of the gross premium paid, less any claims paid on the agreement. A reasonable administrative fee may be charged, not to exceed 5 percent of the gross premium paid by the warranty agreement holder. After the home warranty agreement has been in effect for 10 days, if the contract is canceled by the warranty holder, a return of premium shall be based upon 90 percent of unearned pro rata premium less any claims that have been paid. If the contract is canceled by the association for any reason other than for fraud or misrepresentation, a return of premium shall be based upon 100 percent of unearned pro rata premium, less any claims paid on the agreement. A home warranty association may effectuate a refund through the issuing sales representative.

Section 5. Section 634.314, Florida Statutes, is amended to read:

634.314 Examination of associations.—

~~(1)~~ Home warranty associations licensed under this part may be subject to periodic examinations by the office, in the same manner and subject to the same terms and conditions as apply to insurers under part II of chapter 624 of the insurance code, with the exception of ss. 624.316(2)(e) and 624.3161(3), which do not apply to examinations conducted pursuant to this section. The office is not required to conduct periodic examinations pursuant to this section, but may examine a service agreement company at its discretion. An examination conducted pursuant to this section may cover a period of only the most recent 5 years.

~~(2) The office shall determine whether to conduct an examination of a home warranty association by considering:~~

~~(a) The amount of time that the association has been continuously licensed and operating under the same management and control.~~

~~(b) The association's history of compliance with applicable law.~~

~~(c) The number of consumer complaints against the association.~~

~~(d) The financial condition of the association, demonstrated by the financial reports submitted pursuant to s. 634.313.~~

Section 6. Section 634.3385, Florida Statutes, is created to read:

634.3385 Unauthorized entities, gifts and grants.—A governmental unit, public agency, institution, person, firm, or legal entity may provide property or money to the department in accordance with s. 626.9894 to enable the department to pursue unauthorized entities operating in violation of this part. The department may transfer funds or property to the office to administer this section.

Section 7. Section 634.414, Florida Statutes, is amended to read:

634.414 Forms; required provisions.—

(1) Each service warranty contract shall contain a cancellation provision. If the contract is canceled by the warranty holder, return of premium shall be based upon no less than 90 percent of unearned pro rata premium less any claims

that have been paid or less the cost of repairs made on behalf of the warranty holder. If the contract is canceled by the association, return of premium shall be based upon 100 percent of unearned pro rata premium, less any claims paid or the cost of repairs made on behalf of the warranty holder. Service warranty associations may effectuate refunds through the issuing sales representative.

(2) Refunds owed pursuant to this section may be made by cash, check, store credit, gift card, or other similar means.

(3)~~(2)~~ By July 1, 2011, each service warranty contract sold in this state must be accompanied by a written disclosure to the consumer that the rate charged for the contract is not subject to regulation by the office. A service warranty association may comply with this requirement by including such disclosure in its service warranty contract form or in a separate written notice provided to the consumer at the time of sale.

Section 8. Section 634.416, Florida Statutes, is amended to read:

634.416 Examination of associations.—

~~(1)(a)~~ Service warranty associations licensed under this part may be subject to periodic examination by the office, in the same manner and subject to the same terms and conditions that apply to insurers under part II of chapter 624, with the exception of ss. 624.316(2)(e) and 624.3161(3), which do not apply to examinations conducted pursuant to this section. The office is not required to conduct periodic examinations pursuant to this section, but may examine a service agreement company at

its discretion. An examination conducted pursuant to this section may cover a period of only the most recent 5 years.

~~(b) The office shall determine whether to conduct an examination of a service warranty association by considering:~~

~~1. The amount of time that the association has been continuously licensed and operating under the same management and control.~~

~~2. The association's history of compliance with applicable law.~~

~~3. The number of consumer complaints against the association.~~

~~4. The financial condition of the association, demonstrated by the financial reports submitted pursuant to s. 634.313.~~

~~(2) The rate charged a service warranty association by the office for examination may be adjusted to reflect the amount collected for the Form 10-K filing fee as provided in this section.~~

~~(3) On or before May 1 of each year, an association may submit to the office the Form 10-K, as filed with the United States Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended. Upon receipt and review of the most current Form 10-K, the office may waive the examination requirement; if the office determines not to waive the examination, such examination will be limited to that examination necessary to ensure compliance with this part. The Form 10-K shall be accompanied by a filing fee of $2,000 to be deposited into the Insurance Regulatory Trust Fund.~~

~~(4) The office is not required to examine an association that has less than $20,000 in gross written premiums as reflected in its most recent annual statement. The office may examine such an association if it has reason to believe that the association may be in violation of this part or is otherwise in an unsound financial condition.~~ If the office examines an association that has less than $20,000 in gross written premiums, the examination fee may not exceed 5 percent of the gross written premiums of the association.

Section 9. Section 634.4385, Florida Statutes, is created to read:

634.4385 Unauthorized entities; gifts and grants.—A governmental unit, public agency, institution, person, firm, or legal entity may provide property or money to the department in accordance with the provisions of s. 626.9894 to enable the department to pursue unauthorized entities operating in violation of this part. The department may transfer funds or property to the office to administer this section.

Section 10. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 643 Title Insurance
SPONSOR(S): Insurance & Banking Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee		Reilly	Cooper

SUMMARY ANALYSIS

Title insurance insures owners of real property (owner's policy) or others having an interest in real property against loss by encumbrance, defective title, invalidity, or adverse claim to title. The bill requires title insurers and title insurance agencies to submit to the Office of Insurance Regulation (OIR), by March 31 of each year, data that have been identified as necessary to assist in the analysis of premium rates, title search costs, and the condition of Florida's title insurance industry. The Financial Services Commission is authorized to promulgate rules governing the collection and analysis of such data. The Department of Financial Services is required to take adverse action against title insurance agents or agencies that fail to timely file the required data, including suspension or revocation of authority.

Under current law, title insurance agents must complete 10 hours of continuing education (CE) every 2 years on any insurance products sold in Florida. However, these agents are authorized to sell only title insurance products and no other lines of insurance. The bill amends CE requirements for title insurance agents, specifying that the credit hours must be earned in title insurance and escrow management courses specific to Florida and approved by the Department of Financial Services. At least 1.5 of the CE hours must be in ethics, rules, or compliance with state and federal regulations relating to title insurance and closing services.

The bill requires attorneys who serve as title insurance or real estate settlement agents to deposit and maintain funds received in connection with such transactions into a separate trust account, unless maintaining funds in the separate account for a particular client would violate rules of the Florida Bar. Such attorneys are also required to permit title insurers for whom they hold funds to audit the separate account.

The bill also requires the OIR to:

- Approve or disapprove forms filed by title insurers within 180 days after receipt and, when approving a form, to determine if the current rate applies or if the coverages require the adoption of rules.
- Expeditiously approve filed forms that contain identical coverages, rates, and approved deviations to a form the OIR has approved for another title insurer to prevent a competitive advantage in the marketplace.

The OIR is authorized to revoke approval of any form after providing 180 days notice to the title insurer.

To the extent that the bill provides timeframes for the approval/disapproval of title insurance forms and annual review of title insurance data by the OIR, it will permit title insurers to respond more quickly to changes in the marketplace and ensure that the premiums charged are appropriate.

The bill is effective July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Overview of Title Insurance

Title insurance insures owners of real property (owner's policy) or others having an interest in real property against loss by encumbrance, defective title, invalidity, or adverse claim to title.[1] Title insurance is a policy issued by a title insurer that, after performing a search of title, represents the state of that title and insures the accuracy of its search against claims of title defects. It is usually taken out by the purchaser of property or an entity that is loaning money on a mortgage.

Purchasers of real property and lenders utilize title insurance to protect themselves against claims by others that claim to be the rightful owner of the property. Most lenders require title insurance when they underwrite loans for real property. Title insurance provides a duty to defend related to adverse claims against title, and also promises to indemnify the policyholder for damage to the lender's security interest created by a cloud on title, unmarketable title, or adverse title that was not discovered by the insurer.[2]

Regulation in Florida

Historically, a single regulatory entity, the Department of Insurance, promulgated title insurance rates and regulated title insurance agents in Florida. Under current law, two entities provide regulatory oversight of the title insurance industry: the Department of Financial Services (DFS), which regulates title agents, and the Office of Insurance Regulation (OIR), which regulates title insurers, including licensing and promulgation of rates. Title insurance forms must be filed and approved by the OIR prior to usage[3,4] and rates and premiums charged by title insurers are specified by rule by the Financial Services Commission (FSC).[5] Title insurers may deviate from the proscribed rates by petitioning the OIR for an order authorizing a specific deviation from the adopted premium.[6]

Title insurers operate on a monoline basis, meaning that the insurer can only transact title insurance and cannot transact any other type of insurance.[7] Pursuant to s. 627.782, F.S., the FSC is mandated to adopt by rule and specify a premium to be charged by title insurers for the respective types of title insurance contracts and, for policies issued through agents or agencies, the percentage of such premium required to be retained by the title insurer, which shall not be less than 30%. The FSC must review the premium not less than once every three years. Also, the FSC may by rule require insurers to submit statistical information, including loss and expense data, as it determines to be necessary to analyze premium rates.[8]

Title Insurance Agencies and Agents

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[1] Section 624.608, F.S. Title insurance is also insurance of owners and secured parties as to the existence, attachment, perfection and priority of a security interest in personal property under the Uniform Commercial Code.

[2] See, e.g., the website of the American Land Title Association, http://www.alta.org (last visited January 7, 2012). ALTA is the national trade association of the abstract and title insurance industry. There are currently six basic ALTA policies of title insurance: Lenders, Lenders Leasehold, Owners, Owners Leasehold, Residential, and Construction Loan Policies.

[3] Section 627.777, F.S.

[4] According to the OIR, there is currently no timeframe within which it is required to approve or disapprove filed title insurance forms.

[5] Section 627.782, F.S.

[6] Section 627.783, F.S.

[7] Section 627.786, F.S.

[8] Section 627.782, F.S.

Title insurance agencies must apply for and be licensed by the DFS, and are separately appointed[9] by each title insurer they represent.

To be licensed as a title insurance agent, a person must qualify for and pass a written examination given by the DFS. The examination must test the applicant's ability, competence, and knowledge of title insurance and real property transactions and the duties and responsibilities of licensees. In addition to title insurance, topics to be covered on the test include abstracting, title searches, examination of title, closing procedures, and escrow handling.

Prior to taking the test, an applicant must complete 40 hours of classroom work in title insurance in the 4 years immediately preceding the application date, or have had 12 months experience working in the title insurance industry as a substantially full-time employee. Licensed title insurance agents are required to take 10 hours of continuing education courses every 2 years[10] on any insurance products sold in Florida, and must be separately appointed by each insurer they represent.

Effect of the Bill

The bill makes changes to title insurance regulation as follows.

Title Insurance Forms

The OIR is required to approve or disapprove filed title insurance forms within 180 days of receipt. (Currently, there are no timeframes within which filed forms must be approved or disapproved.) When approving a form, the OIR must determine if the current rate applies or if the coverages require rulemaking. To prevent a competitive advantage to an insurer that has received approval of a filed form, the OIR is required to expeditiously approve forms filed by other insurers that contain identical coverages, rates, and approved deviations as the approved form.

Submission of Data to the OIR

Title insurers, their direct or retail businesses in the state, and title agencies must submit to the OIR, on or before March 31 of each year, revenue, loss, and expense data for the most recently concluded year that are determined necessary to assist in the analysis of premium rates, title search costs, and the condition of the Florida title insurance industry. The Financial Services Commission is authorized to adopt rules to assist in data analysis and collection. The DFS is required to take action against the authority of any title insurance agent or agency that fails to timely submit the required data, including suspension or revocation of a license or appointment, unless a rule challenge has been filed under s. 120.56, F.S., as to the form or substance of the data that must be submitted.

Separate Escrow Account for Specified Funds Held by Attorneys

Attorneys who serve as title insurance or real estate settlement agents are required to deposit and maintain funds received in connection with such transactions into a separate trust account, unless maintaining funds in the separate account for a particular client would violate rules of the Florida Bar. Attorneys are required to allow insurers for whom they hold funds to audit the separate account.

Continuing Education Requirements for Title Insurance Agents

While the number of continuing education (CE) hours title insurance agents must complete every 2 years remains unchanged (10 hours), the bill requires that the credits be earned in title insurance and escrow management courses specific to Florida, and which have been approved by the DFS. At least 1.5 of these hours must be in ethics, rules, or compliance with state and federal regulations relating to title insurance and closing services.

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[9] An appointment is the authority given by an insurer to a licensee to transact insurance on its behalf.

[10] Section 626.2815(3)(d), F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 626.2815, F.S., to revise continuing education requirements for title insurance agents.

Section 2. Amends s. 626.8437, F.S., to require the Department of Financial Services to deny, suspend or revoke the authority of title insurance agents and agencies that do not timely submit annual data to the OIR.

Section 3. Amends s. 626.8473, F.S., to require attorneys who serve as title or real estate settlement agents to deposit funds received in connection with these transactions in a separate account, unless such deposit as to a particular client would violate rules of the Florida Bar.

Section 4. Amends s. 627.777, F.S., relating to approval or disapproval of title insurance forms filed with the OIR.

Section 5. Amends s. 627.782, F.S., to require title insurers, their affiliated businesses in Florida, and title agents to submit certain financial data annually to the OIR; mandates penalties for failure to timely submit required data.

Section 6. 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:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Requiring title insurers to annually submit data for analysis to the OIR, establishing timeframes within which filed forms must be approved or disapproved, and requiring a determination of whether current rates apply to newly approved forms, will allow the title insurance industry to be more responsive to changes in the title insurance market and ensure proper review of premium charges.

Title insurers and title agencies may have to invest in technology and expand the programming capacities of their current computer systems to collect and provide the OIR with data based upon rulemaking authority granted to the Financial Services Commission. As it is likely that the regulatory cost of such rule will exceed $1 million in the aggregate over 5 years, the OIR will be required to submit the rule to the Legislature for ratification before it takes effect pursuant to chapter 2010-279, F.S.

D. FISCAL COMMENTS:

See comments in Section II.C.

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:

The Financial Services Commission is authorized to promulgate rules to govern the submission and collection of certain financial data from title insurers.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to title insurance; amending s. 626.2815, F.S.; specifying continuing education requirements for title insurance agents; amending s. 626.8437, F.S.; specifying additional grounds to deny, suspend, revoke, or refuse to renew or continue the license or appointment of a title insurance agent or agency; amending s. 626.8473, F.S.; requiring an attorney serving as a title or real estate settlement agent to deposit and maintain certain funds in a separate trust account and permit the account to be audited by the applicable title insurer, unless prohibited by the rules of The Florida Bar; amending s. 627.777, F.S.; providing procedures and requirements relating to the approval or disapproval of title insurance forms by the office; amending s. 627.782, F.S.; requiring title insurance agencies and insurers to submit specified information to the office to assist in the analysis of title insurance premium rates, title search costs, and the condition of the title insurance industry; providing an effective date.

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

Section 1. Paragraph (d) of subsection (3) of section 626.2815, Florida Statutes, is amended, and paragraph (l) is added to that subsection, to read:

626.2815 Continuing education required; application;

exceptions; requirements; penalties.—

(3)

(d) Any person who holds a license as a customer representative, limited customer representative, ~~title agent,~~ motor vehicle physical damage and mechanical breakdown insurance agent, crop or hail and multiple-peril crop insurance agent, or as an industrial fire insurance or burglary insurance agent and who is not a licensed life or health insurance agent, must ~~shall be required to~~ complete 10 hours of continuing education courses every 2 years.

(l) Any person who holds a license as a title insurance agent must complete a minimum of 10 hours of continuing education courses every 2 years in title insurance and escrow management specific to this state and approved by the department, which shall include at least 1.5 hours of continuing education on the subject matter of ethics, rules, or compliance with state and federal regulations relating to title insurance and closing services.

Section 2. Subsection (11) is added to section 626.8437, Florida Statutes, to read:

626.8437 Grounds for denial, suspension, revocation, or refusal to renew license or appointment.—The department shall deny, suspend, revoke, or refuse to renew or continue the license or appointment of any title insurance agent or agency, and it shall suspend or revoke the eligibility to hold a license or appointment of such person, if it finds that as to the applicant, licensee, appointee, or any principal thereof, any

one or more of the following grounds exist:

(11) Failure to timely submit data as required by s. 627.782, unless a rule challenge has been filed pursuant to s. 120.56 as to the form or substance of data to be provided.

Section 3. Subsection (8) is added to section 626.8473, Florida Statutes, to read: 626.8473 Escrow; trust fund.—

(8) An attorney shall deposit and maintain all funds received in connection with transactions in which the attorney is serving as a title or real estate settlement agent into a separate trust account that is maintained exclusively for funds received in connection with such transactions and permit the account to be audited by its title insurers, unless maintaining funds in the separate account for a particular client would violate applicable rules of The Florida Bar.

Section 4. Section 627.777, Florida Statutes, is amended to read:

627.777 Approval of forms.—

(1) A title insurer may not issue or agree to issue any form of title insurance commitment, title insurance policy, other contract of title insurance, or related form until it is filed with and approved by the office. The office may not disapprove a title guarantee or policy form on the ground that it has on it a blank form for an attorney's opinion on the title.

(2) The office shall approve or disapprove a form filed for approval within 180 days after receipt.

(3) When the office approves any form, it shall determine if the current rate in effect applies or if the coverages

require the adoption of a rule pursuant to s. 627.782.

(4) The office may revoke approval of any form after providing 180 days' notice to the title insurer.

(5) An insurer may not achieve a competitive advantage over any other insurer, agency, or agent as to rates or forms. If a form or rate is approved for an insurer, the office shall expeditiously approve the forms of other insurers who apply for approval if those forms contain identical coverages, rates, and deviations which have been approved under s. 627.783.

Section 5. Subsection (8) of section 627.782, Florida Statutes, is amended to read:

627.782 Adoption of rates.—

(8) Each title insurance agency and insurer licensed to do business in this state and each insurer's direct or retail business in this state shall maintain and submit information, including revenue, loss, and expense data, as the office determines necessary to assist in the analysis of title insurance premium rates, title search costs, and the condition of the title insurance industry in this state. This information must be transmitted to the office annually by March 31 of the year after the reporting year. The commission shall adopt rules to assist in the collection and analysis of the data from the title insurance industry. ~~The commission may, by rule, require licensees under this part to annually submit statistical information, including loss and expense data, as the department determines to be necessary to analyze premium rates, retention rates, and the condition of the title insurance industry.~~

Section 6. This act shall take effect July 1, 2012.

WORKSHOP:
HB 833

A bill to be entitled

An act relating to the Florida Hurricane Catastrophe Fund; amending s. 215.555, F.S.; revising the definitions of "retention" and "corporation"; providing for calculation of an insurer's reimbursement premium and retention under the reimbursement contract; revising coverage levels available under the reimbursement contract; revising aggregate coverage limits; providing for the phase-in of changes to coverage levels and limits; revising the cash build-up factor included in reimbursement premiums; providing for phase-in; reducing maximum allowable emergency assessments; changing the name of the Florida Hurricane Catastrophe Fund Finance Corporation; repealing provisions related to temporary emergency options for additional coverage; terminating the temporary increase in coverage limits option at the end of the 2011-2012 contract year; limiting to the 2012-2013 contract year provisions relating to the TICL options addendum, TICL reimbursement premiums, and the claims-paying capacity of the fund, to conform; amending s. 627.0629, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Paragraphs (e) and (n) of subsection (2), paragraphs (b) and (c) of subsection (4), paragraph (b) of

subsection (5), paragraphs (b) and (d) of subsection (6), and subsections (16), (17), and (18) of section 215.555, Florida Statutes, are amended to read:

215.555 Florida Hurricane Catastrophe Fund.—

(2) DEFINITIONS.—As used in this section:

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

1.a. The board shall calculate and report to each insurer the retention multiples for that year.

(I) For the contract year beginning June 1, 2005, the retention multiple shall be equal to $4.5 billion divided by the total estimated reimbursement premium for the contract year; for subsequent years, up to and including the 2012-2013 contract year, the retention multiple shall be equal to $4.5 billion, adjusted based upon the reported exposure for the contract year occurring 2 years before the particular contract year to reflect the percentage growth in exposure to the fund for covered policies since 2004, divided by the total estimated reimbursement premium for the contract year.

(II) For the contract year beginning June 1, 2013, the retention multiple shall be equal to $8 billion divided by the total estimated reimbursement premium for the contract year. For subsequent years, the retention multiple shall be equal to $8 billion, adjusted based upon the reported exposure for the contract year occurring 2 years before the particular contract year to reflect the percentage growth in exposure to the fund for covered policies since 2011, divided by the total

reimbursement premium for the contract year.

b. For the 2012-2013 contract year, total reimbursement premium for purposes of the calculation under this subparagraph shall be estimated using the assumption that all insurers have selected the 90-percent coverage level.

c. In order to implement the phase-in of reduced coverage levels as provided in paragraph (4)(b), total reimbursement premium for purposes of the calculation under this subparagraph shall be estimated using the following assumptions:

(I) For the 2013-2014 contract year, the assumption is that all insurers have selected the 85-percent coverage level.

(II) For the 2014-2015 contract year, the assumption is that all insurers have selected the 80-percent coverage level.

(III) For the 2015-2016 contract year and subsequent contract years, the assumption is that all insurers have selected the 75-percent coverage level.

2. The retention multiple as determined under subparagraph 1. shall be adjusted to reflect the coverage level elected by the insurer.

a. For an insurer electing the maximum coverage level available under paragraph (4)(b) for a particular contract year ~~For insurers electing the 90-percent coverage level~~, the adjusted retention multiple is 100 percent of the amount determined under subparagraph 1.

b. In order to implement the phase-in of reduced coverage levels as provided in paragraph (4)(b), for an insurer electing a coverage level other than the maximum coverage level, the adjusted retention multiple is as follows:

(I) With respect to the 2012-2013 contract year, for an insurer ~~For insurers~~ electing the 75-percent coverage level, the retention multiple is 90/75ths ~~120 percent~~ of the amount determined under subparagraph 1., and for an insurer ~~For insurers~~ electing the 45-percent coverage level, the adjusted retention multiple is 90/45ths ~~200 percent~~ of the amount determined under subparagraph 1.

(II) With respect to the 2013-2014 contract year, for an insurer electing the 75-percent coverage level, the retention multiple is 85/75ths of the amount determined under subparagraph 1., and for an insurer electing the 45-percent coverage level, the retention multiple is 85/45ths of the amount determined under subparagraph 1.

(III) With respect to the 2014-2015 contract year, for an insurer electing the 75-percent coverage level, the retention multiple is 80/75ths of the amount determined under subparagraph 1., and for an insurer electing the 45-percent coverage level, the retention multiple is 80/45ths of the amount determined under subparagraph 1.

(IV) With respect to the 2015-2016 contract year and subsequent contract years, for an insurer electing the 75-percent coverage level, the retention multiple is the amount determined under subparagraph 1., and for an insurer electing the 45-percent coverage level, the retention multiple is 75/45ths of the amount determined under subparagraph 1.

3. An insurer shall determine its provisional retention by multiplying its provisional reimbursement premium by the applicable adjusted retention multiple and shall determine its

actual retention by multiplying its actual reimbursement premium by the applicable adjusted retention multiple.

4. For insurers who experience multiple covered events causing loss during the contract year, beginning June 1, 2005, each insurer's full retention shall be applied to each of the covered events causing the two largest losses for that insurer. For each other covered event resulting in losses, the insurer's retention shall be reduced to one-third of the full retention. The reimbursement contract shall provide for the reimbursement of losses for each covered event based on the full retention with adjustments made to reflect the reduced retentions on or after January 1 of the contract year provided the insurer reports its losses as specified in the reimbursement contract.

(n) "Corporation" means the State Board of Administration ~~Florida Hurricane Catastrophe Fund~~ Finance Corporation created in paragraph (6)(d).

(4) REIMBURSEMENT CONTRACTS.—

(b)1.a. The contract shall contain a promise by the board to reimburse the insurer for a specified percentage ~~45 percent, 75 percent, or 90 percent~~ of its losses from each covered event in excess of the insurer's retention, plus 5 percent of the reimbursed losses to cover loss adjustment expenses.

b. The available coverage levels are as follows:

(I) For the 2012-2013 contract year, 90 percent, 75 percent, and 45 percent.

(II) For the 2013-2014 contract year, 85 percent, 75 percent, and 45 percent.

(III) For the 2014-2015 contract year, 80 percent, 75

percent, and 45 percent.

(IV) For the 2015-2016 contract year and subsequent contract years, 75 percent and 45 percent.

2.a. The insurer must elect one of the percentage coverage levels specified in this paragraph and may, upon renewal of a reimbursement contract, elect a lower percentage coverage level if no revenue bonds issued under subsection (6) after a covered event are outstanding, or elect a higher percentage coverage level, regardless of whether or not revenue bonds are outstanding. All members of an insurer group must elect the same percentage coverage level. Any joint underwriting association, risk apportionment plan, or other entity created under s. 627.351 must elect the maximum ~~90-percent~~ coverage level available under subparagraph 1.

b. In order to implement the phase-in of reduced coverage levels as provided in subparagraph 1., and notwithstanding any provisions of sub-subparagraph a. to the contrary, if revenue bonds issued under subsection (6) after a covered event are outstanding and the insurer has elected the maximum coverage level available under subparagraph 1., the insurer must, upon renewal of the reimbursement contract, elect the maximum coverage level available under subparagraph 1. for the renewal contract year.

3. The contract shall provide that reimbursement amounts shall not be reduced by reinsurance paid or payable to the insurer from other sources.

4. Notwithstanding any other provision contained in this section, the board shall make available to insurers that

purchased coverage provided by this subparagraph in 2008, insurers qualifying as limited apportionment companies under s. 627.351(6)(c), and insurers that have been approved to participate in the Insurance Capital Build-Up Incentive Program pursuant to s. 215.5595 a contract or contract addendum that provides an additional amount of reimbursement coverage of up to $10 million. The premium to be charged for this additional reimbursement coverage shall be 50 percent of the additional reimbursement coverage provided, which shall include one prepaid reinstatement. The minimum retention level that an eligible participating insurer must retain associated with this additional coverage layer is 30 percent of the insurer's surplus ~~as of December 31, 2008, for the 2009-2010 contract year; as of December 31, 2009, for the 2010-2011 contract year; and~~ as of December 31, 2010, for the 2011-2012 contract year. This coverage shall be in addition to all other coverage that may be provided under this section. The coverage provided by the fund under this subparagraph shall be in addition to the claims-paying capacity as defined in subparagraph (c)1., but only with respect to those insurers that select the additional coverage option and meet the requirements of this subparagraph. The claims-paying capacity with respect to all other participating insurers and limited apportionment companies that do not select the additional coverage option shall be limited to their reimbursement premium's proportionate share of the actual claims-paying capacity otherwise defined in subparagraph (c)1. and as provided for under the terms of the reimbursement contract. The optional coverage retention as specified shall be

accessed before the mandatory coverage under the reimbursement contract, but once the limit of coverage selected under this option is exhausted, the insurer's retention under the mandatory coverage will apply. This coverage will apply and be paid concurrently with mandatory coverage. This subparagraph expires on May 31, 2012.

(c)1. The contract shall also provide that the obligation of the board with respect to all contracts covering a particular contract year shall not exceed the actual claims-paying capacity of the fund up to the limit specified in this subparagraph.

a. For the 2012-2013 contract year, the limit is $17 billion.

b. For the 2013-2014 contract year, the limit is $15.5 billion.

c. For the 2014-2015 contract year, the limit is $14 billion.

d. For the 2015-2016 contract year and subsequent contract years, the limit is $12 billion.

e. For contract years after the 2015-2016 contract year, if ~~a limit of $17 billion for that contract year, unless~~ the board determines that there is sufficient estimated claims-paying capacity to provide $12 ~~$17~~ billion of capacity for the current contract year and an additional $12 ~~$17~~ billion of capacity for subsequent contract years~~. If the board makes such a determination~~, the estimated claims-paying capacity for the particular contract year shall be determined by adding to the $12 ~~$17~~ billion limit one-half of the fund's estimated claims-paying capacity in excess of $24 ~~$34~~ billion. However, the

dollar growth in the limit may not increase in any year by an amount greater than the dollar growth of the balance of the fund as of December 31~~, less any premiums or interest attributable to optional coverage~~, as defined by rule, which occurred over the prior calendar year.

2. In May and October of the contract year, the board shall publish in the Florida Administrative Weekly a statement of the fund's estimated borrowing capacity, the fund's estimated claims-paying capacity, and the projected balance of the fund as of December 31. After the end of each calendar year, the board shall notify insurers of the estimated borrowing capacity, estimated claims-paying capacity, and the balance of the fund as of December 31 to provide insurers with data necessary to assist them in determining their retention and projected payout from the fund for loss reimbursement purposes. In conjunction with the development of the premium formula, as provided for in subsection (5), the board shall publish factors or multiples that assist insurers in determining their retention and projected payout for the next contract year. For all regulatory and reinsurance purposes, an insurer may calculate its projected payout from the fund as its share of the total fund premium for the current contract year multiplied by the sum of the projected balance of the fund as of December 31 and the estimated borrowing capacity for that contract year as reported under this subparagraph.

(5) REIMBURSEMENT PREMIUMS.—

(b)1. The State Board of Administration shall select an independent consultant to develop a formula for determining the

actuarially indicated premium to be paid to the fund. The formula shall specify, for each zip code or other limited geographical area, the amount of premium to be paid by an insurer for each $1,000 of insured value under covered policies in that zip code or other area. In establishing premiums, the board shall consider the coverage elected under paragraph (4)(b) and any factors that tend to enhance the actuarial sophistication of ratemaking for the fund, including deductibles, type of construction, type of coverage provided, relative concentration of risks, and other such factors deemed by the board to be appropriate.

2. The formula must provide for a cash build-up factor as specified in this subparagraph. ~~For the 2009-2010 contract year, the factor is 5 percent. For the 2010-2011 contract year, the factor is 10 percent.~~

a. For the 2011-2012 contract year, the factor is 15 percent.

b. For the 2012-2013 contract year, the factor is 20 percent.

c. For the 2013-2014 contract year ~~and thereafter~~, the factor is 25 percent.

d For the 2014-2015 contract year, the factor is 30 percent.

e. For the 2015-2016 contract year, the factor is 35 percent.

f. For the 2016-2017 contract year, the factor is 40 percent.

g. For the 2017-2018 contract year, the factor is 45

percent.

h. For the 2018-2019 contract year and subsequent contract years, the factor is 50 percent.

3. The formula may provide for a procedure to determine the premiums to be paid by new insurers that begin writing covered policies after the beginning of a contract year, taking into consideration when the insurer starts writing covered policies, the potential exposure of the insurer, the potential exposure of the fund, the administrative costs to the insurer and to the fund, and any other factors deemed appropriate by the board. The formula must be approved by unanimous vote of the board. The board may, at any time, revise the formula pursuant to the procedure provided in this paragraph.

(6) REVENUE BONDS.—

(b) Emergency assessments—

1. If the board determines that the amount of revenue produced under subsection (5) is insufficient to fund the obligations, costs, and expenses of the fund and the corporation, including repayment of revenue bonds and that portion of the debt service coverage not met by reimbursement premiums, the board shall direct the Office of Insurance Regulation to levy, by order, an emergency assessment on direct premiums for all property and casualty lines of business in this state, including property and casualty business of surplus lines insurers regulated under part VIII of chapter 626, but not including any workers' compensation premiums or medical malpractice premiums. As used in this subsection, the term "property and casualty business" includes all lines of business

identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required of authorized insurers by s. 624.424 and any rule adopted under this section, except for those lines identified as accident and health insurance and except for policies written under the National Flood Insurance Program. The assessment shall be specified as a percentage of direct written premium and is subject to annual adjustments by the board in order to meet debt obligations. The same percentage shall apply to all policies in lines of business subject to the assessment issued or renewed during the 12-month period beginning on the effective date of the assessment.

2.a. A premium is not subject to an annual assessment under this paragraph in excess of 6 percent of premium with respect to obligations arising out of losses attributable to any one contract year prior to the 2015-2016 contract year, and a premium is not subject to an aggregate annual assessment under this paragraph in excess of 10 percent of premium if all of the losses that generated the obligations were attributable to contract years prior to the 2015-2016 contract year. An annual assessment under this paragraph shall continue as long as the revenue bonds issued with respect to which the assessment was imposed are outstanding, including any bonds the proceeds of which were used to refund the revenue bonds, unless adequate provision has been made for the payment of the bonds under the documents authorizing issuance of the bonds.

b. Except as provided in sub-subparagraph a., a premium is not subject to an annual assessment under this paragraph in excess of 5 percent of premium with respect to obligations

arising out of losses attributable to any one contract year, and a premium is not subject to an aggregate annual assessment under this paragraph in excess of 8 percent of premium. An annual assessment under this paragraph shall continue as long as the revenue bonds issued with respect to which the assessment was imposed are outstanding, including any bonds the proceeds of which were used to refund the revenue bonds, unless adequate provision has been made for the payment of the bonds under the documents authorizing issuance of the bonds.

3. Emergency assessments shall be collected from policyholders. Emergency assessments shall be remitted by insurers as a percentage of direct written premium for the preceding calendar quarter as specified in the order from the Office of Insurance Regulation. The office shall verify the accurate and timely collection and remittance of emergency assessments and shall report the information to the board in a form and at a time specified by the board. Each insurer collecting assessments shall provide the information with respect to premiums and collections as may be required by the office to enable the office to monitor and verify compliance with this paragraph.

4. With respect to assessments of surplus lines premiums, each surplus lines agent shall collect the assessment at the same time as the agent collects the surplus lines tax required by s. 626.932, and the surplus lines agent shall remit the assessment to the Florida Surplus Lines Service Office created by s. 626.921 at the same time as the agent remits the surplus lines tax to the Florida Surplus Lines Service Office. The

emergency assessment on each insured procuring coverage and filing under s. 626.938 shall be remitted by the insured to the Florida Surplus Lines Service Office at the time the insured pays the surplus lines tax to the Florida Surplus Lines Service Office. The Florida Surplus Lines Service Office shall remit the collected assessments to the fund or corporation as provided in the order levied by the Office of Insurance Regulation. The Florida Surplus Lines Service Office shall verify the proper application of such emergency assessments and shall assist the board in ensuring the accurate and timely collection and remittance of assessments as required by the board. The Florida Surplus Lines Service Office shall annually calculate the aggregate written premium on property and casualty business, other than workers' compensation and medical malpractice, procured through surplus lines agents and insureds procuring coverage and filing under s. 626.938 and shall report the information to the board in a form and at a time specified by the board.

5.a. Any assessment authority not used for a particular contract year may be used for a subsequent contract year. If, for a subsequent contract year, the board determines that the amount of revenue produced under subsection (5) is insufficient to fund the obligations, costs, and expenses of the fund and the corporation, including repayment of revenue bonds and that portion of the debt service coverage not met by reimbursement premiums, the board shall direct the Office of Insurance Regulation to levy an emergency assessment up to an amount not exceeding the amount of unused assessment authority from a

previous contract year or years, plus an additional 4 percent, if ~~provided that~~ the assessments in the aggregate do not exceed the limits specified in subparagraph 2. and all of the losses that generated the obligations were attributable to contract years prior to the 2015-2016 contract year.

b. Except as provided in sub-subparagraph a., any assessment authority not used for a particular contract year may be used for a subsequent contract year. If, for a subsequent contract year, the board determines that the amount of revenue produced under subsection (5) is insufficient to fund the obligations, costs, and expenses of the fund and the corporation, including repayment of revenue bonds and that portion of the debt service coverage not met by reimbursement premiums, the board shall direct the Office of Insurance Regulation to levy an emergency assessment up to an amount not exceeding the amount of unused assessment authority from a previous contract year or years, plus an additional 3 percent, if the assessments in the aggregate do not exceed the limits specified in subparagraph 2.

6. The assessments otherwise payable to the corporation under this paragraph shall be paid to the fund unless and until the Office of Insurance Regulation and the Florida Surplus Lines Service Office have received from the corporation and the fund a notice, which shall be conclusive and upon which they may rely without further inquiry, that the corporation has issued bonds and the fund has no agreements in effect with local governments under paragraph (c). On or after the date of the notice and until the date the corporation has no bonds outstanding, the

fund shall have no right, title, or interest in or to the assessments, except as provided in the fund's agreement with the corporation.

7. Emergency assessments are not premium and are not subject to the premium tax, to the surplus lines tax, to any fees, or to any commissions. An insurer is liable for all assessments that it collects and must treat the failure of an insured to pay an assessment as a failure to pay the premium. An insurer is not liable for uncollectible assessments.

8. When an insurer is required to return an unearned premium, it shall also return any collected assessment attributable to the unearned premium. A credit adjustment to the collected assessment may be made by the insurer with regard to future remittances that are payable to the fund or corporation, but the insurer is not entitled to a refund.

9. When a surplus lines insured or an insured who has procured coverage and filed under s. 626.938 is entitled to the return of an unearned premium, the Florida Surplus Lines Service Office shall provide a credit or refund to the agent or such insured for the collected assessment attributable to the unearned premium prior to remitting the emergency assessment collected to the fund or corporation.

10. The exemption of medical malpractice insurance premiums from emergency assessments under this paragraph is repealed May 31, 2013, and medical malpractice insurance premiums shall be subject to emergency assessments attributable to loss events occurring in the contract years commencing on June 1, 2013.

(d) State Board of Administration ~~Florida Hurricane Catastrophe Fund~~ Finance Corporation.—

1. In addition to the findings and declarations in subsection (1), the Legislature also finds and declares that:

a. The public benefits corporation created under this paragraph will provide a mechanism necessary for the cost-effective and efficient issuance of bonds. This mechanism will eliminate unnecessary costs in the bond issuance process, thereby increasing the amounts available to pay reimbursement for losses to property sustained as a result of hurricane damage.

b. The purpose of such bonds is to fund reimbursements through the Florida Hurricane Catastrophe Fund to pay for the costs of construction, reconstruction, repair, restoration, and other costs associated with damage to properties of policyholders of covered policies due to the occurrence of a hurricane.

c. The efficacy of the financing mechanism will be enhanced by the corporation's ownership of the assessments, by the insulation of the assessments from possible bankruptcy proceedings, and by covenants of the state with the corporation's bondholders.

2.a. There is created a public benefits corporation, which is an instrumentality of the state, to be known as the State Board of Administration ~~Florida Hurricane Catastrophe Fund~~ Finance Corporation.

b. The corporation shall operate under a five-member board of directors consisting of the Governor or a designee, the Chief

Financial Officer or a designee, the Attorney General or a designee, the director of the Division of Bond Finance of the State Board of Administration, and the Chief Operating Officer ~~senior employee of the State Board of Administration responsible for operations~~ of the Florida Hurricane Catastrophe Fund.

c. The corporation has all of the powers of corporations under chapter 607 and under chapter 617, subject only to the provisions of this subsection.

d. The corporation may issue bonds and engage in such other financial transactions as are necessary to provide sufficient funds to achieve the purposes of this section.

e. The corporation may invest in any of the investments authorized under s. 215.47.

f. There shall be no liability on the part of, and no cause of action shall arise against, any board members or employees of the corporation for any actions taken by them in the performance of their duties under this paragraph.

3.a. In actions under chapter 75 to validate any bonds issued by the corporation, the notice required by s. 75.06 shall be published only in Leon County and in two newspapers of general circulation in the state, and the complaint and order of the court shall be served only on the State Attorney of the Second Judicial Circuit.

b. The state hereby covenants with holders of bonds of the corporation that the state will not repeal or abrogate the power of the board to direct the Office of Insurance Regulation to levy the assessments and to collect the proceeds of the revenues pledged to the payment of such bonds as long as any such bonds

remain outstanding unless adequate provision has been made for the payment of such bonds pursuant to the documents authorizing the issuance of such bonds.

4. The bonds of the corporation are not a debt of the state or of any political subdivision, and neither the state nor any political subdivision is liable on such bonds. The corporation does not have the power to pledge the credit, the revenues, or the taxing power of the state or of any political subdivision. The credit, revenues, or taxing power of the state or of any political subdivision shall not be deemed to be pledged to the payment of any bonds of the corporation.

5.a. The property, revenues, and other assets of the corporation; the transactions and operations of the corporation and the income from such transactions and operations; and all bonds issued under this paragraph and interest on such bonds are exempt from taxation by the state and any political subdivision, including the intangibles tax under chapter 199 and the income tax under chapter 220. This exemption does not apply to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations other than the State Board of Administration ~~Florida Hurricane Catastrophe Fund~~ Finance Corporation.

b. All bonds of the corporation shall be and constitute legal investments without limitation for all public bodies of this state; for all banks, trust companies, savings banks, savings associations, savings and loan associations, and investment companies; for all administrators, executors, trustees, and other fiduciaries; for all insurance companies and

associations and other persons carrying on an insurance business; and for all other persons who are now or may hereafter be authorized to invest in bonds or other obligations of the state and shall be and constitute eligible securities to be deposited as collateral for the security of any state, county, municipal, or other public funds. This sub-subparagraph shall be considered as additional and supplemental authority and shall not be limited without specific reference to this sub-subparagraph.

6. The corporation and its corporate existence shall continue until terminated by law; however, no such law shall take effect as long as the corporation has bonds outstanding unless adequate provision has been made for the payment of such bonds pursuant to the documents authorizing the issuance of such bonds. Upon termination of the existence of the corporation, all of its rights and properties in excess of its obligations shall pass to and be vested in the state.

7. The State Board of Administration Finance Corporation is for all purposes the successor to the Florida Hurricane Catastrophe Fund Finance Corporation.

~~(16) TEMPORARY EMERGENCY OPTIONS FOR ADDITIONAL COVERAGE.~~

~~(a) Findings and intent.~~

~~1. The Legislature finds that:~~

~~a. Because of temporary disruptions in the market for catastrophic reinsurance, many property insurers were unable to procure reinsurance for the 2006 hurricane season with an attachment point below the insurers' respective Florida Hurricane Catastrophe Fund attachment points, were unable to~~

~~procure sufficient amounts of such reinsurance, or were able to procure such reinsurance only by incurring substantially higher costs than in prior years.~~

~~b. The reinsurance market problems were responsible, at least in part, for substantial premium increases to many consumers and increases in the number of policies issued by the Citizens Property Insurance Corporation.~~

~~c. It is likely that the reinsurance market disruptions will not significantly abate prior to the 2007 hurricane season.~~

~~2. It is the intent of the Legislature to create a temporary emergency program, applicable to the 2007, 2008, and 2009 hurricane seasons, to address these market disruptions and enable insurers, at their option, to procure additional coverage from the Florida Hurricane Catastrophe Fund.~~

~~(b) Applicability of other provisions of this section.—All provisions of this section and the rules adopted under this section apply to the program created by this subsection unless specifically superseded by this subsection.~~

~~(c) Optional coverage.—For the contract year commencing June 1, 2007, and ending May 31, 2008, the contract year commencing June 1, 2008, and ending May 31, 2009, and the contract year commencing June 1, 2009, and ending May 31, 2010, the board shall offer for each of such years the optional coverage as provided in this subsection.~~

~~(d) Additional definitions.—As used in this subsection, the term:~~

~~1. "TEACO options" means the temporary emergency additional coverage options created under this subsection.~~

~~2. "TEACO insurer" means an insurer that has opted to obtain coverage under the TEACO options in addition to the coverage provided to the insurer under its reimbursement contract.~~

~~3. "TEACO reimbursement premium" means the premium charged by the fund for coverage provided under the TEACO options.~~

~~4. "TEACO retention" means the amount of losses below which a TEACO insurer is not entitled to reimbursement from the fund under the TEACO option selected. A TEACO insurer's retention options shall be calculated as follows:~~

~~a. The board shall calculate and report to each TEACO insurer the TEACO retention multiples. There shall be three TEACO retention multiples for defining coverage. Each multiple shall be calculated by dividing $3 billion, $4 billion, or $5 billion by the total estimated mandatory FHCF reimbursement premium assuming all insurers selected the 90-percent coverage level.~~

~~b. The TEACO retention multiples as determined under sub-subparagraph a. shall be adjusted to reflect the coverage level elected by the insurer. For insurers electing the 90-percent coverage level, the adjusted retention multiple is 100 percent of the amount determined under sub-subparagraph a. For insurers electing the 75-percent coverage level, the retention multiple is 120 percent of the amount determined under sub-subparagraph a. For insurers electing the 45-percent coverage level, the adjusted retention multiple is 200 percent of the amount determined under sub-subparagraph a.~~

~~c. An insurer shall determine its provisional TEACO~~

~~retention by multiplying its estimated mandatory FHCF reimbursement premium by the applicable adjusted TEACO retention multiple and shall determine its actual TEACO retention by multiplying its actual mandatory FHCF reimbursement premium by the applicable adjusted TEACO retention multiple.~~

~~d. For TEACO insurers who experience multiple covered events causing loss during the contract year, the insurer's full TEACO retention shall be applied to each of the covered events causing the two largest losses for that insurer. For other covered events resulting in losses, the TEACO option does not apply and the insurer's retention shall be one-third of the full retention as calculated under paragraph (2)(e).~~

~~5. "TEACO addendum" means an addendum to the reimbursement contract reflecting the obligations of the fund and TEACO insurers under the program created by this subsection.~~

~~6. "FHCF" means the Florida Hurricane Catastrophe Fund.~~

~~(c) TEACO addendum.~~

~~1. The TEACO addendum shall provide for reimbursement of TEACO insurers for covered events occurring during the contract year, in exchange for the TEACO reimbursement premium paid into the fund under paragraph (f). Any insurer writing covered policies has the option of choosing to accept the TEACO addendum for any of the 3 contract years that the coverage is offered.~~

~~2. The TEACO addendum shall contain a promise by the board to reimburse the TEACO insurer for 45 percent, 75 percent, or 90 percent of its losses from each covered event in excess of the insurer's TEACO retention, plus 5 percent of the reimbursed losses to cover loss adjustment expenses. The percentage shall~~

~~be the same as the coverage level selected by the insurer under paragraph (4)(b).~~

~~3. The TEACO addendum shall provide that reimbursement amounts shall not be reduced by reinsurance paid or payable to the insurer from other sources.~~

~~4. The TEACO addendum shall also provide that the obligation of the board with respect to all TEACO addenda shall not exceed an amount equal to two times the difference between the industry retention level calculated under paragraph (2)(c) and the $3 billion, $4 billion, or $5 billion industry TEACO retention level options actually selected, but in no event may the board's obligation exceed the actual claims-paying capacity of the fund plus the additional capacity created in paragraph (g). If the actual claims-paying capacity and the additional capacity created under paragraph (g) fall short of the board's obligations under the reimbursement contract, each insurer's share of the fund's capacity shall be prorated based on the premium an insurer pays for its mandatory reimbursement coverage and the premium paid for its optional TEACO coverage as each such premium bears to the total premiums paid to the fund times the available capacity.~~

~~5. The priorities, schedule, and method of reimbursements under the TEACO addendum shall be the same as provided under subsection (4).~~

~~6. A TEACO insurer's maximum reimbursement for a single event shall be equal to the product of multiplying its mandatory FHCF premium by the difference between its FHCF retention multiple and its TEACO retention multiple under the TEACO option~~

~~selected and by the coverage selected under paragraph (4)(b), plus an additional 5 percent for loss adjustment expenses. A TEACO insurer's maximum reimbursement under the TEACO option selected for a TEACO insurer's two largest events shall be twice its maximum reimbursement for a single event.~~

~~(f) TEACO reimbursement premiums.—~~

~~1. Each TEACO insurer shall pay to the fund, in the manner and at the time provided in the reimbursement contract for payment of reimbursement premiums, a TEACO reimbursement premium calculated as specified in this paragraph.~~

~~2. The insurer's TEACO reimbursement premium associated with the $3 billion retention option shall be equal to 85 percent of a TEACO insurer's maximum reimbursement for a single event as calculated under subparagraph (c)6. The TEACO reimbursement premium associated with the $4 billion retention option shall be equal to 80 percent of a TEACO insurer's maximum reimbursement for a single event as calculated under subparagraph (c)6. The TEACO premium associated with the $5 billion retention option shall be equal to 75 percent of a TEACO insurer's maximum reimbursement for a single event as calculated under subparagraph (c)6.~~

~~(g) Effect on claims-paying capacity of the fund.—For the contract term commencing June 1, 2007, the contract year commencing June 1, 2008, and the contract term beginning June 1, 2009, the program created by this subsection shall increase the claims-paying capacity of the fund as provided in subparagraph (4)(c)1. by an amount equal to two times the difference between the industry retention level calculated under paragraph (2)(c)~~

~~and the $3 billion industry TEACO retention level specified in sub-subparagraph (d)4.a. The additional capacity shall apply only to the additional coverage provided by the TEACO option and shall not otherwise affect any insurer's reimbursement from the fund.~~

(16)~~(17)~~ TEMPORARY INCREASE IN COVERAGE LIMIT OPTIONS.—

(a) Findings and intent.—

1. The Legislature finds that:

a. Because of temporary disruptions in the market for catastrophic reinsurance, many property insurers were unable to procure sufficient amounts of reinsurance for the 2006 hurricane season or were able to procure such reinsurance only by incurring substantially higher costs than in prior years.

b. The reinsurance market problems were responsible, at least in part, for substantial premium increases to many consumers and increases in the number of policies issued by Citizens Property Insurance Corporation.

c. It is likely that the reinsurance market disruptions will not significantly abate prior to the 2007 hurricane season.

2. It is the intent of the Legislature to create options for insurers to purchase a temporary increased coverage limit above the statutorily determined limit in subparagraph (4)(c)1., applicable for the ~~2007, 2008, 2009, 2010,~~ 2011~~, 2012, and 2013~~ hurricane season ~~seasons~~, to address market disruptions and enable insurers, at their option, to procure additional coverage from the Florida Hurricane Catastrophe Fund.

(b) Applicability of other provisions of this section.—All provisions of this section and the rules adopted under this

section apply to the coverage created by this subsection unless specifically superseded by provisions in this subsection.

(c) Optional coverage.—For the ~~2009-2010, 2010-2011,~~ 2011-2012~~, 2012-2013, and 2013-2014~~ contract year ~~years~~, the board shall offer~~, for each of such years,~~ the optional coverage as provided in this subsection.

(d) Additional definitions.—As used in this subsection, the term:

1. "FHCF" means Florida Hurricane Catastrophe Fund.

2. "FHCF reimbursement premium" means the premium paid by an insurer for its coverage as a mandatory participant in the FHCF, but does not include additional premiums for optional coverages.

3. "Payout multiple" means the number or multiple created by dividing the statutorily defined claims-paying capacity as determined in subparagraph (4)(c)1. by the aggregate reimbursement premiums paid by all insurers estimated or projected as of calendar year-end.

4. "TICL" means the temporary increase in coverage limit.

5. "TICL options" means the temporary increase in coverage options created under this subsection.

6. "TICL insurer" means an insurer that has opted to obtain coverage under the TICL options addendum in addition to the coverage provided to the insurer under its FHCF reimbursement contract.

7. "TICL reimbursement premium" means the premium charged by the fund for coverage provided under the TICL option.

8. "TICL coverage multiple" means the coverage multiple

when multiplied by an insurer's reimbursement premium that defines the temporary increase in coverage limit.

9. "TICL coverage" means the coverage for an insurer's losses above the insurer's statutorily determined claims-paying capacity based on the claims-paying limit in subparagraph (4)(c)1., which an insurer selects as its temporary increase in coverage from the fund under the TICL options selected. A TICL insurer's increased coverage limit options shall be calculated as follows:

~~a. The board shall calculate and report to each TICL insurer the TICL coverage multiples based on 12 options for increasing the insurer's FHCF coverage limit. Each TICL coverage multiple shall be calculated by dividing $1 billion, $2 billion, $3 billion, $4 billion, $5 billion, $6 billion, $7 billion, $8 billion, $9 billion, $10 billion, $11 billion, or $12 billion by the total estimated aggregate FHCF reimbursement premiums for the 2007-2008 contract year, and the 2008-2009 contract year.~~

~~b. For the 2009-2010 contract year, the board shall calculate and report to each TICL insurer the TICL coverage multiples based on 10 options for increasing the insurer's FHCF coverage limit. Each TICL coverage multiple shall be calculated by dividing $1 billion, $2 billion, $3 billion, $4 billion, $5 billion, $6 billion, $7 billion, $8 billion, $9 billion, and $10 billion by the total estimated aggregate FHCF reimbursement premiums for the 2009-2010 contract year.~~

~~c. For the 2010-2011 contract year, the board shall calculate and report to each TICL insurer the TICL coverage multiples based on eight options for increasing the insurer's~~

~~FHCF coverage limit. Each TICL coverage multiple shall be calculated by dividing $1 billion, $2 billion, $3 billion, $4 billion, $5 billion, $6 billion, $7 billion, and $8 billion by the total estimated aggregate FHCF reimbursement premiums for the contract year.~~

~~d. For the 2011-2012 contract year, the board shall calculate and report to each TICL insurer the TICL coverage multiples based on six options for increasing the insurer's FHCF coverage limit. Each TICL coverage multiple shall be calculated by dividing $1 billion, $2 billion, $3 billion, $4 billion, $5 billion, and $6 billion by the total estimated aggregate FHCF reimbursement premiums for the 2011-2012 contract year.~~

a.~~e.~~ For the 2012-2013 contract year, the board shall calculate and report to each TICL insurer the TICL coverage multiples based on four options for increasing the insurer's FHCF coverage limit. Each TICL coverage multiple shall be calculated by dividing $1 billion, $2 billion, $3 billion, and $4 billion by the total estimated aggregate FHCF reimbursement premiums for the 2012-2013 contract year.

~~f. For the 2013-2014 contract year, the board shall calculate and report to each TICL insurer the TICL coverage multiples based on two options for increasing the insurer's FHCF coverage limit. Each TICL coverage multiple shall be calculated by dividing $1 billion and $2 billion by the total estimated aggregate FHCF reimbursement premiums for the 2013-2014 contract year.~~

b.~~g.~~ The TICL insurer's increased coverage shall be the FHCF reimbursement premium multiplied by the TICL coverage

multiple. In order to determine an insurer's total limit of coverage, an insurer shall add its TICL coverage multiple to its payout multiple. The total shall represent a number that, when multiplied by an insurer's FHCF reimbursement premium for a given reimbursement contract year, defines an insurer's total limit of FHCF reimbursement coverage for that reimbursement contract year.

10. "TICL options addendum" means an addendum to the reimbursement contract reflecting the obligations of the fund and insurers selecting an option to increase an insurer's FHCF coverage limit.

(e) TICL options addendum.—

1. The TICL options addendum shall provide for reimbursement of TICL insurers for covered events occurring during the ~~2009-2010, 2010-2011, 2011-2012,~~ 2012-2013~~, and 2013-2014~~ contract year ~~years~~ in exchange for the TICL reimbursement premium paid into the fund under paragraph (f) based on the TICL coverage available and selected for each respective contract year. Any insurer writing covered policies has the option of selecting an increased limit of coverage under the TICL options addendum and shall select such coverage at the time that it executes the FHCF reimbursement contract.

2. The TICL addendum shall contain a promise by the board to reimburse the TICL insurer for 45 percent, 75 percent, or 90 percent of its losses from each covered event in excess of the insurer's retention, plus 5 percent of the reimbursed losses to cover loss adjustment expenses. The percentage shall be the same as the coverage level selected by the insurer under paragraph

(4)(b).

3. The TICL addendum shall provide that reimbursement amounts shall not be reduced by reinsurance paid or payable to the insurer from other sources.

4. The priorities, schedule, and method of reimbursements under the TICL addendum shall be the same as provided under subsection (4).

(f) TICL reimbursement premiums.—Each TICL insurer shall pay to the fund, in the manner and at the time provided in the reimbursement contract for payment of reimbursement premiums, a TICL reimbursement premium determined as specified in subsection (5), except that a cash build-up factor does not apply to the TICL reimbursement premiums. However, the TICL reimbursement premium shall be increased in the ~~2009-2010 contract year by a factor of two, in the 2010-2011 contract year by a factor of three, in the 2011-2012 contract year by a factor of four, in the~~ 2012-2013 contract year by a factor of five~~, and in the 2013-2014 contract year by a factor of six~~.

(g) Effect on claims-paying capacity of the fund.—For the ~~2009-2010, 2010-2011, 2011-2012,~~ 2012-2013~~, and 2013-2014~~ contract year ~~years~~, the program created by this subsection shall increase the claims-paying capacity of the fund as provided in subparagraph (4)(c)1. by an amount not to exceed $4 ~~$12~~ billion and shall depend on the TICL coverage options available and selected for the specified contract year and the number of insurers that select the TICL optional coverage. The additional capacity shall apply only to the additional coverage provided under the TICL options and shall not otherwise affect

any insurer's reimbursement from the fund if the insurer chooses not to select the temporary option to increase its limit of coverage under the FHCF.

(17) ~~(18)~~ FACILITATION OF INSURERS' PRIVATE CONTRACT NEGOTIATIONS BEFORE THE START OF THE HURRICANE SEASON.—

(a) In addition to the legislative findings and intent provided elsewhere in this section, the Legislature finds that:

1.a. Because a regular session of the Legislature begins approximately 3 months before the start of a contract year and ends approximately 1 month before the start of a contract year, participants in the fund always face the possibility that legislative actions will change the coverage provided or offered by the fund with only a few days or weeks of advance notice.

b. The timing issues described in sub-subparagraph a. can create uncertainties and disadvantages for the residential property insurers that are required to participate in the fund when such insurers negotiate for the procurement of private reinsurance or other sources of capital.

c. Providing participating insurers with a greater degree of certainty regarding the coverage provided or offered by the fund and more time to negotiate for the procurement of private reinsurance or other sources of capital will enable the residential property insurance market to operate with greater stability.

d. Increased stability in the residential property insurance market serves a primary purpose of the fund and benefits Florida consumers by enabling insurers to operate more economically. In years when reinsurance and capital markets are

experiencing a capital shortage, the last-minute rush by insurers only weeks before the start of the hurricane season to procure adequate coverage in order to meet their capital requirements can result in higher costs that are passed on to Florida consumers. However, if more time is available, residential property insurers should experience greater competition for their business with a corresponding beneficial effect for Florida consumers.

2. It is the intent of the Legislature to provide insurers with the terms and conditions of the reimbursement contract well in advance of the insurers' need to finalize their procurement of private reinsurance or other sources of capital, and thereby improve insurers' negotiating position with reinsurers and other sources of capital.

3. It is also the intent of the Legislature that the board publish the fund's maximum statutory limit of coverage and the fund's total retention early enough that residential property insurers can have the opportunity to better estimate their coverage from the fund.

(b) The board shall adopt the reimbursement contract for a particular contract year by February 1 of the immediately preceding contract year. However, the reimbursement contract shall be adopted as soon as possible in advance of the 2010-2011 contract year.

(c) Insurers writing covered policies shall execute the reimbursement contract by March 1 of the immediately preceding contract year, and the contract shall have an effective date as defined in paragraph (2)(o).

(d) The board shall publish in the Florida Administrative Weekly the maximum statutory adjusted capacity for the mandatory coverage for a particular contract year, the maximum statutory coverage for any optional coverage for the particular contract year, and the aggregate fund retention used to calculate individual insurer's retention multiples for the particular contract year no later than January 1 of the immediately preceding contract year.

Section 2. Subsection (5) of section 627.0629, Florida Statutes, is amended to read:

627.0629 Residential property insurance; rate filings.—

(5) In order to provide an appropriate transition period, an insurer may implement an approved rate filing for residential property insurance over a period of years. Such insurer must provide an informational notice to the office setting out its schedule for implementation of the phased-in rate filing. The insurer may include in its rate the actual cost of private market reinsurance that corresponds to available coverage of the Temporary Increase in Coverage Limits, TICL, from the Florida Hurricane Catastrophe Fund. The insurer may also include the cost of reinsurance to replace the TICL reduction implemented pursuant to s. 215.555(16)(d)9 ~~s. 215.555(17)(d)9~~. However, this cost for reinsurance may not include any expense or profit load or result in a total annual base rate increase in excess of 10 percent.

Section 3. This act shall take effect upon becoming a law.

WORKSHOP:
HB 1127

A bill to be entitled

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

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

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

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

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

in the coastal account. In issuing multiperil coverage, the corporation may use its approved policy forms and rates for the personal lines account. An applicant or insured who is eligible to purchase a multiperil policy from the corporation may purchase a multiperil policy from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides coverage only for the peril of wind from the corporation. An applicant or insured who is eligible for a corporation policy that provides coverage only for the peril of wind may elect to purchase or retain such policy and also purchase or retain coverage excluding wind from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides multiperil coverage from the corporation. It is the goal of the Legislature that there be an overall average savings of 10 percent or more for a policyholder who currently has a wind-only policy with the corporation, and an ex-wind policy with a voluntary insurer or the corporation, and who obtains a multiperil policy from the corporation. It is the intent of the Legislature that the offer of multiperil coverage in the coastal account be made and implemented in a manner that does not adversely affect the tax-exempt status of the corporation or creditworthiness of or security for currently outstanding financing obligations or credit facilities of the coastal account, the personal lines account, or the commercial lines account. The coastal account must also include quota share primary insurance under subparagraph (c)2. The area eligible for coverage under the coastal account also includes the area within

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

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

c. Creditors of the Residential Property and Casualty Joint Underwriting Association and the accounts specified in sub-sub-subparagraphs a.(I) and (II) may have a claim against, and recourse to, those accounts and no claim against, or recourse to, the account referred to in sub-sub-subparagraph a.(III). Creditors of the Florida Windstorm Underwriting Association have a claim against, and recourse to, the account referred to in sub-sub-subparagraph a.(III) and no claim against, or recourse to, the accounts referred to in sub-sub-subparagraphs a.(I) and (II).

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

attributable to particular accounts shall be prorated among the accounts.

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

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

3. With respect to a deficit in an account:

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

(I) Is not greater than 2 ~~6~~ percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the entire deficit shall be recovered through regular assessments of assessable insurers under paragraph (q) and assessable insureds.

(II) Exceeds 2 ~~6~~ percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the corporation shall levy regular assessments on assessable insurers under paragraph (q) and on assessable insureds in an amount equal to the greater of 2 ~~6~~ percent of the projected deficit or 2 ~~6~~ percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year. Any remaining projected deficit shall be recovered through emergency assessments under sub-subparagraph d. ~~c.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The corporation's plan of operation:

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

following policy forms:

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

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

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

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

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

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

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

a. As used in this subsection, the term:

(I) "Quota share primary insurance" means an arrangement in which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an authorized insurer. The corporation and authorized insurer are each solely responsible for a specified percentage of hurricane coverage of an eligible risk as set forth in a quota share primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The responsibility of the corporation or authorized insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the agreement, may not be altered by the inability of the other party to pay its specified percentage of losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement, clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and conspicuously and clearly state that the authorized insurer and the corporation may not be held responsible beyond their specified percentage of coverage of hurricane losses.

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

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

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

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

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

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

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

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

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

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

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

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

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

different geographical areas of this state.

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

b. The board shall create a Market Accountability Advisory

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

appointed by the insurer, the insurer shall:

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

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

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

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

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

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ACKNOWLEDGEMENT OF POTENTIAL SURCHARGE
AND ASSESSMENT LIABILITY:

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

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

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

STATE OF FLORIDA.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

from any other entity.

(w) Notwithstanding any other provision of law:

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

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

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

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

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

other action.

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

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

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