

Insurance & Banking Subcommittee

Wednesday, February 2, 2022
9:00 AM - 11:00 AM
Morris Hall (17 HOB)

Meeting Packet

Chris Sprowls
Speaker

Nick DiCeglie
Chair

The Florida House of Representatives

Commerce Committee

Insurance & Banking Subcommittee

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Meeting Agenda

Wednesday, February 2, 2022
9:00 AM – 11:00 AM
Morris Hall (17 HOB)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

- HB 625 Estates and Trusts by Altman
- HB 785 Two-way Radio Communication Enhancement Systems by Botana
- HB 837 Hurricane Loss Mitigation Program by Willhite
- HB 1141 Bail Bond Agents by Plakon
- HB 1307 Citizens Property Insurance Corporation by Gregory, Giallombardo

V. Closing Remarks

VI. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, FL 32399-1300
(850) 717-4870

HB 625

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 625 Estates and Trusts
SPONSOR(S): Altman
TIED BILLS: **IDEN./SIM. BILLS:** SB 1502

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Property Rights Subcommittee	15 Y, 0 N	Mathews	Jones
2) Insurance & Banking Subcommittee		Hinshelwood	Luczynski
3) Judiciary Committee			

SUMMARY ANALYSIS

Probate is a court-supervised process for identifying and gathering the assets of a deceased person (decedent), paying the decedent's debts, and distributing the decedent's assets to his or her beneficiaries. Through the probate process, the personal representative is responsible for giving actual notice of the probate proceedings to "known or reasonably ascertainable creditors." Any creditor who believes he or she is entitled to compensation from the decedent's estate to satisfy a debt must file a claim with the clerk of court. The personal representative or any other interested person may file an objection to a creditor's statement of claim. If an objection is filed against a creditor's statement of claim, the creditor must file a separate independent lawsuit against the decedent's estate to pursue the claim within thirty days from the date the objection was served.

A trust is a document created to manage a person's assets and distribute his or her remaining assets after death. The person who creates the trust is the "grantor" or "settlor." The person responsible for the management of the assets within the trust is the "trustee." The trustee includes the original trustee, any additional trustee, any successor trustee, and any cotrustee. A trustee has a right to resign after providing at least 30 days' notice to the beneficiaries and other interested parties. In Florida, a trustee's right to resign is a mandatory provision and may not be denied or curtailed by any provision in the trust instrument. However, under current law, if the resigning trustee is the only remaining trustee, he or she continues to owe a fiduciary duty, regardless of his or her notice and resignation, until another trustee accepts the role.

The bill amends s. 733.705, F.S., codifying the existing procedure by which courts have permitted a creditor's pending action against a person at the time of death to be deemed an "independent action" under s. 733.705(5), F.S., thereby satisfying the creditor's requirement to bring an independent action within 30 days of an objection to a statement of claim. The bill also codifies procedures for deeming the "independent action" requirement satisfied where a claim is subject to a binding arbitration agreement or arbitration was already commenced before the decedent's death.

The bill amends s. 736.0705(1), F.S., to clarify that a trust instrument may provide the procedure by which a trustee may resign, subject to specified notice requirements. The bill effectively permits a trust instrument to make the process of resignation easier for an outgoing trustee. However, if the trust instrument is silent regarding timing of the trustee's resignation or if the trust attempts to impose a notice requirement of more than 30 days, the 30-day notice requirement under current law prevails. Therefore, a trust instrument may not make the resignation process more difficult by imposing a longer notice, but the trust instrument may include provisions to make the resignation process easier.

The bill has no fiscal impact on state or local governments and an indeterminate fiscal impact on the private sector.

The bill has an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Probate

Probate is a court-supervised process for identifying and gathering the assets of a deceased person (decedent), paying the decedent's debts, and distributing the decedent's assets to his or her beneficiaries. A will is a legal document that a person (a testator) may use to determine who gets his or her property upon death. A will does not dispose of all of a testator's property, but only his or her estate, or those assets that are subject to probate administration.[1] Other assets are disposed of outside probate.

Without a will, a decedent's estate is distributed pursuant to the intestacy statutes, which devise[2] a decedent's estate according to default rules. With a will, however, a testator may devise the estate to whomever he or she prefers.

In order for the decedent's estate to be transferred to heirs or to the beneficiaries of the will, a petition for administration must be filed with the circuit court.[3] A personal representative, who is designated by the will or the circuit court to serve in that role, must provide a notice of administration to various parties, including family members, beneficiaries, and other entities.[4] The personal representative must search for and provide notice to the decedent's creditors.[5] In order for a personal representative to claim monies from bank accounts for the estate, the court must issue letters of administration granting the personal representative the authority to act on the estate's behalf. The letters give the personal representative the authority to gather assets, pay a creditor, and pay an heir or beneficiary. Administration of the decedent's estate ensures that the decedent's creditors are paid as long as certain procedures are followed.[6]

Probate and the Decedent's Creditors

Through the probate process, the personal representative is responsible for giving actual notice of the probate proceedings to "known or reasonably ascertainable creditors."[7] The notice process ensures creditors have the opportunity to file claims against the decedent's estate to recover debts owed by the decedent to the creditor.[8] Any creditor who believes he or she is entitled to compensation from the decedent's estate to satisfy a debt must file a claim with the clerk of court. The personal representative or any other interested person may file an objection to a creditor's statement of claim. If an objection is filed against a creditor's statement of claim, the creditor must file a separate independent lawsuit against the decedent's estate to pursue the claim within thirty days from the date the objection was served.

Currently, neither the Florida Statutes nor the Florida Probate Rules address what happens when a creditor has a pending action against a person at the time of death. As such, there is no clear mechanism by which the creditor's pending lawsuit or action is sufficient to be deemed an independent legal action such that it satisfies the creditor's requirement to bring an independent action within 30

[1] S. 732.201(14), F.S.
[2] To devise means to dispose of real or personal property by will or trust. S. 731.201(10), F.S.
[3] S. 733.202, F.S.
[4] S. 733.212, F.S.
[5] S. 733.2121, F.S.
[6] The Florida Bar, *Consumer Pamphlet: Probate in Florida*, https://www.floridabar.org/public/consumer/pamphlet026/ (last visited Jan. 13, 2022).
[7] *Id*.
[8] *Id*.

days of an objection to a statement of claim.[9] Florida courts appear to have established that a pending action against a decedent at the time of death is deemed an "independent action" under s. 733.705(5), F.S., when a motion for substitution (or voluntary substitution) of the personal representative or other fiduciary of the estate is filed in the pending lawsuit.[10]

Resignation of a Trustee

A trust is a document created to manage a person's assets and distribute his or her remaining assets after death.[11] The person who creates the trust is the "grantor" or "settlor."[12] The person responsible for the management of the assets within the trust is the "trustee."[13] The trustee includes the original trustee, any additional trustee, any successor trustee, and any cotrustee.[14]

Currently, a trustee in Florida has a right to resign after providing at least 30 days' notice to the beneficiaries and other interested parties.[15] In Florida, a trustee's right to resign is a mandatory provision and may not be denied or curtailed by any provision in the trust instrument.[16] However, under current law, if the resigning trustee is the only remaining trustee, he or she continues to owe a fiduciary duty, regardless of his or her notice and resignation, until another trustee accepts the role.[17]

Effect of the Bill

Probate and Creditors

The bill amends s. 733.705(5), F.S., to codify the existing procedure by which courts have permitted a creditor's pending action against a person at the time of death to be deemed an "independent action" under s. 733.705(5), F.S., thereby satisfying the creditor's requirement to bring an independent action within 30 days of an objection to a statement of claim.[18] If a creditor has an existing or pending claim or action against the decedent at the time of death, the bill treats the substitution of the decedent's estate (via the personal representative or other fiduciary) in an existing action as satisfying the requirement to file an independent action. The bill also codifies procedures for deeming the "independent action" requirement satisfied where a claim is subject to a binding arbitration agreement or arbitration was already commenced before the decedent's death.

Resignation of a Trustee

The bill amends s. 736.0705(1), F.S., to clarify that a trust instrument may provide the procedure by which a trustee may resign, subject to specified notice requirements. The bill effectively permits a trust instrument to make the process of resignation easier for an outgoing trustee. However, if the trust instrument is silent regarding timing of the trustee's resignation or if the trust attempts to impose a notice requirement of more than 30 days, the 30-day notice requirement under current law prevails. Therefore, a trust instrument may not make the resignation process more difficult by imposing a longer notice, but the trust instrument may include provisions to make the resignation process easier.

The bill provides an effective date of July 1, 2022.

B. SECTION DIRECTORY:

[9] Probate Law and Procedure Committee of the Real Property, Probate and Trust Law Section of the Florida Bar, *White Paper on Proposed Amendments to S. 733.705(5), F.S.* (2022).
[10] *Id. See e.g., Lewsadder v. Estate of Lewsadder*, 757 So. 2d 1221 (Fla.4th DCA 2000).
[11] The Florida Bar, Consumer Pamphlet: The Revocable Trust in Florida, https://www.floridabar.org/public/consumer/pamphlet028/ (last visited on Jan. 13, 2022).
[12] *Id*.
[13] *Id*.
[14] S. 736.0103(27), F.S.
[15] S. 736.0705,(1)(a), F.S.
[16] Trust Law Committee of the Real Property, Probate and Trust Law Section of the Florida Bar, *White Paper on Proposed Amendments to S. 736.0705(1)(a), F.S. – Trustee Resignation* (2022).
[17] S. 736.0707(1), F.S.
[18] *Id*.

Section 1: Amends s. 733.705(5), F.S., relating to payment of and objection to claims.

Section 2: Amends s. 736.0705(1), F.S., relating to resignation of trustee.

Section 3: Provides an effective date of July 1, 2022.

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:
Indeterminate.

D. FISCAL COMMENTS:
None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

1. Applicability of Municipality/County Mandates Provision:
   Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:
   None.

B. RULE-MAKING AUTHORITY:
None.

C. DRAFTING ISSUES OR OTHER COMMENTS:
None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to estates and trusts; amending s. 733.705, F.S.; providing that the requirement for a claimant to file an independent action is satisfied if specified actions are taken; specifying that claimants, not creditors, are given certain priority of claims; amending s. 736.0705, F.S.; providing that a trustee may resign by specified procedure and with notice to certain parties; providing an effective date.

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

Section 1. Subsection (5) of section 733.705, Florida Statutes, is amended to read:

733.705 Payment of and objection to claims.—

(5) The claimant is limited to a period of 30 days from the date of service of an objection within which to bring an independent action upon the claim, or a declaratory action to establish the validity and amount of an unmatured claim which is not yet due but which is certain to become due in the future, or a declaratory action to establish the validity of a contingent claim upon which no cause of action has accrued on the date of service of an objection and that may or may not become due in the future, unless an extension of this time is agreed to by the

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

personal representative in writing before it expires.

(a) For good cause, the court may extend the time for filing an action or proceeding after objection is filed. No action or proceeding on the claim may be brought against the personal representative after the time limited above, and the claim is barred without court order.

(b) If an action or proceeding by the claimant is pending against the decedent at the time of the decedent's death, the requirement to bring an independent action is satisfied if, within 30 days after the filing of an objection to the claim:

1. A motion complying with all applicable rules of procedure is filed, or a similar procedure is initiated, to substitute the proper party; or

2. An order substituting the proper party is entered.

(c) If the decedent entered into a binding arbitration agreement relating to the claim during his or her lifetime, or if arbitration is required under s. 731.401, the requirement to bring an independent action is satisfied if, within 30 days after the filing of an objection to the claim, a motion to compel arbitration against the proper party is initiated, as provided for in s. 682.03.

(d) If arbitration was commenced before the decedent's death, the requirement to bring an independent action is satisfied if, within 30 days after the filing of an objection to the claim, notice is given to the proper party. If the

arbitration was commenced by order of the court, the notice must take the form of a timely filed motion, complying with all applicable rules of procedure, to substitute the proper party.

(e) If an objection is filed to the claim of any claimant ~~creditor~~ and the claimant ~~creditor~~ brings an action to establish the claim, a judgment establishing the claim shall give it no priority over claims of the same class to which it belongs.

Section 2. Subsection (1) of section 736.0705, Florida Statutes, is amended to read:

736.0705 Resignation of trustee.—

(1) A trustee may resign in accordance with the procedure set forth in the trust instrument and upon notice to the cotrustees or, if none, to the successor trustee who has accepted the appointment, or, if none, to the person or persons who have the authority to appoint a successor trustee. Notwithstanding any provision of the terms of the trust, a trustee may also resign:

(a) Upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees; or

(b) With the approval of the court.

Section 3. This act shall take effect July 1, 2022.

HB 785

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 785 Two-way Radio Communication Enhancement Systems
SPONSOR(S): Botana
TIED BILLS: **IDEN./SIM. BILLS:** SB 1190

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Fortenberry	Luczynski
2) Commerce Committee			

SUMMARY ANALYSIS

Chapter 633, F.S., Fire Prevention and Control, designates the Chief Financial Officer (CFO) as the State Fire Marshal (SFM). The SFM, through the Division of the State Fire Marshal within the Department of Financial Services (DFS), is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety. The SFM adopts by rule the Florida Fire Prevention Code (FFPC), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety laws and rules, and is the minimum fire prevention code deemed adopted in each municipality, county, and special district with firesafety responsibilities. Local fire authorities (authorities having jurisdiction) set standards for radio signal strength throughout buildings within their jurisdiction to ensure consistent fire and rescue communication capabilities.

Two-way radio communication enhancement systems are devices installed after a building is constructed that accept, and then amplify, radio signals used by first responders. The generally desired effect is that the radio signal strength at ground level, where a fire rescue operation might be based, is equal to the radio signal strength in all locations throughout the building, to ensure consistent communication. Several devices are available to boost signal strength to meet required radio signal strength. Amendments to the FFPC, effective January 1, 2018, provided that all new and existing buildings must maintain minimum radio signal strength at a level determined by the authority having jurisdiction.

Section 633.202(18), F.S., enacted in 2016, provides that authorities having jurisdiction shall determine minimum radio signal strength for fire department communications in all new and existing high-rise buildings. The FFPC defines a high-rise building as a building where the floor of an occupiable story is greater than 75 feet above the lowest level of fire department vehicle access. Currently, existing high-rise buildings are not required to comply with minimum radio strength for fire department communications and two-way radio communication enhancement systems as required by the FFPC until January 1, 2025. By January 1, 2024, an existing building that is not in compliance with the requirements for minimum radio strength for fire department communications must apply to the local government agency having jurisdiction for an appropriate permit for the required system installation. Such an existing building must demonstrate that the building will become compliant with the FFPC by January 1, 2025.

The bill establishes that two-way radio communication enhancement, or equivalent systems may be used to comply with the minimum radio signal strength requirements for fire department communications. However, the bill also establishes that these systems are not required in apartment buildings that are 75 feet or less in height.

The bill has no impact on state or local government revenues or expenditures, and may have an indeterminate, positive impact on the private sector.

The bill has an effective date of July 1, 2022.

FULL ANALYSIS
I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Fire Marshal

Chapter 633, F.S., Fire Prevention and Control, designates the Chief Financial Officer (CFO) as the State Fire Marshal (SFM). The SFM, through the Division of the State Fire Marshal within the Department of Financial Services (DFS), is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety.[1] The SFM also has the responsibility to minimize the loss of life and property due to fire.[2] Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel and firesafety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; and operates the Florida State Fire College.

Florida Fire Prevention Code

The SFM adopts by rule the Florida Fire Prevention Code (FFPC), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety laws and rules.[3] The SFM adopts a new edition of the FFPC every three years[4] and the 7th edition of the FFPC took effect on December 31, 2020.[5] The FFPC is largely based on the *National Fire Protection Association's (NFPA) Standard 1, Fire Prevention Code,* along with the current edition of the *NFPA's Life Safety Code, NFPA 101*.[6]

The FFPC is the minimum fire prevention code deemed adopted in each municipality, county, and special district with firesafety responsibilities, and applies to every building and structure throughout the state with few exceptions.[7] Municipalities, counties, and special districts with firesafety responsibilities may supplement the FFPC with more stringent standards.[8] Local fire authorities (authorities having jurisdiction) set standards for radio signal strength throughout buildings within their jurisdiction to ensure consistent fire and rescue communication capabilities.

Radio Signal Strength for Fire Department Communications

The life safety of firefighters and citizens depends on reliable, functional communication tools that work in the harshest and most hostile of environments.[9] All firefighters, professional and volunteer, operate in extreme environments that are markedly different from those of any other radio users.[10] The radio connects the firefighters to command and outside assistance in the most desperate of situations.[11] The focus on radio signal strength stems from difficulties firefighters experienced when attempting rescue operations on September 11, 2001, in the World Trade Center Towers.[12] These firefighters found that in

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[1] S. 633.104 F.S.
[2] *Id.*
[3] Ch. 69A, F.A.C.
[4] S. 633.202, F.S.
[5] *See* Florida Fire Prevention Code (FFPC), https://www.myfloridacfo.com/division/sfm/bfp/floridafirepreventioncodepage.htm (last visited Jan. 28, 2022).
[6] S. 633.202(2), F.S.
[7] S. 633.208, F.S. and R. 69A-60.002(1), F.A.C.
[8] S. 633.208(3), F.S., and 69A-60.002(2), F.A.C.
[9] U.S. Fire Administration, *Voice Radio Communications Guide for the Fire Service* (June 2016), https://www.usfa.fema.gov/downloads/pdf/publications/Voice_Radio_Communications_Guide_for_the_Fire_Service.pdf (last visited Jan. 28, 2022).
[10] *Id.*
[11] *Id.*
[12] *See* National Fire Protection Association, *Assessment of Total Evacuation Systems for Tall Buildings: Literature Review*, evacsystemstallbuildingsliteraturereviewexecsum.ashx (nfpa.org) (last visited Jan. 29, 2022).

certain areas of the buildings their radio signal degraded, making live communications difficult or impossible.[13]

Two-way radio communication enhancement systems are devices installed after a building is constructed that accept, and then amplify, radio signals used by first responders. A radio frequency site survey may be conducted in a building to determine areas where radio signal strength drops due to materials used in construction, such as thick walls, metal construction, underground structures, and low-emissivity glass windows. The generally desired effect is that the radio signal strength at ground level, where a fire rescue operation might be based, is equal to the radio signal strength in all locations throughout the building, to ensure consistent communication. Several devices are available to boost signal strength to meet required radio signal strength. These include bi-directional amplifiers and networks of indoor antennae, referred to collectively as a distributed antenna system.[14]

Florida Fire Code Minimum Radio Signal Strength

Amendments to the FFPC, effective January 1, 2018, provided that all new and existing buildings must maintain minimum radio signal strength at a level determined by the authority having jurisdiction.[15] Where required by a local fire authority, two-way radio communication enhancement systems must comply with federal standards for installation and upkeep.[16] Additionally, if a two-way radio communication enhancement system would have a negative impact on the operations of a facility, the local fire authority may accept an automatically activated emergency responder radio coverage system in the alternative.[17]

Minimum Radio Signal Strength for High-Rise Buildings

Section 633.202(18), F.S., enacted in 2016,[18] provides that authorities having jurisdiction shall determine minimum radio signal strength for fire department communications in all new and existing high-rise buildings. The FFPC defines a high-rise building as a building where the floor of an occupiable story is greater than 75 feet above the lowest level of fire department vehicle access.[19] Currently, existing high-rise buildings are not required to comply with minimum radio strength for fire department communications and two-way radio communication enhancement systems as required by the FFPC until January 1, 2025.[20] By January 1, 2024, an existing building that is not in compliance with the requirements for minimum radio strength for fire department communications must apply to the local government agency having jurisdiction for an appropriate permit for the required system installation.[21] Such an existing building must demonstrate that the building will become compliant with the FFPC by January 1, 2025.[22]

Effect of the Bill

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[13] *Id.*

[14] *See* City of Treasure Island, Florida, *Two-Way Radio Communications Enhancement Systems Requirements* (Apr. 20, 2019), High-Rise Public Safety System Integrators (mytreasureisland.org) (last visited Jan. 29, 2022); *see also* East Lake Tarpon Special Fire Control District, *Information Bulletin: Two-Way Radio Communication Enhancement System Requirements*, Bulletin+East+Lake+Two+Way+Communications.pdf (elfr.org) (last visited Jan. 29, 2022).

[15] Florida Fire Prevention Code (7th ed. 2020) s. 11.10.1, https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-standards/free-access?mode=view (last visited Jan. 29, 2022).

[16] Florida Fire Prevention Code (7th ed. 2020) s. 11.10.2, https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-standards/free-access?mode=view (last visited Jan. 29, 2022).

[17] Florida Fire Prevention Code (7th ed. 2020) s. 11.10.3, https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-standards/free-access?mode=view (last visited Jan. 29, 2022).

[18] Ch. 2016-129, s. 27, Laws of Fla.

[19] Florida Fire Prevention Code (7th ed. 2020) s. 3.3.29.6, https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-standards/free-access?mode=view (last visited Jan. 29, 2022).

[20] S. 633.202(18), F.S. Under current law, the compliance dates for existing apartment buildings are the same as those for all other high-rise buildings.

[21] *Id.*

[22] *Id.*

The bill establishes that two-way radio communication enhancement, or equivalent, systems may be used to comply with the minimum radio signal strength requirements for fire department communications. The bill also establishes that these systems are not required in apartment buildings that are 75 feet or less in height.

B. SECTION DIRECTORY:
Section 1. Amends s. 633.202, F.S., relating to Fire Prevention Code.

Section 2. Provides and effective date of July 1, 2022.

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 has an indeterminate, but potentially positive impact on the private sector. Certain apartment buildings will be made exempt from putting in two-way radio systems and save the cost associated with putting in those systems.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

While the bill states that two-way radio communication enhancement systems are not required in buildings that are 75 feet or less in height, existing language in s. 633.202(18), F.S., reads as though all existing apartment buildings are required to comply with these requirements. It is suggested that a clarification be made to the existing language to make it clear that only apartment buildings over 75 feet in height need to comply.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to two-way radio communication enhancement systems; amending s. 633.202, F.S.; authorizing the use of two-way radio communication enhancement systems to comply with certain radio signal strength requirements in the Florida Fire Prevention Code; exempting certain apartment buildings from requiring two-way radio communication enhancement systems; providing an effective date.

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

Section 1. Subsection (18) of section 633.202, Florida Statutes, is amended to read:

633.202 Florida Fire Prevention Code.—

(18) The authority having jurisdiction shall determine the minimum radio signal strength for fire department communications in all new high-rise and existing high-rise buildings. Two-way radio communication enhancement systems or equivalent systems may be used to comply with the minimum radio signal strength requirements. However, two-way radio communication enhancement systems or equivalent systems are not required in apartment buildings that are 75 feet or less in height. Existing buildings are not required to comply with minimum radio strength for fire department communications and two-way radio communication

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

enhancement systems ~~system enhancement communications~~ as required by the Florida Fire Prevention Code until January 1, 2025. However, by January 1, 2024, an existing building that is not in compliance with the requirements for minimum radio strength for fire department communications must apply for an appropriate permit for the required installation with the local government agency having jurisdiction and must demonstrate that the building will become compliant by January 1, 2025. Existing apartment buildings are not required to comply until January 1, 2025. However, existing apartment buildings are required to apply for the appropriate permit for the required communications installation by January 1, 2024.

Section 2. This act shall take effect July 1, 2022.

INSURANCE & BANKING SUBCOMMITTEE

HB 785 by Rep. Botana
Two-way Radio Communication Enhancement Systems

AMENDMENT SUMMARY
February 2, 2022

Amendment 1 by Rep. Botana (Line 18): The amendment makes the following modifications to the bill:

- Establishes that apartment buildings that are 75 feet or less in height with exterior components constructed of wood frame are exempted from the requirement to install two-way radio communication enhancement, or equivalent, systems. The bill as filed exempted all apartment buildings that are 75 feet or less in height.
- Establishes that evidence of wood frame construction shall be shown by the property owner providing building permit documentation that confirms this type of construction.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Botana offered the following:

Amendment

Remove line 23 and insert:

buildings 75 feet or less in height with the exterior components constructed of wood frame. Evidence of wood frame construction shall be shown by the property owner providing building permit documentation which identifies the construction type as wood frame. Existing buildings

HB 837

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 837 Hurricane Loss Mitigation Program
SPONSOR(S): Willhite
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Fortenberry	Luczynski
2) Pandemics & Public Emergencies Committee			
3) Infrastructure & Tourism Appropriations Subcommittee			
4) Commerce Committee			

SUMMARY ANALYSIS

The Legislature created the Florida Hurricane Catastrophe Fund (FHCF), a tax-exempt trust fund, in 1993, in response to the problems that developed in the residential property insurance industry following property losses incurred through a serious of catastrophic events, including Hurricane Andrew in 1992. When the Internal Revenue Service issued a private letter ruling granting tax-exempt status to the FHCF, it required a certain amount of FHCF funds to be appropriated for hurricane mitigation purposes.

Since fiscal year 1997-98 and annually thereafter, Florida law directs the Legislature to appropriate from the investment income of the FHCF no less than $10 million, but no more than 35 percent, from the investment income of the FHCF from the prior fiscal year. The FHCF appropriation is for the purpose of providing funding to state agencies, local governments, public and private educational institutions, and nonprofit organizations to support programs intended to:

- Improve hurricane preparedness;
- Reduce potential losses in the event of a hurricane;
- Provide research into means to reduce such losses;
- Assist the public in determining the appropriateness of upgrades to structures or financing upgrades; or
- Protect local infrastructure from potential hurricane damage.

In 1999, the Legislature created the Hurricane Loss Mitigation Program (HLMP), The HLMP is funded by the annual appropriation of $10 million from the FHCF. The funds are to be used as follows:

- $3 million is directed towards retrofitting public facilities for use as hurricane shelters.
- $7 million is directed toward programs to improve the wind resistance of residences and mobile homes, educating persons concerning the Florida Building Code cooperative programs with local governments and the Federal Government, and other efforts to prevent or reduce losses or reduce the cost of rebuilding after a disaster. These funds are further directed as follows:
    - $2.8 million to the Mobile Home Tie-Down Program;
    - $700,000 to the Florida International University center for hurricane research; and
    - $3.5 million to the Hurricane Loss Mitigation Program Retrofit Grant for the purpose of improving community resiliency.

The bill saves the HLMP from repeal by extending the expiration date of the relevant statute to June 30, 2032. In relation to the mobile home program, the bill also removes obsolete rate standard language regarding mobile home insurance policies issued by Citizens.

The bill has no fiscal impact on the General Revenue fund. Annually, $10 million is appropriated from the FHFC to the HLMP. Should this bill become law, these funds would continue to be appropriated until June 30, 2032. The bill has an indeterminate but likely positive impact on the private sector.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Legislature created the Florida Hurricane Catastrophe Fund (FHCF), a tax-exempt trust fund, in 1993.[1] The creation of the FHCF stemmed from issues that developed in the residential property insurance market following property losses due to a series of catastrophic events, including Hurricane Andrew in 1992.[2] State actions was required to correct the inability of the private insurance and reinsurance markets to maintain sufficient capacity.[3] The FHCF is intended to provide a stable and ongoing source of reimbursement to insurers for a portion of their catastrophic hurricane losses, creating additional insurance capacity for the state.[4] The FHCF is administered by the State Board of Administration, which is governed by a three-member Board of Trustees, comprised of the Governor, who serves as the chair, the Chief Financial Officer, and the Attorney General.[5]

The Internal Revenue Service issued a private letter ruling (PLR)[6] granting tax-exempt status to the FHCF, which requires a certain amount of FHCF funds to be appropriated for hurricane mitigation purposes.[7] Annually since fiscal year 1997-98, Florida law directs the Legislature to appropriate no less than $10 million, but not more than 35 percent, from the investment income of the FHCF from the prior fiscal year.[8] The FHCF appropriation is for the purpose of providing funding for state agencies, local governments, public and private educational institutions, and nonprofit organizations to support programs intended to:

- Improve hurricane preparedness;
- Reduce potential losses in the event of a hurricane;
- Provide research into means to reduce such losses;
- Assist the public in determining the appropriateness of upgrades to structures or financing upgrades; or
- Protect local infrastructure from potential hurricane damage.[9]

In 1999,[10] the Legislature created the Hurricane Loss Mitigation Program (HLMP) within the Department of Community Affairs (DCA). The HLMP is funded by an annual appropriation of $10 million from the FHCF. The HLMP is currently located in the Division of Emergency Management (Division) as the DCA was dissolved.[11]

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[1] Ch. 93-409, Laws of Florida.
[2] *See* s. 215.555(1)(b), F.S.
[3] S. 215.555(1)(c), F.S.
[4] S. 215.555(1)(e), F.S.
[5] Ss. 215.555(3) and 215.44(1), F.S.
[6] A "private letter ruling," or PLR, is a written statement issued to a taxpayer that interprets and applies tax laws to the taxpayer's specific set of facts. A PLR is issued to establish with certainty the federal tax consequences of a particular transaction before the transaction is consummated or before the taxpayer's return is filed. A PLR is issued in response to a written request submitted by a taxpayer and is binding on the IRS if the taxpayer fully and accurately described the proposed transaction in the request and carries out the transaction as described. Internal Revenue Service, *Tax Exempt Bonds Private Letter Rulings: Some Basic Concepts*, https://www.irs.gov/tax-exempt-bonds/teb-private-letter-ruling-some-basic-concepts#:~:text=A%20private%20letter%20ruling%2C%20or,taxpayers%20or%20by%20IRS%20personnel. (last visited Jan. 21, 2022).
[7] State Board of Administration of Florida, *Florida Hurricane Catastrophe Fund Fiscal Year 2008-2009 Annual Report*, p. 16, https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/20100413_SBA_CATF_Annual_Report.pdf?ver=2016-06-08-121914-787 (last visited Feb. 26, 2021).
[8] S. 215.555(7)(c), F.S.
[9] *Id.*
[10] Ch. 99-305, Laws of Fla.
[11] S. 215.559, F.S.

Of the $10 million annually appropriated to the HLMP, $3 million is directed towards retrofitting public facilities for use as hurricane shelters. The Division must prioritize funds for projects included in the annual Shelter Retrofit Report and projects in regional planning council areas with shelter deficits.[12]

The Division's 2020 Shelter Retrofit Report indicates that significant success has been made toward reducing the deficit of safe[13] public hurricane evacuation shelter space (shelter space).[14] The combination of existing building surveys, retrofit projects, and the availability of retrofit and mitigation-related funds, as well as the application of enhanced hurricane resistance design and construction standards has increased the number of shelter spaces.[15] As of 2020, there are 1,060,767 shelter spaces.[16] Available shelter spaces were projected to increase to 1,120,174 by August 2021.[17]

The remaining $7 million of the $10 million appropriation must be used for programs that:

- Improve the wind resistance of residences and mobile homes, through loans, subsidies, grants, demonstration projects, and direct assistance;
- Educate persons concerning the Florida Building Code cooperative programs with local governments and the Federal Government; and
- Prevent or reduce losses or costs of rebuilding after a disaster.[18]

The $7 million allocated to these programs is subdivided. Forty percent ($2.8 million) is directed to the Mobile Home Tie-Down Program (MHTDP)[19], which is administered by Tallahassee Community College (TCC). The MHTDP is used to mitigate future losses for mobile homes and to provide tie-downs for mobile homes in communities throughout the state.[20]

Over the years, the MHTDP has been reviewed and audited. In 2016, the Department of Financial Services Bureau of Auditing (Bureau) audited the MHTP and determined that a contractual agreement should exist between the Division and TCC because the allocated funds are classified as "grant and aid."[21] The Bureau recommended a written agreement that incorporates the relevant statutory requirements, a clear scope of work, deliverables, monitoring, and financial consequences.[22] The Division and TCC subsequently executed a written agreement for the program that incorporated the Bureau's recommendations, including a scope of work.[23] The program's scope of work requires the mobile home tie-down improvements under this program to meet or exceed the standards established in Rules 15C-1.0101 through 15C-1.0109, F.A.C.[24] However, the program is not intended to bring an existing mobile home up to building code standards.[25]

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[12] S. 215.559(1)(b), F.S.

[13] "'Safe' is defined as meeting the intent of American Red Cross (ARC) Hurricane Evacuation Shelter Selection Standards (June 2018)." Florida Division of Emergency Management, 2020 State Retrofit Report (Nov. 2020), https://portal.floridadisaster.org/shelters/External/Current/2020%20SRR/2020%20Shelter%20Retrofit%20Report.pdf (last visited Jan. 21, 2022).

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.* As of the date of this analysis, a 2021 State Retrofit Report has not been published by the Division. Therefore, confirmation of the available increase in shelter space is currently unavailable.

[18] S. 215.559(1)(a), F.S.

[19] S. 215.555(2)(a), F.S.

[20] Florida Division of Emergency Management, *Florida Hurricane Loss Mitigation Program 2020 Annual Report* (Jan. 1, 2021), https://portal.floridadisaster.org/mitigation/HLMP/Internet%20Documents/Reports/2020%20HLMP%20Annual%20Report.pdf (last visited Jan. 21, 2022).

[21] *May 10, 2016 Letter from Department of Financial Services Bureau of Auditing to Division of Emergency Management Director Bryan Koon*, https://www.myfloridacfo.com/division/aa/Aud_Act/docs/DEM%20Report%20dtd%205-10-2016_Redacted.pdf (last visited Jan. 21, 2022).

[22] *Id.*

[23] *Id.*

[24] Department of Financial Services, *Original Contract - D9042 (executed Aug. 7, 2018)*, https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=310000&ContractId=D9042 (last visited Jan. 21, 2022).

[25] Tallahassee Community College, Mobile Home Tie-Down Program, https://www.tcc.fl.edu/about/college/administrative-services/sponsored-programs/mobile-home-tie-down-program/ (last visited Jan. 21, 2022).

In fiscal year 2020-2021, nine counties (Brevard, Charlotte, Collier, Lake, Lee, Marion, Osceola, Pinellas, Polk) benefitted from the Mobile Home Tie-Down Program. A total of 686 manufactured or mobile homes were retrofitted.[26] Currently, the program is not accepting new applications, as the waiting list exceeds five years; new applications will be accepted once the waiting list is reduced to three years.[27]

Ten percent ($700,000) of the $7 million allocated above is directed to the Florida International University (FIU) center for hurricane research.[28] During the 2020-2021 fiscal year, FIU conducted research including the following:

- Quantification of Wind Driven Rain Intrusion Through Shuttered Sliding Glass Door Systems;
- Aerodynamic Loading of Residential Buildings Subject to Experimental Downbursts and Hurricanes;
- Codification Wind-induced Loads on Irregular Shape Buildings Phase II;
- Development of Integrated Storm Tide and Freshwater Flooding Model Phase 4;
- Improving Individual Preparedness for Hurricanes; Lessons to be Learned form Longitudinal Survey Data Collected from Florida; and
- Education and Outreach Programs to Convey the Benefits of Various Hurricane Loss Mitigation Devices and Techniques.[29]

The remaining 50 percent ($3.5 million) of the $7 million allocated above is used to fund the Hurricane Loss Mitigation Program Retrofit Grant (Grant) for the purpose of improving community resiliency.[30] Funded activities include inspections, retrofits, and construction or modification of building components designed to increase a structure's ability to withstand hurricane conditions.[31]

Under this Grant, eligible applicants are nonprofit organizations, qualified for-profit organizations, and governmental entities.[32] Homeowners are not eligible, but may partner with an eligible local government.[33] In the 2020-2021 fiscal year, 13 recipients received the grant to conduct wind mitigation retrofits to homes. These recipients included:

- Calhoun County;
- Carrabelle;
- Centro Campesino;
- City of Bradenton;
- City of Deerfield Beach;
- City of Lauderdale Lakes;
- Franklin County;
- Gulf County;
- Memorial Health;
- Miami Dade Community Action & Human Services Department;
- North Lauderdale;
- Pompano Beach; and
- St. Lucie Habitat for Humanity.[34]

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[26] Florida Division of Emergency Management, *Florida Hurricane Loss Mitigation Program 2021 Annual Report* (Jan. 1, 2022). According to TCC, the number of mobile homes completed during the 2020-2021 fiscal year was significantly impacted by COVID-19.
[27] Tallahassee Community College, *supra* note 25.
[28] S. 215.559(3), F.S.
[29] Florida Division of Emergency Management, *supra* note 26.
[30] Florida Division of Emergency Management, *Hurricane Loss Mitigation Program*, https://www.floridadisaster.org/dem/mitigation/hurricane-loss-mitigation-program/ (last visited Jan. 21, 2022).
[31] *Id.*
[32] *Id.*
[33] *Id.*
[34] Florida Division of Emergency Management, *supra* note 26.

Seven additional projects were funded that did not involve residential wind retrofitting, including the following: Banyan Health, City of Edgewater, City of Flagler Beach, City of Panama City, DeSoto County Board of County Commissioners, and West Palm Beach Housing Authority.[35]

Current law requires the Division, with the exception of the hurricane research program conducted by FIU, to develop these programs in consultation with an advisory council (Council).[36] The Council also reviews and approves FIU's hurricane research work plan.[37] The Council must consist of one representative designated by each of the following:

- Chief Financial Officer;
- Florida Homebuilders Association;
- Florida Insurance Council;
- Federation of Manufactured Home Owners;
- Florida Association of Counties; and
- Florida Manufactured Housing Association.[38]

The Division is required to submit a full report and evaluation of these activities on January 1st each year.[39] The report must be submitted to the Speaker of the House of Representatives, the President of the Senate, and the Majority and Minority Leaders of the House of Representatives and the Senate.[40] The Office of Insurance Regulation (OIR) must review the report and make recommendations to the insurance industry as deemed appropriate by the OIR.[41] The recommendations may be used by insurers for potential discounts or rebates.[42]

Below are the Hurricane Loss Mitigation Program Activities for fiscal year 2020-2021:

Hurricane Loss Mitigation Program Activities for Fiscal Year 2020-2021[43]

Shelter Retrofit Program	$3,000,000
HLMP Retrofit Grant	$3,500,000
Manufactured Homes	$2,800,000
Hurricane Mitigation Research	$700,000
TOTAL	**$10,000,000**

The statute that creates the HLMP, also created the Manufactured Housing and Mobile Home Mitigation and Enhancement Program (MHMHMEP) to mitigate or enhance manufactured and mobile homes in specified areas of the state.[44] However, the MHMHMEP does not share in the $10 million appropriated from the FHCF and is not currently funded. The MHMHMEP also references an obsolete rate standard for mobile home insurance policies issued by Citizens Property Insurance Corporation.[45]

Section 215.559, F.S., relating to the Hurricane Loss Mitigation Program is scheduled to be repealed on June 30, 2022.[46]

Effect of the Bill

[35] *Id.*
[36] S. 215.559(4), F.S.
[37] S. 215.559(3), F.S.
[38] S. 215.559(4), F.S.
[39] S. 215.559(6), F.S.
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] Florida Division of Emergency Management, *supra* note 26.
[44] S. 215.559(2)(b), F.S.
[45] S. 215.559(2)(b)3., F.S.
[46] S. 215.559(7), F.S.

The bill saves the HLMP from repeal by extending the expiration date of the relevant statute to Jun 30, 2032.

In relation to the mobile home program, the bill also removes obsolete rate standard language regarding mobile home insurance policies issued by Citizens.

B. SECTION DIRECTORY:

Section 1. Amends s. 215.559, F.S., related to Hurricane Loss Mitigation Program.

Section 2. Provides that the bill is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Annually, $10 million is appropriated from the Florida Hurricane Catastrophe Fund to the Hurricane Loss Mitigation Program. Should this bill become law, these funds would continue to be appropriated until June 30, 2032.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that research and program activities conducted through the HLMP strengthen structures, educate the public, and reduce property losses, the private sector will benefit. However, the impact is indeterminate.

D. FISCAL COMMENTS:

Pursuant to the PLR, failure to spend FHCF funds on hurricane loss mitigation efforts could jeopardize the tax-exempt status of the FHCF. Additionally, current law specifies that the Legislature must appropriate no less than $10 million, but not more than 35 percent, from the investment income of the FHCF from the prior fiscal year for hurricane mitigation effort; it does not specify what occurs if the investment income from a given fiscal year is not sufficient for the Legislature to meet these requirements (i.e., if allocating $10 million would require the allocation of more than 35 percent of the FHCF's investment income for the prior fiscal year).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Hurricane Loss Mitigation Program; amending s. 215.559, F.S.; deleting construction relating to Citizens Property Insurance Corporation coverage rates; delaying the future repeal of the Hurricane Loss Mitigation Program; providing an effective date.

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

Section 1. Paragraph (b) of subsection (2) and subsection (7) of section 215.559, Florida Statutes, are amended to read:

215.559 Hurricane Loss Mitigation Program.—A Hurricane Loss Mitigation Program is established in the Division of Emergency Management.

(2)

(b)1. The Manufactured Housing and Mobile Home Mitigation and Enhancement Program is established. The program shall require the mitigation of damage to or the enhancement of homes for the areas of concern raised by the Department of Highway Safety and Motor Vehicles in the 2004-2005 Hurricane Reports on the effects of the 2004 and 2005 hurricanes on manufactured and mobile homes in this state. The mitigation or enhancement must include, but need not be limited to, problems associated with weakened trusses, studs, and other structural components caused

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

by wood rot or termite damage; site-built additions; or tie-down systems and may also address any other issues deemed appropriate by Tallahassee Community College, the Federation of Manufactured Home Owners of Florida, Inc., the Florida Manufactured Housing Association, and the Department of Highway Safety and Motor Vehicles. The program shall include an education and outreach component to ensure that owners of manufactured and mobile homes are aware of the benefits of participation.

2. The program shall be a grant program that ensures that entire manufactured home communities and mobile home parks may be improved wherever practicable. The moneys appropriated for this program shall be distributed directly to Tallahassee Community College for the uses set forth under this subsection.

3. Upon evidence of completion of the program, the Citizens Property Insurance Corporation shall grant, on a pro rata basis, actuarially reasonable discounts, credits, or other rate differentials or appropriate reductions in deductibles for the properties of owners of manufactured homes or mobile homes on which fixtures or construction techniques that have been demonstrated to reduce the amount of loss in a windstorm have been installed or implemented. The discount on the premium must be applied to subsequent renewal premium amounts. Premiums of the Citizens Property Insurance Corporation must reflect the location of the home and the fact that the home has been installed in compliance with building codes adopted after

Hurricane Andrew. ~~Rates resulting from the completion of the Manufactured Housing and Mobile Home Mitigation and Enhancement Program are not considered competitive rates for the purposes of s. 627.351(6)(d)1. and 2.~~

4. On or before January 1 of each year, Tallahassee Community College shall provide a report of activities under this subsection to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must set forth the number of homes that have taken advantage of the program, the types of enhancements and improvements made to the manufactured or mobile homes and attachments to such homes, and whether there has been an increase in availability of insurance products to owners of manufactured or mobile homes.

Tallahassee Community College shall develop the programs set forth in this subsection in consultation with the Federation of Manufactured Home Owners of Florida, Inc., the Florida Manufactured Housing Association, and the Department of Highway Safety and Motor Vehicles. The moneys appropriated for the programs set forth in this subsection shall be distributed directly to Tallahassee Community College to be used as set forth in this subsection.

(7) This section is repealed June 30, 2032 ~~2022~~.

Section 2. This act shall take effect upon becoming a law.

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

INSURANCE & BANKING SUBCOMMITTEE

HB 837 by Rep. Willhite
Hurricane Loss Mitigation Program

AMENDMENT SUMMARY
February 2, 2022

Amendment 1 by Rep. Willhite (strike-all): The strike-all amendment contains the current provisions of the bill and makes the following modifications and clarifications:

- Establishes that the funds currently appropriated for the retrofitting of hurricane shelters may also be used for construction of hurricane shelters.
- Transfers the Manufactured Housing and Mobile Home Mitigation and Enhancement Program, which includes the Mobile Home Tie-Down Program, from Tallahassee Community College to Gulf Coast State College.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___ (Y/N)
ADOPTED AS AMENDED	___ (Y/N)
ADOPTED W/O OBJECTION	___ (Y/N)
FAILED TO ADOPT	___ (Y/N)
WITHDRAWN	___ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Willhite offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (b) of subsection (1), subsection (2), and subsection (7) of section 215.559, Florida Statutes, are amended to read:

215.559 Hurricane Loss Mitigation Program.—A Hurricane Loss Mitigation Program is established in the Division of Emergency Management.

(1) The Legislature shall annually appropriate $10 million of the moneys authorized for appropriation under s. 215.555(7)(c) from the Florida Hurricane Catastrophe Fund to the

division for the purposes set forth in this section. Of the amount:

(b) Three million dollars in funds shall be used to construct or retrofit ~~existing~~ facilities used as public hurricane shelters. Each year the division shall prioritize the use of these funds for projects included in the annual report of the Shelter Development ~~Retrofit~~ Report prepared in accordance with s. 252.385(3). The division must give funding priority to projects in regional planning council regions that have shelter deficits and to projects that maximize the use of state funds.

(2)(a) Forty percent of the total appropriation in paragraph (1)(a) shall be used to inspect and improve tie-downs for mobile homes.

(b)1. The Manufactured Housing and Mobile Home Mitigation and Enhancement Program is established. The program shall require the mitigation of damage to or the enhancement of homes for the areas of concern raised by the Department of Highway Safety and Motor Vehicles in the 2004-2005 Hurricane Reports on the effects of the 2004 and 2005 hurricanes on manufactured and mobile homes in this state. The mitigation or enhancement must include, but need not be limited to, problems associated with weakened trusses, studs, and other structural components caused by wood rot or termite damage; site-built additions; or tie-down systems and may also address any other issues deemed appropriate by the Gulf Coast State College ~~Tallahassee Community College~~,

the Federation of Manufactured Home Owners of Florida, Inc., the Florida Manufactured Housing Association, and the Department of Highway Safety and Motor Vehicles. The program shall include an education and outreach component to ensure that owners of manufactured and mobile homes are aware of the benefits of participation.

2. The program shall be a grant program that ensures that entire manufactured home communities and mobile home parks may be improved wherever practicable. The moneys appropriated for this program shall be distributed directly to the Gulf Coast State College ~~Tallahassee Community College~~ for the uses set forth under this subsection.

3. Upon evidence of completion of the program, the Citizens Property Insurance Corporation shall grant, on a pro rata basis, actuarially reasonable discounts, credits, or other rate differentials or appropriate reductions in deductibles for the properties of owners of manufactured homes or mobile homes on which fixtures or construction techniques that have been demonstrated to reduce the amount of loss in a windstorm have been installed or implemented. The discount on the premium must be applied to subsequent renewal premium amounts. Premiums of the Citizens Property Insurance Corporation must reflect the location of the home and the fact that the home has been installed in compliance with building codes adopted after Hurricane Andrew. ~~Rates resulting from the completion of the~~

~~Manufactured Housing and Mobile Home Mitigation and Enhancement Program are not considered competitive rates for the purposes of s. 627.351(6)(d)1. and 2.~~

4. On or before January 1 of each year, the Gulf Coast State College ~~Tallahassee Community College~~ shall provide a report of activities under this subsection to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must set forth the number of homes that have taken advantage of the program, the types of enhancements and improvements made to the manufactured or mobile homes and attachments to such homes, and whether there has been an increase in availability of insurance products to owners of manufactured or mobile homes.

The Gulf Coast State College ~~Tallahassee Community College~~ shall develop the programs set forth in this subsection in consultation with the Federation of Manufactured Home Owners of Florida, Inc., the Florida Manufactured Housing Association, and the Department of Highway Safety and Motor Vehicles. The moneys appropriated for the programs set forth in this subsection shall be distributed directly to the Gulf Coast State College ~~Tallahassee Community College~~ to be used as set forth in this subsection.

(7) This section is repealed June 30, 2032 ~~2022~~.

T I T L E A M E N D M E N T

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to the Hurricane Loss Mitigation Program; amending s. 215.559, F.S.; revising the use of certain funds from the Florida Hurricane Catastrophe Fund to also include construction of certain facilities; revising the title of a certain annual report; revising provisions to require the Manufactured Housing and Mobile Home Mitigation and Enhancement Program to be operated by Gulf Coast State College; deleting construction related to Citizens Property Insurance Corporation coverage rates; delaying the future repeal of the Hurricane Loss Mitigation Program; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1141 Bail Bond Agents
SPONSOR(S): Plakon
TIED BILLS: **IDEN./SIM. BILLS:** SB 822

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Herendeen	Luczynski
2) State Administration & Technology Appropriations Subcommittee			
3) Judiciary Committee			
4) Commerce Committee			

SUMMARY ANALYSIS

A bail bond is a guarantee by a third-party that a defendant in a criminal case will appear in court at all scheduled proceedings. The Department of Financial Services, Division of Insurance Agent and Agency Services (DFS), issues licenses for temporary bail bond agents and bail bond agents.

A bail bond agent may execute or sign bonds, handle collateral receipts, deliver bonds to appropriate authorities, or operate an agency or branch agency at a separate location from the supervising bail bond agent, managing general agent, or the insurer that employs the bail bond agent. To be fully licensed, an applicant must complete a 120-hour basic certification course, provide proof of 1,540 hours of work under a temporary bail bond agent license, and pass a licensing exam.

A temporary bail bond agent must be accompanied by a supervising bail bond agent when apprehending, arresting, or surrendering defendants to the authorities. A person holding the temporary license must complete the required coursework and licensing exam within the four years prior to application for the temporary license, and cannot take the licensing exam unless he or she has completed 1,540 hours of supervised paid employment during a one-year period after obtaining the temporary license.

The bill eliminates the temporary bail bond license. Instead of completing a one-year apprenticeship, qualified applicants who are eligible to work in the United States and pass a criminal background check could become a bail bond agent or professional bail bond agent by completing a 120-hour basic certification course during the two years prior to application and passing a licensing exam.

The bill also increases the qualifications for a bail bond agent in charge of an agency or branch location; such person must have worked as a licensed and appointed bail bond agent during the two years prior to being designated as the agent in charge.

Additionally, the bill requires that continuing education be classroom based, elevates the punishment for assault and/or battery of a bail bond agent, and adjusts forfeiture laws to increase the amount of a bond a court returns to a bail bond agent or insurance carrier if the forfeiture of a bond is rescinded.

The bill may have an indeterminate, insignificant impact on state or local governments.

The bill has an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

A bail bond is a guarantee by a third-party that a defendant in a criminal case will appear in court at all scheduled proceedings. A bail bond agent posts a surety bond to secure the defendant's release from custody; the defendant provides money or other collateral to secure the bail bond and forfeits the premium (10 percent of the amount of bail set by the court) if he or she fails to appear in court or comply with other conditions of the bond. Bail bond agents must be licensed by DFS and appointed by insurance carriers to execute bail bonds. If a defendant fails to appear in court, the bail bond agent may apprehend and detain the defendant until the defendant is surrendered to the authorities.[1]

Bail bond agents may execute or sign bonds, handle collateral receipts, deliver bonds to appropriate authorities, or operate an agency or branch agency at a separate location from the supervising bail bond agent, managing general agent, or insurer that employs the bail bond agent.[2]

Licensure as a Bail Bond Agent

DFS issues a temporary license that is effective for 18 months and permits a licensee to work under the direct supervision of a licensed and appointed bail bond agent; a limited surety license that allows a bail bond agent to execute bail bonds; and a professional bail bond agent that allows the agent to obtain collateral from a criminal defendant in return for the execution of a bail bond with the court.

To become a temporary bail bond agent, an applicant must have completed a 120-hour basic certification course during the four years prior to application and have an offer of employment from a supervising bail bond agent. A temporary bail bond agent must be accompanied by a supervising bail bond agent when apprehending, arresting, or surrendering defendants to the authorities. After one year of work under a temporary license (which must include at least 1,540 hours of paid employment under the supervision of a supervising bail bond agent), the temporary licensee may apply for a regular bail bond agent's license and take the required licensing examination.[3]

After completing the one-year apprenticeship, a temporary licensee who passes a licensing exam and criminal background check may become a:

- Bail bond agent (also known as limited surety agent) who may execute or countersign bail bonds in connection with judicial proceedings; or
- Professional Bail Bond Agent, who may pledge U.S. currency, postal money orders, or cashier's check as security for a bail bond in connection with a judicial proceeding and receives or is promised money or things of value in return.[4]

All applicants for bail bond licenses submit fingerprints for a national criminal background check and pay an application fee. Bail bond agents may not have been convicted of a felony, must be age 18 or older, and must be eligible to work in the United States. A bail bond agent must be appointed by a licensed insurer and the insurer must report the appointment to DFS. A bail bond agent may not charge a premium other than the rate that has been approved by the Office of Insurance Regulation, and must retain records related to any bail bonds the agent has executed or countersigned for at least three years after the liability of the surety has been terminated. Additionally, bail bond agents must register with the sheriff and the clerk of the circuit court in the county where the bail bond agent resides. Bail bond agents may not solicit clients at a jail, prison, or courthouse, and may not pay fees for referrals from any person working in the law enforcement community.[5]

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[1] Ss. 648.24 and 624.26, F.S. *Also see* Department of Financial Services, Division of Consumer Services, *Bail Bonds Overview*, https://www.myfloridacfo.com/division/consumers/understandingcoverage/bailbondsoverview.htm (last visited Jan. 28, 2022).
[2] S. 648.355, F.S.
[3] *Id.* and R. 69B-221.051, F.A.C.
[4] S. 648.25, F.S.
[5] Ss. 648.355, 648.33, 648.34, 648.35, 648.36, 648.382, 648.42, and 648.44, F.S.

Effect of the Bill

The bill eliminates the requirement that a person who wishes to be licensed as a bail bond agent serve a one-year apprenticeship under a supervising bail bond agent.

To do this, the bill deletes all statutory language related to the temporary bail agent license, including the definition of a temporary bail bond agent, as well as qualifications for licensure as a temporary bail bond agent, appointment as a temporary bail bond agent, and all cross references to the term temporary bail bond agent.

Ownership of a Bail Bond Agency

The owner of a bail bond agency must be a licensed and appointed bail bond agent.[6] The owner or operator of a bail bond agency must designate a primary bail bond agent who is responsible for the overall operation and management of a bail bond agency location and file the name and license number of the primary bail bond agent and the address of the bail bond agency with DFS. A primary bail bond agent may supervise only one location, is responsible for hiring employees and may not employ or contract with any person who has been found guilty of a felony.[7]

Effect of the Bill

The bill requires that the primary bail bond agent who is designated to supervise a bail bond agency or branch location must have worked as a licensed and appointed bail bond agent during the two years prior to being designated as the agent in charge of a bail bond agency or branch location.

Continuing Education

Bail bond agents must complete at least 14 hours of continuing education every two years.[8] Schools that offer continuing education must be approved and certified by DFS, and must offer a minimum of three classroom-instruction continuing education classes per calendar year. Continuing education classes must consist of at least two hours of approved coursework and be taught by a supervising instructor who is approved by DFS.[9]

Effect of the Bill

The bill adds the words "classroom instruction" to the continuing education requirements, to ensure that bail bond agents are taking the required hours of continuing education in the presence of a supervising instructor.

Assault or Battery on Law Enforcement Officers

Florida law increases criminal penalties for assault and/or battery of the following persons, while engaged in the lawful performance of their duties: law enforcement officer, firefighter, emergency medical care provider, railroad special officer, traffic accident investigation officer, nonsworn law enforcement agency employee who is certified as an agency inspector, blood alcohol analyst, breath test operator while such employee is in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI, law enforcement explorer, traffic infraction enforcement officer, parking enforcement specialist, person licensed as a security officer and wearing a uniform that bears at least one patch or emblem that is visible at all times that clearly identifies the employing agency and that clearly identifies the person as a licensed security officer, or a security officer employed by the board of trustees of a community college.[10]

[6] S. 648.285, F.S.
[7] Ss. 648.25(6) and 648.387, F.S.
[8] S. 648.385, F.S.
[9] S. 648.386, F.S.
[10] S. 784.07(2), F.S.

The law elevates assault and/or battery upon any of the persons listed above from a second-degree to first-degree misdemeanor. Battery is elevated from a first-degree misdemeanor to a third-degree felony. Aggravated assault is elevated from a third-degree felony to a second-degree felony. And aggravated battery is elevated from a second-degree felony to a first-degree felony.[11]

Effect of the Bill

The bill adds bail bond agent to the list of persons for whom the offenses of assault and/or battery are reclassified to provide stiffer penalties.

Forfeiture of a Bail Bond

When a defendant in a criminal case who has been released on bond fails to appear in court on the required date and at the required time, the court declares any bonds or money deposited as bail forfeited.[12] If a defendant surrenders or is apprehended and surrendered to the authorities within two years of forfeiture, the court rescinds forfeiture of a bond, based on the following schedule:

- Within 90 days of forfeiture, the court rescinds up to 100 percent of the bond;
- Within 180 days of forfeiture, the court rescinds up to 95 percent of the bond;
- Within 270 days of forfeiture, the court rescinds up to 90 percent of the bond;
- Within one year of forfeiture, the court rescinds up to 85 percent of the bond; and
- Within two years of forfeiture, the court rescinds up to 50 percent of the bond.[13]

Effect of the Bill

The bill includes the death of a criminal defendant as a reason for the court to rescind the forfeiture of a bond and eliminates statutory language that provided discretion in the amount of forfeiture that must be rescinded. Under the amended schedule, if a defendant surrenders, is apprehended and surrendered to the authorities, or dies within two years of forfeiture, the court must rescind the forfeiture of a bond based on the following schedule:

- Within 90 days of forfeiture, the court rescinds 100 percent of the bond;
- Within 180 days of forfeiture, the court rescinds 95 percent of the bond;
- Within 270 days of forfeiture, the court rescinds 90 percent of the bond;
- Within one year of forfeiture, the court rescinds 85 percent of the bond; and
- Within two years of forfeiture, the court rescinds 50 percent of the bond.

Additionally, if the state is not willing to seek extradition of a defendant from any jail or prison even though the surety agent or insurer pledges to pay the costs of returning the defendant to court, the bill requires the court to rescind forfeiture of a bond.

Effective Date

The bill provides an effective date of July 1, 2022.

B. SECTION DIRECTORY:

Section 1. Amends s. 648.25, F.S., Definitions.

Section 2. Amends s. 648.27, F.S., Licenses and appointments; general.

Section 3. Amends 648.285, F.S., Bond agency; ownership requirements.

[11] *Id.*
[12] S. 903.26, F.S.
[13] S. 903.28, F.S.

Section 4. Amends s. 648.30, F.S., Licensure and appointment required; prohibited acts; penalties.

Section 5. Amends 648.31, F.S., Appointment taxes and fees.

Section 6. Amends s. 648.34, F.S., Bail bond agents; qualifications.

Section 7. Amends s. 648.355, F.S., Temporary limited license as Limited surety agent or professional bail bond agent; pending examination.

Section 8. Amend s. 648.382, F.S., Appointment of bail bond agents and temporary bail bond agents; effective date of appointment.

Section 9. Amends s. 648.386, F.S., Qualifications for prelicensing and continuing education schools and instructors.

Section 10. Creates s. 648.3875, F.S., Primary bail bond agents; qualifications.

Section 11. Amends s. 648.39, F.S., Termination of appointment of managing general agents, bail bond agents, and temporary bail bond agents.

Section 12. Repeals s. 648.41, F.S., Termination of appointment of temporary bail bond agents.

Section 13. Amends 648.42, F.S., Registration of bail bond agents.

Section 14. Amends s. 648.44, F.S., Prohibitions; penalty.

Section 15. Amends s. 648.441, F.S., Furnishing supplies to unlicensed bail bond agent prohibited; civil liability and penalty.

Section 16. Amends s. 648.50, F.S., Effect of suspension, revocation upon associated licenses and licensees.

Section 17. Amends s. 784.07, F.S., Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.

Section 18. Amends s. 843.021, F.S., Unlawful possession of a concealed handcuff key.

Section 19. Amends s. 903.28, F.S., Remission of forfeiture; conditions.

Section 20. Provides an effective date of July 1, 2022.

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 has a positive fiscal impact on bail bond agencies because the bill adds an additional reason for the court to rescind the forfeiture of a bond (death of the defendant) and eliminates discretion in the amount of a forfeited bond that must be rescinded.

D. FISCAL COMMENTS:

Changes to licensing laws related to bail bond agents and bail bond agencies would temporarily increase the administrative workload at DFS because agency rules and procedures, and accompanying forms would require revision.

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 action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires amendments to existing rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not indicate what would happen to existing temporary bail bond licenses when temporary bail bond provisions are removed from the law.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to bail bond agents; amending s. 648.285, F.S.; providing that persons who manage bail bond agencies are subject to certain requirements; revising requirements for persons who own, control, or have pecuniary interests in bail bond agencies; amending s. 648.355, F.S.; providing for licensure, rather than temporary licensure, of limited surety agents and professional bail bond agents; revising the timeframe for an applicant's completion of specified coursework before applying for licensure; amending s. 648.386, F.S.; revising criteria for approval and certification as an approved limited surety agent and professional bail bond agent continuing education school to require continuing education classes to be classroom instruction; creating s. 648.3875, F.S.; specifying requirements for applications for designation as a primary bail bond agent; specifying qualifications for primary bail bond agents; repealing s. 648.41, F.S., relating to termination of appointment of temporary bail bond agents; amending s. 648.42, F.S.; revising the entities from whom a bail bond agent must receive appointment before registering as a bail bond agent; conforming provisions to changes made by the act; amending ss. 648.25, 648.27, 648.30,

648.31, 648.34, 648.382, 648.39, 648.44, 648.441, and 648.50, F.S.; conforming provisions to changes made by the act; amending s. 784.07, F.S.; defining the term "bail bond agent"; providing penalties for the assault or battery upon a bail bond agent; amending s. 843.021, F.S.; conforming a provision to changes made by the act; revising a defense to the charge of unlawful possession of a concealed handcuff key; amending s. 903.28, F.S.; specifying procedures for remission of forfeitures of deceased defendants; revising the amounts of forfeitures that must be remitted; specifying procedures for remission of forfeitures of defendants for whom the state is unwilling to seek extradition; providing an effective date.

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

Section 1. Subsection (8) of section 648.25, Florida Statutes, is amended to read:

648.25 Definitions.—As used in this chapter, the term:

~~(8) "Temporary bail bond agent" means a person employed by a bail bond agent or agency, insurer, or managing general agent, and such licensee has the same authority as a licensed bail bond agent, including presenting defendants in court; apprehending,~~

~~arresting, and surrendering defendants to the proper authorities, while accompanied by a supervising bail bond agent or an agent from the same agency; and keeping defendants under necessary surveillance. However, a temporary licensee may not execute or sign bonds, handle collateral receipts, or deliver bonds to appropriate authorities. A temporary licensee may not operate an agency or branch agency separate from the location of the supervising bail bond agent, managing general agent, or insurer by whom the licensee is employed. This does not affect the right of a bail bond agent or insurer to hire counsel or to obtain the assistance of law enforcement officers.~~

Section 2. Subsection (5) of section 648.27, Florida Statutes, is amended to read:

648.27 Licenses and appointments; general.—

(5)~~(a)~~ The license of a bail bond agent shall continue in force, without further examination unless deemed necessary by the department, until suspended, revoked, or otherwise terminated.

~~(b) The license of a temporary bail bond agent shall continue in force until suspended, revoked, or otherwise terminated.~~

Section 3. Subsection (1) of section 648.285, Florida Statutes, is amended to read:

648.285 Bond agency; ownership requirements.—

(1) A person may not own, control, manage, or otherwise

have a pecuniary interest in a bail bond agency unless such individual is ~~a~~ licensed, ~~and~~ appointed, employed, and actively engaged as a bail bond agent for at least 24 months following the date of issuance of a license pursuant to s. 648.27. Any agency that is not in compliance with this subsection shall be subject to the issuance of an immediate final order of suspension of all operations until the agency achieves compliance.

Section 4. Subsection (1) of section 648.30, Florida Statutes, is amended to read:

648.30 Licensure and appointment required; prohibited acts; penalties.—

(1) A person may not act in the capacity of a bail bond agent ~~or temporary bail bond agent~~ or perform any of the functions, duties, or powers prescribed for bail bond agents ~~or temporary bail bond agents~~ under this chapter unless that person is qualified, licensed, and appointed as provided in this chapter.

Section 5. Section 648.31, Florida Statutes, is amended to read:

648.31 Appointment taxes and fees.—The department shall collect in advance all appointment taxes and fees for the issuance of any appointment to a bail bond agent ~~or temporary bail bond agent,~~ as provided in s. 624.501.

Section 6. Subsection (2) of section 648.34, Florida

Statutes, is amended to read:

648.34 Bail bond agents; qualifications.—

(2) To qualify as a bail bond agent, it must affirmatively appear at the time of application and throughout the period of licensure that the applicant ~~has complied with the provisions of s. 648.355 and has obtained a temporary license pursuant to such section and~~:

(a) ~~The applicant~~ Is a natural person who has reached the age of 18 years and holds a high school diploma or its equivalent.

(b) ~~The applicant~~ Is a United States citizen or legal alien who possesses work authorization from the United States Bureau of Citizenship and Immigration Services and is a resident of this state. An individual who is a resident of this state shall be deemed to meet the residence requirement of this paragraph, notwithstanding the existence, at the time of application for license, of a license in the applicant's name on the records of another state as a resident licensee of such other state, if the applicant furnishes a letter of clearance satisfactory to the department that his or her resident licenses have been canceled or changed to a nonresident basis and that he or she is in good standing.

(c) Will maintain his or her ~~The~~ place of business ~~of the applicant will be located~~ in this state and in the county where the applicant will maintain his or her records and be actively

engaged in the bail bond business and maintain an agency accessible to the public which is open for reasonable business hours.

(d) ~~The applicant~~ Is vouched for and recommended upon sworn statements filed with the department by at least three reputable citizens who are residents of the same counties in which the applicant proposes to engage in the bail bond business.

(e) ~~The applicant~~ Is a person of high character and approved integrity and has not been convicted of or pleaded guilty or no contest to a felony, a crime involving moral turpitude, or a crime punishable by imprisonment of 1 year or more under the law of any state, territory, or country, whether or not a judgment or conviction has been entered.

(f) ~~The applicant~~ Has passed any required examination.

Section 7. Section 648.355, Florida Statutes, is amended to read:

648.355 ~~Temporary limited license as~~ Limited surety agents and ~~agent or~~ professional bail bond agents ~~agent~~; qualifications ~~pending examination~~.—

(1) The department may, in its discretion, issue a ~~temporary~~ license as a limited surety agent or professional bail bond agent, subject to the following conditions:

(a) The applicant is a natural person at least 18 years of age and holds a high school diploma or its equivalent.

(b) The applicant is a United States citizen or legal alien who possesses work authorization from the United States Bureau of Citizenship and Immigration Services and is a resident of this state. An individual who is a resident of this state shall be deemed to meet the residence requirement of this paragraph, notwithstanding the existence, at the time of application for a ~~temporary~~ license, of a license in the individual's name on the records of another state as a resident licensee of such other state, if the applicant furnishes a letter of clearance satisfactory to the department that the individual's resident licenses have been canceled or changed to a nonresident basis and that the individual is in good standing.

(c) The applicant is a person of high character and approved integrity and has never been convicted of or pleaded guilty or no contest to a felony, a crime involving moral turpitude, or a crime punishable by imprisonment of 1 year or more under the law of any state, territory, or country, whether or not a judgment or conviction is entered.

(d) Within 2 ~~4~~ years before ~~prior to~~ the date of application for a ~~temporary~~ license, the applicant has successfully completed a basic certification course in the criminal justice system, consisting of not less than 120 hours of classroom instruction with a passing grade of 80 percent or higher and has successfully completed a correspondence course for bail bond agents approved by the department.

~~(c) The applicant must be employed full time at the time of licensure, and at all times throughout the existence of the temporary license, by only one licensed and appointed supervising bail bond agent, who supervises the work of the applicant and is responsible for the licensee's conduct in the bail bond business. The applicant must be appointed by the same insurers as the supervising bail bond agent. The supervising bail bond agent shall certify monthly to the department under oath, on a form prescribed by the department, the names and hours worked each week of all temporary bail bond agents. Filing a false certification is grounds for the immediate suspension of the license and imposition of a $5,000 administrative fine. The department may adopt rules that establish standards for the employment requirements.~~

(e)~~(f)~~ The application must be accompanied by an affidavit verifying proposed employment and a report as to the applicant's integrity and moral character on a form prescribed by the department and executed by the proposed employer.

(f)~~(g)~~ The applicant must file with the department statements by at least three reputable citizens who are residents of the same counties in which the applicant proposes to engage as a ~~temporary~~ licensee.

(g)~~(h)~~ The applicant's employer is responsible for the bail bonding acts of any licensee under this section.

(2) All applicable license fees, as prescribed in s.

624.501, must be paid before issuance of the ~~temporary~~ license.

~~(3) The temporary license shall be effective for 18 months, subject to earlier termination at the request of the employer or if suspended or revoked by the department.~~

(3)~~(4)~~ The applicant shall furnish, with the application for ~~temporary~~ license, a complete set of the applicant's fingerprints and a recent credential-sized, fullface photograph of the applicant. The applicant's fingerprints shall be certified by an authorized law enforcement officer. The department shall not issue a ~~temporary~~ license under this section until the department has received a report from the Department of Law Enforcement and the Federal Bureau of Investigation relative to the existence or nonexistence of a criminal history report based on the applicant's fingerprints.

(4)~~(5)~~ The department may collect a fee necessary to cover the cost of a character and credit report made by an established and reputable independent reporting service. The fee shall be deposited to the credit of the Insurance Regulatory Trust Fund.

~~(6) After licensure as a temporary licensee for at least 12 months, such licensee may file an application for and become eligible for a regular bail bond agent's license based on the licensee's experience in the bail bond business and education pursuant to paragraph (1)(d) and, if otherwise qualified, take the required bail bond agent's licensure examination. The applicant and supervising bail bond agent must each file an~~

~~affidavit under oath, on a form prescribed by the department, verifying the required employment of the temporary agent before issuance of the license.~~

~~(7) In no event shall a temporary licensee licensed under this section perform any of the functions for which a bail bond agent's license is required after expiration of the temporary license without having passed the written examination as for a regular bail bond agent's license.~~

~~(8)(a) A temporary licensee has the same authority as a licensed bail bond agent, including presenting defendants in court; apprehending, arresting, and surrendering defendants to the proper authorities; and keeping defendants under necessary surveillance. However, a temporary licensee must be accompanied by a supervising bail bond agent or an agent from the same agency when apprehending, arresting, or surrendering defendants to authorities.~~

~~(b) A temporary licensee may not execute or sign bonds, handle collateral receipts, deliver bonds to appropriate authorities, or operate an agency or branch agency separate from the location of the supervising bail bond agent, managing general agent, or insurer by whom the licensee is employed.~~

~~(9) The department shall not issue a temporary bail bond agent's license to any individual who has held such a temporary license in this state within 2 years after the expiration of such temporary bail bond agent's license.~~

Section 8. Subsections (1) through (4) of section 648.382, Florida Statutes, are amended to read:

648.382 Appointment of bail bond agents ~~and temporary bail bond agents~~; effective date of appointment.—

(1) Each insurer appointing a bail bond agent ~~and each insurer, managing general agent, or bail bond agent appointing a temporary bail bond agent~~ in this state must file the appointment with the department and, at the same time, pay the applicable appointment fees and taxes. A person appointed under this section must hold a valid bail bond agent's ~~or temporary bail bond agent's~~ license.

(2) Before ~~Prior to~~ any appointment, an appropriate officer or official of the appointing insurer ~~in the case of a bail bond agent or an insurer, managing general agent, or bail bond agent in the case of a temporary bail bond agent~~ must submit:

(a) A certified statement or affidavit to the department stating what investigation has been made concerning the proposed appointee and the proposed appointee's background and the appointing person's opinion to the best of his or her knowledge and belief as to the moral character and reputation of the proposed appointee. In lieu of such certified statement or affidavit, by authorizing the effectuation of an appointment for a licensee, the appointing entity certifies to the department that such investigation has been made and that the results of

the investigation and the appointing person's opinion is that the proposed appointee is a person of good moral character and reputation and is fit to engage in the bail bond business;

(b) An affidavit under oath on a form prescribed by the department, signed by the proposed appointee, stating that premiums are not owed to any insurer and that the appointee will discharge all outstanding forfeitures and judgments on bonds previously written. If the appointee does not satisfy or discharge such forfeitures or judgments, the former insurer shall file a notice, with supporting documents, with the appointing insurer, the former agent, and the department, stating under oath that the licensee has failed to timely satisfy forfeitures and judgments on bonds written and that the insurer has satisfied the forfeiture or judgment from its own funds. Upon receipt of such notification and supporting documents, the appointing insurer shall immediately cancel the licensee's appointment. The licensee may be reappointed only upon certification by the former insurer that all forfeitures and judgments on bonds written by the licensee have been discharged. The appointing insurer or former agent may, within 10 days, file a petition with the department seeking relief from this paragraph. Filing of the petition stays the duty of the appointing insurer to cancel the appointment until the department grants or denies the petition; and

(c) Any other information that the department reasonably

requires concerning the proposed appointee.

(3) By authorizing the effectuation of an appointment for a licensee, the appointing insurer certifies to the department that the insurer will be bound by the acts of the bail bond agent acting within the scope of his or her appointment~~, and, in the case of a temporary bail bond agent, the appointing insurer, managing general agent, or bail bond agent, as the case may be, must certify to the department that he or she will supervise the temporary bail bond agent's activities~~.

(4) Each appointing insurer or~~,~~ managing general agent~~, or bail bond agent~~ must advise the department in writing within 5 days after receiving notice or learning that an appointee has been arrested for, pled guilty or nolo contendere to, or been found guilty of, a felony or other offense punishable by imprisonment of 1 year or more under the law of any jurisdiction, whether judgment was entered or withheld by the court.

Section 9. Subsection (2) of section 648.386, Florida Statutes, is amended to read:

648.386 Qualifications for prelicensing and continuing education schools and instructors.—

(2) SCHOOLS AND CURRICULUM FOR CONTINUING EDUCATION SCHOOLS.—In order to be considered for approval and certification as an approved limited surety agent and professional bail bond agent continuing education school, such

entity must:

(a) Provide a minimum of three classroom-instruction continuing education classes per calendar year.

(b) Submit a course curriculum to the department for approval.

(c) Offer continuing education classes which are comprised of a minimum of 2 hours of approved classroom-instruction coursework and are taught by an approved supervising instructor or guest lecturer approved by the entity or the supervising instructor.

Section 10. Section 648.3875, Florida Statutes, is created to read:

648.3875 Primary bail bond agents; qualifications.—

(1) An application for designation as a primary bail bond agent must be submitted on forms prescribed by the department. The application must include the applicant's full name; date of birth; social security number; residence, business, and mailing addresses; contact telephone numbers, including a business telephone number; e-mail address; and the number and date of issuance of the applicant's license issued pursuant to s. 648.27.

(2) To qualify as a primary bail bond agent, it must affirmatively appear at the time of application and throughout the period of licensure that the applicant has complied with s. 648.285 and has been licensed and appointed for the 2 previous

years.

Section 11. Section 648.39, Florida Statutes, is amended to read:

648.39 Termination of appointment of managing general agents and~~,~~ bail bond agents~~, and temporary bail bond agents~~.—

(1) An insurer who terminates the appointment of a managing general agent or~~,~~ bail bond agent~~, or temporary bail bond agent~~ shall, within 10 days after such termination, file written notice thereof with the department together with a statement that it has given or mailed notice to the terminated agent. Such notice filed with the department must state the reasons, if any, for such termination. Information so furnished the department is confidential and exempt from ~~the provisions of~~ s. 119.07(1).

(2) Each insurer shall, within 5 days after terminating the appointment of any managing general agent or~~,~~ bail bond agent, ~~or temporary bail bond agent,~~ give written notice thereof to each clerk of the circuit court and sheriff with whom such person is registered.

(3) An insurer that terminates the appointment of a managing general agent or~~,~~ bail bond agent~~, or temporary bail bond agent~~ may authorize such person to continue to attempt the arrest and surrender of a defendant for whom a surety bond had been written by the bail bond agent before ~~prior to~~ termination and to seek discharge of forfeitures and judgments as provided

in chapter 903.

Section 12. Section 648.41, Florida Statutes, is repealed.

Section 13. Section 648.42, Florida Statutes, is amended to read:

648.42 Registration of bail bond agents.—A bail bond agent may not become a surety on an undertaking unless he or she has registered in the office of the sheriff and with the clerk of the circuit court in the county in which the bail bond agent resides. The bail bond agent may register in a like manner in any other county, and any bail bond agent shall file a certified copy of his or her appointment by power of attorney from each insurer which he or she represents as a bail bond agent with each of such officers. Registration and filing of a certified copy of renewed power of attorney shall be performed by April 1 of each odd-numbered year. The clerk of the circuit court and the sheriff shall not permit the registration of a bail bond agent unless such bail bond agent is currently licensed by the department and appointed by an insurer ~~the department~~. ~~Nothing in this section shall prevent the registration of a temporary licensee at the jail for the purposes of enabling the licensee to perform the duties under such license as set forth in this chapter.~~

Section 14. Subsections (1) and (2) and paragraphs (c) and (d) of subsection (8) of section 648.44, Florida Statutes, are amended to read:

648.44 Prohibitions; penalty.—

(1) A bail bond agent ~~or temporary bail bond agent~~ may not:

(a) Suggest or advise the employment of, or name for employment, any particular attorney to represent his or her principal.

(b) Directly or indirectly solicit business in or on the property or grounds of a jail, prison, or other place where prisoners are confined or in or on the property or grounds of any court. The term "solicitation" includes the distribution of business cards, print advertising, or other written or oral information directed to prisoners or potential indemnitors, unless a request is initiated by the prisoner or a potential indemnitor. Permissible print advertising in the jail is strictly limited to a listing in a telephone directory and the posting of the bail bond agent's or agency's name, address, and telephone number in a designated location within the jail.

(c) Initiate in-person or telephone solicitation after 9:00 p.m. or before 8:00 a.m., in the case of domestic violence cases, at the residence of the detainee or the detainee's family. Any solicitation not prohibited by this chapter must comply with the telephone solicitation requirements in ss. 501.059(2) and (4), 501.613, and 501.616(6).

(d) Wear or display any identification other than the department issued or approved license or approved department

identification, which includes a citation of the licensee's arrest powers, in or on the property or grounds of a jail, prison, or other place where prisoners are confined or in or on the property or grounds of any court.

(e) Pay a fee or rebate or give or promise anything of value to a jailer, police officer, peace officer, or committing trial court judge or any other person who has power to arrest or to hold in custody or to any public official or public employee in order to secure a settlement, compromise, remission, or reduction of the amount of any bail bond or estreatment thereof.

(f) Pay a fee or rebate or give anything of value to an attorney in a bail bond matter, except in defense of any action on a bond.

(g) Pay a fee or rebate or give or promise anything of value to the principal or anyone in his or her behalf.

(h) Participate in the capacity of an attorney at a trial or hearing of one on whose bond he or she is surety.

(i) Loiter in or about a jail, courthouse, or where prisoners are confined.

(j) Accept anything of value from a principal for providing a bail bond except the premium and transfer fee authorized by the office, except that the bail bond agent may accept collateral security or other indemnity from the principal or another person in accordance with ~~the provisions of~~ s. 648.442, together with documentary stamp taxes, if applicable.

No fees, expenses, or charges of any kind shall be permitted to be deducted from the collateral held or any return premium due, except as authorized by this chapter or rule of the department or commission. A bail bond agent may, upon written agreement with another party, receive a fee or compensation for returning to custody an individual who has fled the jurisdiction of the court or caused the forfeiture of a bond.

(k) Write more than one power of attorney per charge on a bond, except in the case of a cosurety, unless the power of attorney prohibits a cosurety.

(l) Execute a bond in this state on his or her own behalf.

(m) Execute a bond in this state if a judgment has been entered on a bond executed by the bail bond agent, which has remained unpaid for 35 days, unless the full amount of the judgment is deposited with the clerk in accordance with s. 903.27(5).

(n) Make a statement or representation to a court, unless such statement or representation is under oath. Such statement or representation may not be false, misleading, or deceptive.

(o) Attempt to collect, through threat or coercion, amounts due for the payment of any indebtedness related to the issuance of a bail bond in violation of s. 559.72.

(p) Conduct bail bond business with any person, other than the defendant, on the grounds of the jail or courthouse for the purpose of executing a bond.

(2) The following persons or classes shall not be bail bond agents~~, temporary bail bond agents,~~ or employees of a bail bond agent or a bail bond business and shall not directly or indirectly receive any benefits from the execution of any bail bond:

(a) Jailers or persons employed in any jail.

(b) Police officers or employees of any police department or law enforcement agency.

(c) Committing trial court judges, employees of a court, or employees of the clerk of any court.

(d) Sheriffs and deputy sheriffs or employees of any sheriff's department.

(e) Attorneys.

(f) Persons having the power to arrest or persons who have authority over or control of federal, state, county, or municipal prisoners.

(8)

(c) Any law enforcement agency, state attorney's office, court clerk, or insurer that is aware that a bail bond agent ~~or temporary bail bond agent~~ has been convicted of or who has pleaded guilty or no contest to a crime as described in paragraph (a) shall notify the department of this fact.

(d) Upon the filing of an information or indictment against a bail bond agent ~~or temporary bail bond agent~~, the state attorney or clerk of the circuit court shall immediately

furnish the department a certified copy of the information or indictment.

Section 15. Subsection (1) of section 648.441, Florida Statutes, is amended to read:

648.441 Furnishing supplies to unlicensed bail bond agent prohibited; civil liability and penalty.—

(1) An insurer, managing general agent, or bail bond agent~~, or temporary bail bond agent~~ appointed under this chapter may not furnish to any person any blank forms, applications, stationery, business card, or other supplies to be used in soliciting, negotiating, or effecting bail bonds until such person has received from the department a license to act as a bail bond agent and is appointed by the insurer. This section does not prohibit an unlicensed employee, under the direct supervision and control of a licensed and appointed bail bond agent, from possessing or executing in the bail bond agency, any forms, except for powers of attorney, bond forms, and collateral receipts, while acting within the scope of his or her employment.

Section 16. Section 648.50, Florida Statutes, is amended to read:

648.50 Effect of suspension, revocation upon associated licenses and licensees.—

(1) Upon the suspension, revocation, or refusal to renew or continue any license or appointment or the eligibility to

hold a license or appointment of a bail bond agent ~~or temporary bail bond agent~~, the department shall at the same time likewise suspend or revoke all other licenses or appointments and the eligibility to hold any other such licenses or appointments which may be held by the licensee under the Florida Insurance Code.

(2) In case of the suspension or revocation of the license or appointment, or the eligibility to hold a license or appointment, of any bail bond agent, the license, appointment, or eligibility of any and all bail bond agents who are members of a bail bond agency, whether incorporated or unincorporated, ~~and any and all temporary bail bond agents employed by such bail bond agency,~~ who knowingly are parties to the act which formed the ground for the suspension or revocation may likewise be suspended or revoked.

(3) No person whose license as a bail bond agent ~~or temporary bail bond agent~~ has been revoked or suspended shall be employed by any bail bond agent, have any ownership interest in any business involving bail bonds, or have any financial interest of any type in any bail bond business during the period of revocation or suspension.

Section 17. Present paragraphs (a) through (f) of subsection (1) of section 784.07, Florida Statutes, are redesignated as paragraphs (b) through (g), respectively, a new paragraph (a) is added to that subsection, and subsection (2) of

that section is amended, to read:

784.07 Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.—

(1) As used in this section, the term:

(a) "Bail bond agent" means any individual appointed by an insurer by power of attorney to execute or countersign bail bonds in connection with judicial proceedings and who receives or is promised money or other things of value for such duties or any person licensed pursuant to s. 648.27.

(2) Whenever any person is charged with knowingly committing an assault or battery upon a law enforcement officer, a firefighter, an emergency medical care provider, a bail bond agent, a railroad special officer, a traffic accident investigation officer as described in s. 316.640, a nonsworn law enforcement agency employee who is certified as an agency inspector, a blood alcohol analyst, or a breath test operator while such employee is in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI, a law enforcement explorer, a traffic infraction enforcement officer as described in s. 316.640, a parking enforcement specialist as defined in s. 316.640, a person licensed as a security officer as defined in s. 493.6101 and wearing a uniform that bears at least one patch

or emblem that is visible at all times that clearly identifies the employing agency and that clearly identifies the person as a licensed security officer, or a security officer employed by the board of trustees of a community college, while the officer, firefighter, emergency medical care provider, bail bond agent, railroad special officer, traffic accident investigation officer, traffic infraction enforcement officer, inspector, analyst, operator, law enforcement explorer, parking enforcement specialist, public transit employee or agent, or security officer is engaged in the lawful performance of his or her duties, the offense for which the person is charged shall be reclassified as follows:

(a) In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.

(b) In the case of battery, from a misdemeanor of the first degree to a felony of the third degree. Notwithstanding any other provision of law, a person convicted of battery upon a law enforcement officer committed in furtherance of a riot or an aggravated riot prohibited under s. 870.01 shall be sentenced to a minimum term of imprisonment of 6 months.

(c) In the case of aggravated assault, from a felony of the third degree to a felony of the second degree. Notwithstanding any other provision of law, any person convicted of aggravated assault upon a law enforcement officer shall be sentenced to a minimum term of imprisonment of 3 years.

(d) In the case of aggravated battery, from a felony of the second degree to a felony of the first degree. Notwithstanding any other provision of law, any person convicted of aggravated battery of a law enforcement officer shall be sentenced to a minimum term of imprisonment of 5 years.

Section 18. Paragraph (a) of subsection (4) of section 843.021, Florida Statutes, is amended to read:

843.021 Unlawful possession of a concealed handcuff key.—

(4)(a) It is a defense to a charge of violating this section that the person in custody and in possession of a concealed handcuff key is:

1. A federal, state, or local law enforcement officer, including a reserve or auxiliary officer, a licensed security officer, or a private investigator as defined in s. 493.6101; or

2. A professional bail bond agent~~, temporary bail bond agent, runner,~~ or limited surety agent as defined in s. 648.25.

Section 19. Section 903.28, Florida Statutes, is amended to read:

903.28 Remission of forfeiture; conditions.—

(1) On application within 2 years from forfeiture, the court shall order remission of the forfeiture if it determines that there was no breach of the bond.

(2) If the defendant surrenders or is apprehended or deceased within 90 days after forfeiture, the court, on motion at a hearing upon notice having been given to the clerk of the

circuit court and the state attorney as required in subsection (9) ~~(8)~~, shall direct remission of ~~up to, but not more than,~~ 100 percent of a forfeiture if the surety apprehended and surrendered the defendant or if the apprehension or surrender of the defendant was substantially procured or caused by the surety~~, or~~ the surety has substantially attempted to procure or cause the apprehension or surrender of the defendant, and the delay has not thwarted the proper prosecution of the defendant; or the defendant is deceased. In addition, remission shall be granted when the surety did not substantially participate or attempt to participate in the apprehension or surrender of the defendant when the costs of returning the defendant to the jurisdiction of the court have been deducted from the remission and when the delay has not thwarted the proper prosecution of the defendant.

(3) If the defendant surrenders or is apprehended or deceased within 180 days after forfeiture, the court, on motion at a hearing upon notice having been given to the clerk of the circuit court and the state attorney as required in subsection (9) ~~(8)~~, shall direct remission of ~~up to, but not more than,~~ 95 percent of a forfeiture if the surety apprehended and surrendered the defendant or if the apprehension or surrender of the defendant was substantially procured or caused by the surety~~, or~~ the surety has substantially attempted to procure or cause the apprehension or surrender of the defendant, and the

delay has not thwarted the proper prosecution of the defendant; or the defendant is deceased. In addition, remission shall be granted when the surety did not substantially participate or attempt to participate in the apprehension or surrender of the defendant when the costs of returning the defendant to the jurisdiction of the court have been deducted from the remission and when the delay has not thwarted the proper prosecution of the defendant.

(4) If the defendant surrenders or is apprehended or deceased within 270 days after forfeiture, the court, on motion at a hearing upon notice having been given to the clerk of the circuit court and the state attorney as required in subsection (9) ~~(8)~~, shall direct remission of ~~up to, but not more than,~~ 90 percent of a forfeiture if the surety apprehended and surrendered the defendant or if the apprehension or surrender of the defendant was substantially procured or caused by the surety;~~, or~~ the surety has substantially attempted to procure or cause the apprehension or surrender of the defendant, and the delay has not thwarted the proper prosecution of the defendant; or the defendant is deceased. In addition, remission shall be granted when the surety did not substantially participate or attempt to participate in the apprehension or surrender of the defendant when the costs of returning the defendant to the jurisdiction of the court have been deducted from the remission and when the delay has not thwarted the proper prosecution of

the defendant.

(5) If the defendant surrenders or is apprehended or deceased within 1 year after forfeiture, the court, on motion at a hearing upon notice having been given to the clerk of the circuit court and the state attorney as required in subsection (9) ~~(8)~~, shall direct remission of ~~up to, but not more than,~~ 85 percent of a forfeiture if the surety apprehended and surrendered the defendant or if the apprehension or surrender of the defendant was substantially procured or caused by the surety;~~, or~~ the surety has substantially attempted to procure or cause the apprehension or surrender of the defendant, and the delay has not thwarted the proper prosecution of the defendant; or the defendant is deceased. In addition, remission shall be granted when the surety did not substantially participate or attempt to participate in the apprehension or surrender of the defendant when the costs of returning the defendant to the jurisdiction of the court have been deducted from the remission and when the delay has not thwarted the proper prosecution of the defendant.

(6) If the defendant surrenders or is apprehended or deceased within 2 years after forfeiture, the court, on motion at a hearing upon notice having been given to the clerk of the circuit court and the state attorney as required in subsection (9) ~~(8)~~, shall direct remission of ~~up to, but not more than,~~ 50 percent of a forfeiture if the surety apprehended and

surrendered the defendant or if the apprehension or surrender of the defendant was substantially procured or caused by the surety;~~, or~~ the surety has substantially attempted to procure or cause the apprehension or surrender of the defendant, and the delay has not thwarted the proper prosecution of the defendant; or the defendant is deceased. In addition, remission shall be granted when the surety did not substantially participate or attempt to participate in the apprehension or surrender of the defendant when the costs of returning the defendant to the jurisdiction of the court have been deducted from the remission and when the delay has not thwarted the proper prosecution of the defendant.

(7) For a period of 2 years after the date of forfeiture, if the state is unwilling to seek extradition of the defendant from any jail or prison after a request by the surety agent or the surety company, and contingent upon the surety agent or surety company consenting to pay all costs incurred by an official in returning the defendant to the jurisdiction of the court, up to the penal amount of the bond, the court shall direct remission of 100 percent of the forfeiture.

(8) The remission of a forfeiture may not be ordered for any reason other than as specified herein.

(9)~~(8)~~ An application for remission must be accompanied by affidavits setting forth the facts on which it is founded; however, the surety must establish by further documentation or

other evidence any claimed attempt at procuring or causing the apprehension or surrender of the defendant before the court may order remission based upon an attempt to procure or cause such apprehension or surrender. The clerk of the circuit court and the state attorney must be given 20 days' notice before a hearing on an application and be furnished copies of all papers, applications, and affidavits. Remission shall be granted on the condition of payment of costs, unless the ground for remission is that there was no breach of the bond.

(10) ~~(9)~~ The clerk of the circuit court may enter into a contract with a private attorney or into an interagency agreement with a governmental agency to represent the clerk of the court in an action for the remission of a forfeiture under this section.

(11) ~~(10)~~ The clerk of the circuit court is the real party in interest for all appeals arising from an action for the remission of a forfeiture under this section.

Section 20. This act shall take effect July 1, 2022.

INSURANCE & BANKING SUBCOMMITTEE

HB 1141 by Rep. Plakon
Bail Bond Agents

AMENDMENT SUMMARY
February 2, 2022

Amendment 1 by Rep. Plakon (Line 336): The amendment:

- Amends continuing education requirements for bail bond agents, to permit courses that are delivered by a live instructor through video, webcast, or other virtual means.
- Amends the definition of "bail bond agent" in ch. 794, F.S., to correspond with the definition in the Insurance Code.
- Makes technical changes to laws that govern investigations and disciplinary actions against licensees.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Plakon offered the following:

Amendment (with title amendment)

Remove lines 141-605 and insert:

Section 7. Section 648.355, Florida Statutes, is amended to read:

648.355 ~~Temporary limited license as~~ Limited surety agents and ~~agent or~~ professional bail bond agents ~~agent~~; qualifications ~~pending examination~~.—

(1) The department may, in its discretion, issue a ~~temporary~~ license as a limited surety agent or professional bail bond agent, subject to the following conditions:

(a) The applicant is a natural person at least 18 years of age and holds a high school diploma or its equivalent.

(b) The applicant is a United States citizen or legal alien who possesses work authorization from the United States Bureau of Citizenship and Immigration Services and is a resident of this state. An individual who is a resident of this state shall be deemed to meet the residence requirement of this paragraph, notwithstanding the existence, at the time of application for a ~~temporary~~ license, of a license in the individual's name on the records of another state as a resident licensee of such other state, if the applicant furnishes a letter of clearance satisfactory to the department that the individual's resident licenses have been canceled or changed to a nonresident basis and that the individual is in good standing.

(c) The applicant is a person of high character and approved integrity and has never been convicted of or pleaded guilty or no contest to a felony, a crime involving moral turpitude, or a crime punishable by imprisonment of 1 year or more under the law of any state, territory, or country, whether or not a judgment or conviction is entered.

(d) Within 2 ~~4~~ years before ~~prior to~~ the date of application for a ~~temporary~~ license, the applicant has successfully completed a basic certification course in the criminal justice system, consisting of not less than 120 hours of classroom instruction with a passing grade of 80 percent or higher and has successfully completed a correspondence course for bail bond agents approved by the department.

~~(c) The applicant must be employed full time at the time of licensure, and at all times throughout the existence of the temporary license, by only one licensed and appointed supervising bail bond agent, who supervises the work of the applicant and is responsible for the licensee's conduct in the bail bond business. The applicant must be appointed by the same insurers as the supervising bail bond agent. The supervising bail bond agent shall certify monthly to the department under oath, on a form prescribed by the department, the names and hours worked each week of all temporary bail bond agents. Filing a false certification is grounds for the immediate suspension of the license and imposition of a $5,000 administrative fine. The department may adopt rules that establish standards for the employment requirements.~~

(e)~~(f)~~ The application must be accompanied by an affidavit verifying proposed employment and a report as to the applicant's integrity and moral character on a form prescribed by the department and executed by the proposed employer.

(f)~~(g)~~ The applicant must file with the department statements by at least three reputable citizens who are residents of the same counties in which the applicant proposes to engage as a ~~temporary~~ licensee.

(g)~~(h)~~ The applicant's employer is responsible for the bail bonding acts of any licensee under this section.

(2) All applicable license fees, as prescribed in s. 624.501, must be paid before issuance of the ~~temporary~~ license.

~~(3) The temporary license shall be effective for 18 months, subject to earlier termination at the request of the employer or if suspended or revoked by the department.~~

(3)~~(4)~~ The applicant shall furnish, with the application for ~~temporary~~ license, a complete set of the applicant's fingerprints and a recent credential-sized, fullface photograph of the applicant. The applicant's fingerprints shall be certified by an authorized law enforcement officer. The department shall not issue a ~~temporary~~ license under this section until the department has received a report from the Department of Law Enforcement and the Federal Bureau of Investigation relative to the existence or nonexistence of a criminal history report based on the applicant's fingerprints.

(4) ~~(5)~~ The department may collect a fee necessary to cover the cost of a character and credit report made by an established and reputable independent reporting service. The fee shall be deposited to the credit of the Insurance Regulatory Trust Fund.

(5) ~~(6) After licensure as a temporary licensee for at least 12 months, such licensee may file an application for and become eligible for a regular bail bond agent's license based on the licensee's experience in the bail bond business and education pursuant to paragraph (1)(d) and, if otherwise qualified, take the required bail bond agent's licensure~~

~~examination. The applicant and supervising bail bond agent must each file an affidavit under oath, on a form prescribed by the department, verifying the required employment of the temporary agent before issuance of the license.~~ Effective July 1, 2022, any person licensed by the department as a temporary bail bond agent may take the required bail bond agent's licensure examination and may file an application for a regular bail bond agent's license, if otherwise qualified for licensure.

~~(7) In no event shall a temporary licensee licensed under this section perform any of the functions for which a bail bond agent's license is required after expiration of the temporary license without having passed the written examination as for a regular bail bond agent's license.~~

~~(8)(a) A temporary licensee has the same authority as a licensed bail bond agent, including presenting defendants in court; apprehending, arresting, and surrendering defendants to the proper authorities; and keeping defendants under necessary surveillance. However, a temporary licensee must be accompanied by a supervising bail bond agent or an agent from the same agency when apprehending, arresting, or surrendering defendants to authorities.~~

~~(b) A temporary licensee may not execute or sign bonds, handle collateral receipts, deliver bonds to appropriate authorities, or operate an agency or branch agency separate from~~

~~the location of the supervising bail bond agent, managing general agent, or insurer by whom the licensee is employed.~~

(6) ~~(9)The department shall not issue a temporary bail bond agent's license to any individual who has held such a temporary license in this state within 2 years after the expiration of such temporary bail bond agent's license.~~ Effective July 1, 2022, the department shall not issue a temporary bail bond agent's license to any individual. Any individual currently licensed as a temporary bail bond agent may continue to be licensed in accordance with this law. If such temporary bail bond agent license expires or is terminated, suspended, or revoked, it may not be reinstated.

Section 8. Subsections (1) through (4) of section 648.382, Florida Statutes, are amended to read:

648.382 Appointment of bail bond agents ~~and temporary bail bond agents~~; effective date of appointment.—

(1) Each insurer appointing a bail bond agent ~~and each insurer, managing general agent, or bail bond agent appointing a temporary bail bond agent~~ in this state must file the appointment with the department and, at the same time, pay the applicable appointment fees and taxes. A person appointed under this section must hold a valid bail bond agent's ~~or temporary bail bond agent's~~ license.

(2) Before ~~Prior to~~ any appointment, an appropriate officer or official of the appointing insurer ~~in the case of a~~

~~bail bond agent or an insurer, managing general agent, or bail bond agent in the case of a temporary bail bond agent~~ must submit:

(a) A certified statement or affidavit to the department stating what investigation has been made concerning the proposed appointee and the proposed appointee's background and the appointing person's opinion to the best of his or her knowledge and belief as to the moral character and reputation of the proposed appointee. In lieu of such certified statement or affidavit, by authorizing the effectuation of an appointment for a licensee, the appointing entity certifies to the department that such investigation has been made and that the results of the investigation and the appointing person's opinion is that the proposed appointee is a person of good moral character and reputation and is fit to engage in the bail bond business;

(b) An affidavit under oath on a form prescribed by the department, signed by the proposed appointee, stating that premiums are not owed to any insurer and that the appointee will discharge all outstanding forfeitures and judgments on bonds previously written. If the appointee does not satisfy or discharge such forfeitures or judgments, the former insurer shall file a notice, with supporting documents, with the appointing insurer, the former agent, and the department, stating under oath that the licensee has failed to timely satisfy forfeitures and judgments on bonds written and that the

insurer has satisfied the forfeiture or judgment from its own funds. Upon receipt of such notification and supporting documents, the appointing insurer shall immediately cancel the licensee's appointment. The licensee may be reappointed only upon certification by the former insurer that all forfeitures and judgments on bonds written by the licensee have been discharged. The appointing insurer or former agent may, within 10 days, file a petition with the department seeking relief from this paragraph. Filing of the petition stays the duty of the appointing insurer to cancel the appointment until the department grants or denies the petition; and

(c) Any other information that the department reasonably requires concerning the proposed appointee.

(3) By authorizing the effectuation of an appointment for a licensee, the appointing insurer certifies to the department that the insurer will be bound by the acts of the bail bond agent acting within the scope of his or her appointment~~, and, in the case of a temporary bail bond agent, the appointing insurer, managing general agent, or bail bond agent, as the case may be, must certify to the department that he or she will supervise the temporary bail bond agent's activities~~.

(4) Each appointing insurer or~~,~~ managing general agent~~, or bail bond agent~~ must advise the department in writing within 5 days after receiving notice or learning that an appointee has been arrested for, pled guilty or nolo contendere to, or been

found guilty of, a felony or other offense punishable by imprisonment of 1 year or more under the law of any jurisdiction, whether judgment was entered or withheld by the court.

Section 9. Subsection (2) of section 648.386, Florida Statutes, is amended to read:

648.386 Qualifications for prelicensing and continuing education schools and instructors.—

(2) SCHOOLS AND CURRICULUM FOR CONTINUING EDUCATION SCHOOLS.—In order to be considered for approval and certification as an approved limited surety agent and professional bail bond agent continuing education school, such entity must:

(a) Provide a minimum of three classroom-instruction continuing education classes per calendar year.

(b) Submit a course curriculum to the department for approval.

(c) Offer continuing education classes which are comprised of a minimum of 2 hours of approved classroom-instruction coursework and are taught by an approved supervising instructor or guest lecturer approved by the entity or the supervising instructor.

(d) For purposes of this section, the term "classroom instruction" means a course designed to be presented to a group

of students by a live instructor using lecture, video, webcast, virtual, or other audio-video presentation.

Section 10. Section 648.3875, Florida Statutes, is created to read:

648.3875 Primary bail bond agents; qualifications.—

(1) An application for designation as a primary bail bond agent must be submitted on forms prescribed by the department. The application must include the applicant's full name; and the number and date of issuance of the applicant's license issued pursuant to s. 648.27.

(2) To qualify as a primary bail bond agent, it must affirmatively appear at the time of application and throughout the period of licensure that the applicant has complied with s. 648.285 and has been licensed as a bail bond agent for the 24 months immediately preceding the appointment as a primary bail bond agent.

Section 11. Section 648.39, Florida Statutes, is amended to read:

648.39 Termination of appointment of managing general agents and~~,~~ bail bond agents~~, and temporary bail bond agents~~.—

(1) An insurer who terminates the appointment of a managing general agent or~~,~~ bail bond agent~~, or temporary bail bond agent~~ shall, within 10 days after such termination, file written notice thereof with the department together with a statement that it has given or mailed notice to the terminated

agent. Such notice filed with the department must state the reasons, if any, for such termination. Information so furnished the department is confidential and exempt from ~~the provisions of~~ s. 119.07(1).

(2) Each insurer shall, within 5 days after terminating the appointment of any managing general agent or~~,~~ bail bond agent, ~~or temporary bail bond agent,~~ give written notice thereof to each clerk of the circuit court and sheriff with whom such person is registered.

(3) An insurer that terminates the appointment of a managing general agent or~~,~~ bail bond agent~~, or temporary bail bond agent~~ may authorize such person to continue to attempt the arrest and surrender of a defendant for whom a surety bond had been written by the bail bond agent before ~~prior to~~ termination and to seek discharge of forfeitures and judgments as provided in chapter 903.

Section 12. Section 648.41, Florida Statutes, is repealed.

Section 13. Section 648.42, Florida Statutes, is amended to read:

648.42 Registration of bail bond agents.—A bail bond agent may not become a surety on an undertaking unless he or she has registered in the office of the sheriff and with the clerk of the circuit court in the county in which the bail bond agent resides. The bail bond agent may register in a like manner in any other county, and any bail bond agent shall file a certified

copy of his or her appointment by power of attorney from each insurer which he or she represents as a bail bond agent with each of such officers. Registration and filing of a certified copy of renewed power of attorney shall be performed by April 1 of each odd-numbered year. The clerk of the circuit court and the sheriff shall not permit the registration of a bail bond agent unless such bail bond agent is currently licensed by the department and appointed by an insurer ~~the department~~. ~~Nothing in this section shall prevent the registration of a temporary licensee at the jail for the purposes of enabling the licensee to perform the duties under such license as set forth in this chapter.~~

Section 14. Subsections (1) and (2) and paragraphs (c) and (d) of subsection (8) of section 648.44, Florida Statutes, are amended to read:

648.44 Prohibitions; penalty.—

(1) A bail bond agent ~~or temporary bail bond agent~~ may not:

(a) Suggest or advise the employment of, or name for employment, any particular attorney to represent his or her principal.

(b) Directly or indirectly solicit business in or on the property or grounds of a jail, prison, or other place where prisoners are confined or in or on the property or grounds of any court. The term "solicitation" includes the distribution of

business cards, print advertising, or other written or oral information directed to prisoners or potential indemnitors, unless a request is initiated by the prisoner or a potential indemnitor. Permissible print advertising in the jail is strictly limited to a listing in a telephone directory and the posting of the bail bond agent's or agency's name, address, and telephone number in a designated location within the jail.

(c) Initiate in-person or telephone solicitation after 9:00 p.m. or before 8:00 a.m., in the case of domestic violence cases, at the residence of the detainee or the detainee's family. Any solicitation not prohibited by this chapter must comply with the telephone solicitation requirements in ss. 501.059(2) and (4), 501.613, and 501.616(6).

(d) Wear or display any identification other than the department issued or approved license or approved department identification, which includes a citation of the licensee's arrest powers, in or on the property or grounds of a jail, prison, or other place where prisoners are confined or in or on the property or grounds of any court.

(e) Pay a fee or rebate or give or promise anything of value to a jailer, police officer, peace officer, or committing trial court judge or any other person who has power to arrest or to hold in custody or to any public official or public employee in order to secure a settlement, compromise, remission, or reduction of the amount of any bail bond or estreatment thereof.

(f) Pay a fee or rebate or give anything of value to an attorney in a bail bond matter, except in defense of any action on a bond.

(g) Pay a fee or rebate or give or promise anything of value to the principal or anyone in his or her behalf.

(h) Participate in the capacity of an attorney at a trial or hearing of one on whose bond he or she is surety.

(i) Loiter in or about a jail, courthouse, or where prisoners are confined.

(j) Accept anything of value from a principal for providing a bail bond except the premium and transfer fee authorized by the office, except that the bail bond agent may accept collateral security or other indemnity from the principal or another person in accordance with ~~the provisions of~~ s. 648.442, together with documentary stamp taxes, if applicable. No fees, expenses, or charges of any kind shall be permitted to be deducted from the collateral held or any return premium due, except as authorized by this chapter or rule of the department or commission. A bail bond agent may, upon written agreement with another party, receive a fee or compensation for returning to custody an individual who has fled the jurisdiction of the court or caused the forfeiture of a bond.

(k) Write more than one power of attorney per charge on a bond, except in the case of a cosurety, unless the power of attorney prohibits a cosurety.

(l) Execute a bond in this state on his or her own behalf.

(m) Execute a bond in this state if a judgment has been entered on a bond executed by the bail bond agent, which has remained unpaid for 35 days, unless the full amount of the judgment is deposited with the clerk in accordance with s. 903.27(5).

(n) Make a statement or representation to a court, unless such statement or representation is under oath. Such statement or representation may not be false, misleading, or deceptive.

(o) Attempt to collect, through threat or coercion, amounts due for the payment of any indebtedness related to the issuance of a bail bond in violation of s. 559.72.

(p) Conduct bail bond business with any person, other than the defendant, on the grounds of the jail or courthouse for the purpose of executing a bond.

(2) The following persons or classes shall not be bail bond agents~~, temporary bail bond agents,~~ or employees of a bail bond agent or a bail bond business and shall not directly or indirectly receive any benefits from the execution of any bail bond:

(a) Jailers or persons employed in any jail.

(b) Police officers or employees of any police department or law enforcement agency.

(c) Committing trial court judges, employees of a court, or employees of the clerk of any court.

(d) Sheriffs and deputy sheriffs or employees of any sheriff's department.

(e) Attorneys.

(f) Persons having the power to arrest or persons who have authority over or control of federal, state, county, or municipal prisoners.

(8)

(c) Any law enforcement agency, state attorney's office, court clerk, or insurer that is aware that a bail bond agent ~~or temporary bail bond agent~~ has been convicted of or who has pleaded guilty or no contest to a crime as described in paragraph (a) shall notify the department of this fact.

(d) Upon the filing of an information or indictment against a bail bond agent ~~or temporary bail bond agent~~, the state attorney or clerk of the circuit court shall immediately furnish the department a certified copy of the information or indictment.

Section 15. Subsection (1) of section 648.441, Florida Statutes, is amended to read:

648.441 Furnishing supplies to unlicensed bail bond agent prohibited; civil liability and penalty.—

(1) An insurer, managing general agent, <u>or</u> bail bond agent~~, or temporary bail bond agent~~ appointed under this chapter may not furnish to any person any blank forms, applications, stationery, business card, or other supplies to be used in

soliciting, negotiating, or effecting bail bonds until such person has received from the department a license to act as a bail bond agent and is appointed by the insurer. This section does not prohibit an unlicensed employee, under the direct supervision and control of a licensed and appointed bail bond agent, from possessing or executing in the bail bond agency, any forms, except for powers of attorney, bond forms, and collateral receipts, while acting within the scope of his or her employment.

Section 16. Section 648.50, Florida Statutes, is amended to read:

648.50 Effect of suspension, revocation upon associated licenses and licensees.—

(1) Upon the suspension, revocation, or refusal to renew or continue any license or appointment or the eligibility to hold a license or appointment of a bail bond agent ~~or temporary bail bond agent~~, the department shall at the same time likewise suspend or revoke all other licenses or appointments and the eligibility to hold any other such licenses or appointments which may be held by the licensee under the Florida Insurance Code.

(2) In case of the suspension or revocation of the license or appointment, or the eligibility to hold a license or appointment, of any bail bond agent, the license, appointment, or eligibility of any and all bail bond agents who are members

of a bail bond agency, whether incorporated or unincorporated, ~~and any and all temporary bail bond agents employed by such bail bond agency,~~ who knowingly are parties to the act which formed the ground for the suspension or revocation may likewise be suspended or revoked.

(3) No person whose license as a bail bond agent ~~or temporary bail bond agent~~ has been revoked or suspended shall be employed by any bail bond agent, have any ownership interest in any business involving bail bonds, or have any financial interest of any type in any bail bond business during the period of revocation or suspension.

Section 17. Present paragraphs (a) through (f) of subsection (1) of section 784.07, Florida Statutes, are redesignated as paragraphs (b) through (g), respectively, a new paragraph (a) is added to that subsection, and subsection (2) of that section is amended, to read:

784.07 Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.—

(1) As used in this section, the term:

(a) "Bail bond agent" means an individual licensed under chapter 648 in good standing, a professional bail bond agent as defined in s. 648.25 in good standing, or an individual licensed as a bail bond agent in another state in good standing.

(2) Whenever any person is charged with knowingly committing an assault or battery upon a law enforcement officer, a firefighter, an emergency medical care provider, a railroad special officer, a traffic accident investigation officer as described in s. 316.640, a nonsworn law enforcement agency employee who is certified as an agency inspector, a blood alcohol analyst, or a breath test operator while such employee is in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI, a law enforcement explorer, a traffic infraction enforcement officer as described in s. 316.640, a parking enforcement specialist as defined in s. 316.640, a person licensed as a security officer as defined in s. 493.6101 and wearing a uniform that bears at least one patch or emblem that is visible at all times that clearly identifies the employing agency and that clearly identifies the person as a licensed security officer, or a security officer employed by the board of trustees of a community college, while the officer, firefighter, emergency medical care provider, railroad special officer, traffic accident investigation officer, traffic infraction enforcement officer, inspector, analyst, operator, law enforcement explorer, parking enforcement specialist, public transit employee or agent, or security officer is engaged in the lawful performance of his or her duties, the offense for which the person is charged shall be reclassified as follows:

(a) In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.

(b) In the case of battery, from a misdemeanor of the first degree to a felony of the third degree. Notwithstanding any other provision of law, a person convicted of battery upon a law enforcement officer committed in furtherance of a riot or an aggravated riot prohibited under s. 870.01 shall be sentenced to a minimum term of imprisonment of 6 months.

(c) In the case of aggravated assault, from a felony of the third degree to a felony of the second degree. Notwithstanding any other provision of law, any person convicted of aggravated assault upon a law enforcement officer shall be sentenced to a minimum term of imprisonment of 3 years.

(d) In the case of aggravated battery, from a felony of the second degree to a felony of the first degree. Notwithstanding any other provision of law, any person convicted of aggravated battery of a law enforcement officer shall be sentenced to a minimum term of imprisonment of 5 years.

Section 18. Subsection (3) of Section 648.26, Florida Statutes, is amended to read:

648.26 Department of Financial Services; administration.—

(3) The papers, documents, reports, or any other investigatory records of the department are confidential and exempt from the provisions of s. 119.07(1) until such investigation is completed or ceases to be active. For the

purpose of this section, an investigation is considered "active" while the investigation is being conducted by the department with a reasonable, good faith belief that it may lead to the filing of administrative, civil, or criminal proceedings. An investigation does not cease to be active if the department is proceeding with reasonable dispatch and there is good faith belief that action may be initiated by the department or other administrative or law enforcement agency. <u>This subsection does not prevent the department or office from disclosing the complaint or such information as it deems necessary to conduct the investigation, to update the complainant as to the status and outcome of the complaint, or to share such information with any law enforcement agency or other regulatory body.</u>

Section 19. Subsection (3) of Section 648.46, Florida Statutes, is amended to read:

648.46 Procedure for disciplinary action against licensees.—

(3) The complaint and all information obtained pursuant to the investigation of the department are confidential and exempt from the provisions of s. 119.07(1) until such investigation is completed or ceases to be active. For the purpose of this section, an investigation is considered "active" while the investigation is being conducted by the department with a reasonable, good faith belief that it may lead to the filing of administrative, civil, or criminal proceedings. An investigation

does not cease to be active if the department is proceeding with reasonable dispatch and there is good faith belief that action may be initiated by the department or other administrative or law enforcement agency. This subsection does not prevent the department or office from disclosing the complaint or such information as it deems necessary to conduct the investigation, to update the complainant as to the status and outcome of the complaint, or to share such information with any law enforcement agency or other regulatory body.

T I T L E A M E N D M E N T

Remove line 16 and insert:
classroom instruction; defining the term "classroom instruction"; creating s. 648.3875, F.S.;

Remove line 40 and insert:
date; amending s. 648.26, F.S.; administration of investigations; amending s. 648.46, F.S.; procedure for disciplinary action against licenses

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1307 Citizens Property Insurance Corporation
SPONSOR(S): Gregory and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Fortenberry	Luczynski
2) State Administration & Technology Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The bill makes several changes to the operations of, and requirements for, Citizens Property Insurance Corporation (Citizens), the state-run property insurer:

- Establishes that the Office of Insurance Regulation (OIR) must approve the method that Citizens uses to value dwelling replacement cost.
- Establishes Citizens must charge policyholders a surcharge to offset a projected deficit according to a schedule based upon the number of Citizens' policyholders.
- Defines "demonstrated expertise in insurance" for the purpose of board appointments as at least ten years of responsible experience:
    - In property and casualty insurance as a full-time employee, an officer or owner of a licensed insurance agency, or an insurer writing residential property insurance; or
    - As an insurance regulator or an executive or officer of an insurance trade association.
- Establishes that, at the time of appointment, Citizens' executive director must have the experience, character, and qualifications sufficient to qualify as a chief executive officer of an insurer in accordance with the requirements for managers, officers, and directors of private insurers.
- Establishes that when Citizens' personal lines residential or commercial lines residential policyholders receive offers of coverage at renewal from authorized insurers, the risks are not eligible for coverage from Citizens unless the premiums from the authorized insurers are more than 20 percent greater than the renewal premiums for comparable coverage from Citizens.
- Establishes that for new applications for commercial lines residential risks, the risk is not eligible for coverage by Citizens unless the premium for coverage from an authorized insurer is more than 20 percent greater than the premium for Citizens. SB 76 (2021) made the change from 15 percent to 20 percent for personal lines residential risks, but the change was not made for commercial lines residential risks in that bill.
- Eliminates Citizens' policyholders' ability to decline take-out offers from authorized insurers if the premium provided in the take-out offer is not more than 20 percent greater than Citizens' premium. The bill also requires that Citizens' notify policyholders of the fact that they have received such an offer and that the offer renders their risks ineligible for Citizens' coverage.
- Establishes that surplus lines insurers may participate in Citizens' take-out program subject to the insurers meeting certain financial requirements and having a depopulation, take-out, or keep-out plan (plan) approved by OIR.

The bill has no effect on state or local government revenues or expenditures. It may have an indeterminate negative impact on the private sector.

The bill is effective on July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Citizens Property Insurance Corporation (Citizens)

Citizens is a state-created, not-for-profit, tax-exempt government entity that is an integral part of the state, whose public purpose is to provide property insurance to those unable to find affordable coverage in the private market.[1] Citizens is overseen by a board of directors (board) and operated by an executive director. Citizens writes both personal and commercial property policies, including the following:

- Standard personal lines policies that are comprehensive multiperil policies providing full coverage of residential property equivalent to the coverage provided in the private insurance market;
- Basic personal lines policies that are similar to dwelling fire policies that provide coverage meeting the requirements of the secondary mortgage market, but are more limited in coverage than under a standard policy;
- Commercial lines residential and nonresidential policies that are generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the private market;
- Personal lines and commercial lines residential property insurance policies that cover the peril of wind only;
- Commercial lines nonresidential property insurance policies that cover the peril of wind only.[2]

Dwelling Valuation

Background

Dwelling coverage, sometimes called "dwelling insurance," is the part of a homeowners policy that pays for the rebuilding or repair of the physical structure of the home if it is damaged by a covered peril.[3] Coverage may be provided on a replacement cost or actual cash-value basis. Replacement cost includes the cost of materials and labor necessary to rebuild or repair the home. Actual cash value is calculated by subtracting depreciation from replacement cost.

Since January 1, 2017, with certain exceptions, a structure that has a dwelling replacement cost of $700,000 or more, or a single condominium that has a combined dwelling and contents replacement cost of $700,000 or more, is not eligible for Citizens' coverage.[4] However, in counties where the Office of Insurance Regulation (OIR) has determined there is not a reasonable degree of competition in the availability of property insurance, the limit for the dwelling replacement cost of a structure, or the dwelling and contents replacement cost of a single condominium eligible for coverage is $1,000,000.[5]

Insurance companies typically use information on a customer's application, proprietary formulas, and third-party data to calculate dwelling replacement costs, which differ from market value.[6] Current law does not specify the method by which Citizens must calculate dwelling replacement cost and does not involve OIR in the process of completing such calculations.

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[1] S. 627.351(6)(a)1., F.S.
[2] S. 627.351(6)(c)1., F.S.
[3] Allstate, *What is Dwelling Insurance Coverage?*, https://www.allstate.com/tr/home-insurance/dwelling-insurance.aspx (last visited Jan. 29, 2022).
[4] S. 627.351(6)(a)3.d., F.S.
[5] *Id.*
[6] Kin, *What is a Replacement Cost Estimate?,* https://www.kin.com/faq/replacement-cost-estimate (last visited Jan. 29, 2022).

Effect of the Bill

The bill establishes that OIR must approve the method that Citizens uses to value dwelling replacement cost. It also removes obsolete language regarding dwelling and contents coverage provided by Citizens.

Policyholder Surcharge

Background

All of Citizens' revenues, assets, liabilities, losses, and expenses are divided into three accounts as follows:

- A personal lines account for personal residential policies issued by Citizens which provides comprehensive, multiperil coverage on risks that are not located in the areas covered by the coastal account and for policies that do not provide coverage for the peril of wind on risks located in the areas covered by the coastal account;
- A commercial lines account for commercial residential and commercial nonresidential policies issued by Citizens which provides coverage for basic property perils on risks that are not located in areas covered by the coastal account and do not provide coverage for the peril of wind on risk located in the areas covered by the coastal account; and
- A coastal account for personal residential policies, and commercial residential and commercial nonresidential property policies issued by Citizens which provides coverage for the peril of wind on risks that are located in the coastal areas. [7]

Upon a determination by the board that an account has a projected deficit, the board must levy a surcharge against all Citizens' policyholders.[8] The surcharge must be levied as a uniform percentage of the premium for the policy, up to 15 percent of the premium, and must be used to offset the deficit.[9] The surcharge is payable upon cancellation or termination of the policy, upon renewal of the policy, or upon issuance of new policy by Citizens within the first 12 months after the levy or the period of time necessary to fully collect the surcharge.[10] The surcharge is not considered premium and is not subject to commissions, fees, or premium taxes.[11] However, failure of the insured to pay the surcharge is considered failure to pay premium.[12]

Effect of the Bill

The bill establishes Citizens must charge policyholders a surcharge to offset a projected deficit according to the following schedule:

- If the total number of Citizens' policyholders is less than one million, a surcharge of 15 percent of the premium;
- If the total number of Citizens' policyholders is at least one million but less than 1.5 million, a surcharge of 20 percent of the premium; and
- If the total number of Citizens' policyholders is at least 1.5 million, a surcharge of 25 percent of the premium.

Primary Residence

Background

[7] S. 627.351(6)(b)2.a., F.S.
[8] S. 627.351(6)(b)2.i., F.S.
[9] S. 627.351(6)(b)2.i.(I), F.S.
[10] S. 627.351(6)(b)2.i.(II), F.S.
[11] S. 627.351(6)(b)2.i.(IV), F.S.
[12] *Id.*

Currently Florida statutes regarding Citizens do not define or otherwise mention a primary residence or establish different rates or coverage based upon whether a property is an insured's primary residence.

Effect of the Bill

The bill defines "primary residence" as a residential dwelling that an insured has listed as a homestead either on an insurance application or has informed Citizens of by other means and is owned by a citizen of, or lawful permanent resident of, the United States. However, the definition is not utilized in any current provision of law or new provisions of the bill.

Qualifications of Citizens' Board Members

Background

Citizens is overseen by its board, which consists of nine individuals who are residents of different geographical areas of Florida.[13] The Governor, Chief Financial Officer, President of the Senate, and Speaker of the House, each appoint two members of the board.[14] The Governor appoints one additional member who serves solely to advocate on behalf of consumers.[15] At least one of the two members appointed by each appointing officer must have demonstrated experience in insurance.[16] However, current law does not define the insurance experience that the board members must have in order to qualify for their board positions.

Effect of the Bill

The bill defines "demonstrated expertise in insurance" as at least ten years of responsible experience:

- In property and casualty insurance as a full-time employee, an officer or owner of a licensed insurance agency, or an insurer writing residential property insurance; or
- As an insurance regulator or an executive or officer of an insurance trade association.

Qualifications of Citizens' Executive Director

Background

Citizens is run by an executive director that is engaged by the board and serves "at the pleasure of the board."[17] The executive director is subject to confirmation by the Senate.[18] He or she is responsible for employing other staff as Citizens requires, subject to review and agreement by the board.[19] However, current law does not specify the experience, character, or qualifications that an individual must have in order to be qualified to serve as Citizens' executive director.

Florida law provides guidance regarding the qualifications necessary for individuals to serve as officers and directors of private insurers within the state.[20] In general, OIR must not grant or continue to grant authority to transact insurance to any insurer, which has management, officers, or directors that it finds to be incompetent or untrustworthy, or "so lacking in insurance company managerial experience as to make the proposed operation hazardous to the insurance-buying public."[21] Additionally, OIR must not grant or continue authority to transact insurance to any insurer if any person in control of the insurer "does not possess the financial standing and business experience for the successful operation of the insurer."[22]

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[13] S. 627.351(6)(c)4., F.S.
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *See* s. 624.404(3), F.S.
[21] S. 624.404(3)(a), F.S.
[22] S. 624.404(3)(b), F.S.

Effect of the Bill

The bill establishes that, at the time of appointment, Citizens' executive director must have the experience, character, and qualifications sufficient to qualify as a chief executive officer of an insurer in accordance with s. 624.404(3), F.S.

Competitiveness of Citizens' Rates and Eligibility for Coverage

Current law requires Citizens to provide a procedure for determining the eligibility of a potential risk for coverage from Citizens and provides specific eligibility requirements based on premium amounts, value of the property insured, and the location of the property. Risks not meeting the statutory eligibility requirements cannot be insured by Citizens. Citizens also has additional eligibility requirements set out in their underwriting rules. These rules are approved by OIR and set out in Citizens' underwriting manuals.[23]

Citizens' rate cap, also known as the "glide path," is not closing the gap between Citizens rates and private market rates. Instead, because of the rate cap and the increasing rates of private property insurance, the gap is growing and making Citizens more like a competitor to private insurers than an insurer of last resort. Because Citizens' rates are often well below those of private carriers, Citizens may be more competitive than otherwise intended. Due to Citizens' structure, its rates do not contain certain elements that the rates of private insurers contain. Citizens does not pay taxes like private insurers and does not need to purchase as much reinsurance as private insurers because of Citizens' higher levels of capital and surplus.

Eligibility for Personal and Commercial Lines Residential Coverage at Renewal

Background

Both personal lines residential and commercial lines residential policyholders cannot renew Citizens' insurance policies if an authorized insurer offers to insure their property at a premium equal to or less than Citizens' renewal premium.[24] Additionally, the insurance from the authorized insurer must be comparable to the insurance from Citizens in order for the renewal premium eligibility requirement to apply.[25]

Effect of the Bill

The bill establishes that when Citizens' personal lines residential or commercial lines residential policyholders receive offers of coverage at renewal from authorized insurers, the risks are not eligible for coverage from Citizens unless the premiums from the authorized insurers are more than 20 percent greater than the renewal premiums for comparable coverage from Citizens.

Eligibility for New Commercial Lines Residential Coverage

Background

New applicants are eligible for commercial lines residential coverage from Citizens if no authorized insurer will write them a policy for a premium that is less than 15 percent greater than what Citizens would offer them for comparable coverage.[26] However, new applicants are eligible for personal lines

[23] *See* Citizens Property Insurance Corporation, *Revised Underwriting Manuals*, https://www.citizensfla.com/-/20160329-revised-underwriting-manuals (last visited Jan. 30, 2022).
[24] S. 627.351(6)(c)5., F.S.
[25] *Id.*
[26] S. 627.351(6)(c)5., F.S.

residential coverage if no authorized insurer will write them a policy for a premium that is less than 20 percent greater than what Citizens would offer them for comparable coverage.[27]

Effect of the Bill

The bill establishes that for new applications for commercial lines residential risks, the risk is not eligible for coverage by Citizens unless the premium for coverage from an authorized insurer is more than 20 percent greater than the premium for Citizens.[28]

Citizens' Take-out Program/Depopulation

Eligibility After a Take-out Offer

Background

Florida law requires that Citizens create programs to help return its policyholders to the private property insurance market and to reduce the risk of additional assessments for all Floridians in the even that Citizens is unable to meet its obligations.[29] In 2016, the Legislature passed requirements that by January 1, 2017, Citizens amend its operations relating to take-out agreements, whereby private insurers remove policies from Citizens.[30] As part of these requirements, a policy may not be taken out of Citizens unless Citizens:

- Publishes a periodic schedule of cycles during which an insurer may identify, and notify Citizens of, policies the insurer requests to take out;[31]
- Maintains and makes available to the agent of record a consolidated list of all insurers requesting to take out a policy; the list must include a description of the coverage offered and the estimated premium for each take-out request;
- Provides written notice to the policyholder and the agent of record regarding all insurers requesting to take-out the policy and regarding the policyholder's option to accept a take-out offer or to reject all take-out offers and to remain with Citizens. The notice must be in a format prescribed by Citizens and include, for each take-out offer:
    - The amount of the estimated premium;
    - A description of coverage; and
    - A comparison of the estimated premium and coverage offered by the insurer to the estimated premium and coverage provided by Citizens.[32]

Effect of the Bill

The bill eliminates Citizens' policyholders' ability to decline take-out offers from authorized insurers if the premium provided in the take-out offer is not more than 20 percent greater than Citizens' premium. The bill also requires that Citizens' notify policyholders of the fact that they have received such an offer and that the offer renders their risks ineligible for Citizens' coverage.

Surplus Lines Insurer Participation in Citizens' Take-out Program

Background

With certain exceptions, Florida law requires any person transacting insurance to have a certificate of authority issued by the OIR.[33] Authorized insurers in Florida are subject to the provisions of the Florida

[27] *Id.*

[28] SB 76 (2021) made the change from 15 percent to 20 percent for personal lines residential risks, but the change was not made for commercial lines residential risks in that bill.

[29] S. 627.351(6)(q)3.a., F.S.

[30] Ch. 2016-229, Laws of Fla.

[31] These requests from insurers must include a description of the coverage offered and an estimated premium for it and must be submitted to Citizens in a form prescribed by Citizens.

[32] S. 627.351(6)(ii), F.S.

[33] S. 624.401, F.S. In the Florida Insurance Code (FIC), a person also includes a business entity such as an insurer.

Insurance Code[34] and regulation primarily by OIR.[35] OIR's regulatory authority over authorized insurers includes solvency and financial strength, insurance policy forms and rates, and market conduct of insurers. States also realized that there are risks for which insurance in the admitted market are not available because insurers are unable or unwilling to write policies for them. Therefore, they allow insurers that are not otherwise authorized to sell policies to sell surplus lines insurance if they meet certain requirements.

Surplus lines insurers are still considered "unauthorized" insurers[36], and may write only surplus lines policies if they are made "eligible" by OIR. Except as specifically stated, surplus lines insurers are not subject to regulation by OIR under ch. 627, F.S., which includes statutory provisions regarding rating standards and insurance policy forms.[37] Currently, surplus lines insurers are not permitted to participate in Citizens' take-out program.

Effect of the Bill

The bill establishes that surplus lines insurers may participate in Citizens' take-out program subject to the insurers meeting certain financial requirements and having a depopulation, take-out, or keep-out plan (plan) approved by OIR. In considering a surplus lines insurer's request for approval of its plan, OIR must determine whether the surplus lines insurer:

- Maintains a surplus of $50,000,000 on a company or pooled basis;
- Has a superior, excellent, exceptional, or equivalent financial strength rating by a rating agency acceptable to OIR;
- Maintains reserves, surplus, reinsurance, and reinsurance equivalents sufficient to cover the insurer's 100-year probable maximum hurricane loss at least twice in a single hurricane season and submits such reinsurance to OIR to review for purposes of the plan;
- Provides prominent notice to the policyholder before the assumption of the policy that surplus lines policies do not receive coverage from the Florida Insurance Guaranty Association[38] and provides an outline of any substantial differences in coverage between the existing policy and the policy it is offering to the policyholder;
- Provides policy coverage similar to the coverage that Citizens provides.

The bill establishes that to obtain approval of a plan, the surplus lines insurer must file the following information with OIR:

- Information OIR requests to demonstrate that the insurer complies with the statutory requirements regarding competence and trustworthiness of its officers;[39]
- A service-of-process consent and agreement form executed by the insurer;
- Proof that the insurer has been an eligible or authorized insurer for at least three years;
- An authenticated copy of the insurer's current audited financial statement;
- A completed certified copy of the latest official financial statement required by the insurer's domiciliary state, if different from the audited financial statement;
- A copy of the insurer's United States trust account agreement, if applicable.

The bill also establishes that, within ten days after the date of assumption of policies that it has taken-out from Citizens, the surplus lines insurer must remit to the Bureau of Collateral Management (BCM) within the Department of Financial Services (DFS) a special deposit equal to the unearned premium, minus unearned commissions, on the assumed policies. According to the bill, the surplus lines insurer is also

[34] Section 624.404, F.S., provides that an insurer must be in compliance with the FIC to qualify for and hold authority to transact insurance in the state. The FIC is chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S. S. 624.01, F.S.
[35] In general, OIR has regulatory authority over insurers and the Department of Financial Services (DFS) has regulatory authority over insurance agents and agencies.
[36] S. 624.09(2), F.S.
[37] S. 626.913(4), F.S.
[38] The Florida Insurance Guaranty Association provides a "mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer." S. 631.51, F.S.
[39] *See* s. 624.404(3), F.S. and s. 624.34, F.S.

required to provide the BCM with an accounting of the policies assumed within ten days of the assumption, a quarterly filing with the BCM regarding the unearned premium on the policies in force for those assumed from Citizens, and additional deposits if the deposit previously made to the BCM is insufficient to cover the unearned premium on the assumed policies.

The bill provides that, if an order of liquidation is entered in any state against the surplus lines insurer, DFS may use the special deposit for payment of unearned premium or policy claims, return all or part of the deposit to the receiver in the surplus lines insurer's state of domicile, or use the funds in accordance with any action authorized under ch. 631, part I, F.S.,[40] or in compliance with an order from a court having jurisdiction over the insolvency.

According to the bill, before a surplus lines insurer assumes a policy from Citizens, surplus lines brokers representing the surplus lines insurer shall obtain written or e-mail confirmation from each producing agent stating that the agent is willing to participate in the take-out program with that surplus lines insurer. The bill further establishes that if both a surplus lines insurer and an authorized insurer select a policyholder for removal from Citizens, Citizens must give priority to the offer from the authorized insurer.

The bill provides that the following risks are not eligible for Citizens coverage if they are offered comparable coverage from qualified surplus lines insurer at a premium no greater than 15 percent above the premium charged by Citizens:

- A risk that has a dwelling replacement cost of $700,000 or more.
- A single condominium unit that has a dwelling and content replacement cost of $700,000 or more.

However, the bill also establishes that a risk that has a dwelling replacement cost below $700,000, or a single condominium unit that has a combined dwelling and contents replacement cost below $700,000 remains eligible for Citizens coverage if a qualified surplus lines insurer offers it coverage.

B. SECTION DIRECTORY:

Section 1. Amends s. 627.022, F.S., relating to scope of this part.

Section 2. Amends s. 627.351, F.S., relating to insurance risk apportionment plans.

Section 3. Amends s. 627.3517, F.S., relating to consumer choice.

Section 4. Amends s. 627.3518, F.S., relating to Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.

Section 5. Provides an effective date of July 1, 2022.

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.

[40] Ch. 631, part 1, F.S., establishes the requirements for rehabilitation and liquidation of insolvent insurers in Florida.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that less policyholders are eligible for Citizens' coverage, they may pay more in insurance premiums on the private market. Therefore, the bill may have an indeterminate negative impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 564–567 of the bill define the term "primary residence." However, that term is not used elsewhere in the bill and the definition may be unnecessary. Additionally, as written, the definition is unclear as to whether the primary residence must be owned by the insured or may be owned by another citizen of the United States or lawful permanent resident and declared a homestead by someone other than the owner. If the bill is amended to use the term elsewhere, it is recommended to amend the definition for clarity about who may own the property that is declared to be a homestead.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to Citizens Property Insurance Corporation; amending s. 627.021, F.S.; revising applicability; amending s. 627.351, F.S.; deleting obsolete language; requiring the Office of Financial Regulation to approve the method used by Citizens Property Insurance Corporation for valuing the dwelling replacement costs; revising the method for determining the amounts of potential surcharges to be levied against policyholders under certain circumstances; defining the term "primary residence"; specifying requirements for certain members the corporation's board of governors at the time of appointment and reappointment; defining the term "demonstrated expertise in insurance" to specify the qualifications of some appointees for the board membership; revising procedures for determining eligibility of a risk for coverage by the corporation; making technical changes; specifying the qualifications for an appointee as the executive director of the corporation; providing that eligible surplus lines insurers may participate, in the same manner and on the same terms as authorized insurers, in depopulation, take-out, or keep-out programs relating to policies removed from the corporation;

providing certain exceptions, conditions, and requirements relating to such participation by surplus lines insurers in the corporation's depopulation, take-out, or keep-out programs; providing thresholds for eligibility for coverage by the corporation for risks that are offered coverage from qualified surplus lines insurers; revising the circumstances under which information from underwriting files and confidential claims files may be released by the corporation; revising the list of entities that such files may be released to; specifying that only the corporation's transfer of a policy file to an insurer, rather than the transfer of any file, changes the file's public record status; making technical changes; revising the notice that must be provided by the corporation when insurers request to take out a policy; amending s. 627.3517, F.S.; making technical changes; amending s. 627.3518, F.S.; deleting obsolete provisions relating to the purpose of the corporation's clearinghouse program and reporting requirements; revising procedures for determining eligibility of a risk for coverage with the corporation; providing an effective date.

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

Section 1. Subsection (2) of section 627.021, Florida Statutes, is amended to read:

627.021 Scope of this part.—

(2) This part does not apply to:

(a) Reinsurance, except joint reinsurance as provided in s. 627.311.

(b) Insurance against loss of or damage to aircraft, their hulls, accessories, or equipment, or against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance, or use of aircraft.

(c) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine insurance policies.

(d) Commercial inland marine insurance.

(e) Except as may be specifically stated to apply, surplus lines insurance placed under ~~the provisions of~~ ss. 626.913-626.937.

Section 2. Paragraphs (a), (b), (c), (d), (n), (q), (x), and (ii) of subsection (6) of section 627.351, Florida Statutes, are amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(a) The public purpose of this subsection is to ensure that there is an orderly market for property insurance for

residents and businesses of this state.

1. The Legislature finds that private insurers are unwilling or unable to provide affordable property insurance coverage in this state to the extent sought and needed. The absence of affordable property insurance threatens the public health, safety, and welfare and likewise threatens the economic health of the state. The state therefore has a compelling public interest and a public purpose to assist in assuring that property in the state is insured and that it is insured at affordable rates so as to facilitate the remediation, reconstruction, and replacement of damaged or destroyed property in order to reduce or avoid the negative effects otherwise resulting to the public health, safety, and welfare, to the economy of the state, and to the revenues of the state and local governments which are needed to provide for the public welfare. It is necessary, therefore, to provide affordable property insurance to applicants who are in good faith entitled to procure insurance through the voluntary market but are unable to do so. The Legislature intends, therefore, that affordable property insurance be provided and that it continue to be provided, as long as necessary, through Citizens Property Insurance Corporation, a government entity that is an integral part of the state, and that is not a private insurance company. To that end, the corporation shall strive to increase the availability of affordable property insurance in this state,

while achieving efficiencies and economies, and while providing service to policyholders, applicants, and agents which is no less than the quality generally provided in the voluntary market, for the achievement of the foregoing public purposes. Because it is essential for this government entity to have the maximum financial resources to pay claims following a catastrophic hurricane, it is the intent of the Legislature that the corporation continue to be an integral part of the state and that the income of the corporation be exempt from federal income taxation and that interest on the debt obligations issued by the corporation be exempt from federal income taxation.

2. The Residential Property and Casualty Joint Underwriting Association originally created by this statute shall be known as the Citizens Property Insurance Corporation. The corporation shall provide insurance for residential and commercial property, for applicants who are entitled, but, in good faith, are unable to procure insurance through the voluntary market. The corporation shall operate pursuant to a plan of operation approved by order of the Financial Services Commission. The plan is subject to continuous review by the commission. The commission may, by order, withdraw approval of all or part of a plan if the commission determines that conditions have changed since approval was granted and that the purposes of the plan require changes in the plan. For the purposes of this subsection, residential coverage includes both

personal lines residential coverage, which consists of the type of coverage provided by homeowner, mobile home owner, dwelling, tenant, condominium unit owner, and similar policies; and commercial lines residential coverage, which consists of the type of coverage provided by condominium association, apartment building, and similar policies.

3. With respect to coverage for personal lines residential structures,~~:~~

~~a. Effective January 1, 2014, a structure that has a dwelling replacement cost of $1 million or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $1 million or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2013, may continue to be covered by the corporation until the end of the policy term. The office shall approve the method used by the corporation for valuing the dwelling replacement cost for the purposes of this subparagraph. If a policyholder is insured by the corporation before being determined to be ineligible pursuant to this subparagraph and such policyholder files a lawsuit challenging the determination, the policyholder may remain insured by the corporation until the conclusion of the litigation.~~

~~b. Effective January 1, 2015, a structure that has a dwelling replacement cost of $900,000 or more, or a single condominium unit that has a combined dwelling and contents~~

~~replacement cost of $900,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2014, may continue to be covered by the corporation only until the end of the policy term.~~

~~c. Effective January 1, 2016, a structure that has a dwelling replacement cost of $800,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $800,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2015, may continue to be covered by the corporation until the end of the policy term.~~

~~d.~~ effective January 1, 2017, a structure that has a dwelling replacement cost of $700,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $700,000 or more, is not eligible for coverage by the corporation. The office shall approve the method used by the corporation for valuing the dwelling replacement cost ~~Such dwellings insured by the corporation on December 31, 2016, may continue to be covered by the corporation until the end of the policy term~~.

The requirements of this subparagraph ~~sub-subparagraphs b.-d.~~ do not apply in counties where the office determines there is not a reasonable degree of competition. In such counties a personal lines residential structure that has a dwelling replacement cost

of less than $1 million, or a single condominium unit that has a combined dwelling and contents replacement cost of less than $1 million, is eligible for coverage by the corporation.

4. It is the intent of the Legislature that policyholders, applicants, and agents of the corporation receive service and treatment of the highest possible level but never less than that generally provided in the voluntary market. It is also intended that the corporation be held to service standards no less than those applied to insurers in the voluntary market by the office with respect to responsiveness, timeliness, customer courtesy, and overall dealings with policyholders, applicants, or agents of the corporation.

5.a. Effective January 1, 2009, a personal lines residential structure that is located in the "wind-borne debris region," as defined in s. 1609.2, International Building Code (2006), and that has an insured value on the structure of $750,000 or more is not eligible for coverage by the corporation unless the structure has opening protections as required under the Florida Building Code for a newly constructed residential structure in that area. A residential structure is deemed to comply with this sub-subparagraph if it has shutters or opening protections on all openings and if such opening protections complied with the Florida Building Code at the time they were installed.

b. Any major structure, as defined in s. 161.54(6)(a),

that is newly constructed, or rebuilt, repaired, restored, or remodeled to increase the total square footage of finished area by more than 25 percent, pursuant to a permit applied for after July 1, 2015, is not eligible for coverage by the corporation if the structure is seaward of the coastal construction control line established pursuant to s. 161.053 or is within the Coastal Barrier Resources System as designated by 16 U.S.C. ss. 3501-3510.

6. With respect to wind-only coverage for commercial lines residential condominiums, effective July 1, 2014, a condominium shall be deemed ineligible for coverage if 50 percent or more of the units are rented more than eight times in a calendar year for a rental agreement period of less than 30 days.

(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; however, 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 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 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 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 shall offer policies that provide coverage only for the peril of wind for risks located in areas eligible for coverage in the coastal account. Effective July 1, 2014, the corporation shall cease offering new commercial residential policies providing multiperil coverage and shall instead continue to offer commercial residential wind-only policies, and may offer commercial residential policies excluding wind. The corporation may, however, continue to renew a commercial residential multiperil policy on a building that is insured by the corporation on June 30, 2014, under a multiperil policy. 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 for consolidating 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. 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., if the remaining projected deficit incurred in the coastal account in a particular calendar year:

(I) Is not greater than 2 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 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 percent of the projected deficit or 2 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.

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. Upon a determination by the board of governors that a projected deficit in an account exceeds the amount that is expected to be recovered through regular assessments under sub-subparagraph a., plus the amount that is expected to be recovered through surcharges under sub-subparagraph i., 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 must be at least 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 in any calendar year may be less than but may 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. 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 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. 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. 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. 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. Upon 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 must ~~shall~~ be levied as a uniform percentage of the premium for the policy ~~of up to 15 percent of such premium~~, and must ~~which funds shall~~ be used to offset the deficit, as follows:

(A) If the total number of policyholders of the corporation is less than 1 million, a surcharge of 15 percent of the premium.

(B) If the total number of policyholders of the corporation is at least 1 million but less than 1.5 million, a surcharge of 20 percent of the premium.

(C) If the total number of policyholders of the corporation is at least 1.5 million, a surcharge of 25 percent of the premium.

(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. 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.

g. Effective January 1, 2013, the corporation shall offer a basic personal lines policy similar to an HO-8 policy with dwelling repair based on common construction materials and methods.

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:

(II) "Primary residence" means the residential dwelling that the insured has represented as homestead on an insurance application or otherwise to the corporation which is owned by a citizen of the United States or a lawful permanent resident.

(III) ~~(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.

(I) ~~(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. 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 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.

4. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of nine individuals who are residents of this state and who are from different geographical areas of this ~~the~~ state, one of whom is appointed by the Governor and serves solely to advocate on behalf of the consumer. The appointment of a consumer representative by the Governor is deemed to be within the scope of the exemption provided in s. 112.313(7)(b) and is in addition to the appointments authorized under sub-subparagraph a.

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 be deemed to be within the scope of the exemption provided in s. 112.313(7)(b) at the time of appointment or reappointment. 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. As used in this sub-subparagraph, the term "demonstrated expertise in insurance" means at least 10 years of responsible experience:

(I) In property and casualty insurance as a full-time employee, an officer or owner of a licensed insurance agency, or an insurer writing residential property coverage; or

(II) As an insurance regulator or an executive or officer of an insurance trade association.

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 this ~~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 that ~~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 20 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a personal lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, ~~if the offer is equal to or less than the corporation's renewal premium for comparable coverage,~~ the risk is not eligible for coverage with the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the renewal 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 removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period.~~ 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. A policyholder removed from the corporation through an assumption agreement does not remain eligible for coverage from the corporation.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, 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 20 ~~15~~ percent greater than the premium for comparable coverage from

the corporation. Whenever an offer of coverage for a commercial lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, ~~if the offer is equal to or less than the corporation's renewal premium for comparable coverage,~~ the risk is not eligible for coverage with the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the renewal 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 removed from the corporation through an assumption agreement does not remain ~~remains~~ eligible for coverage from the corporation ~~until the end of the assumption period~~.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, 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.

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).

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

premium for the corporation's wind-only policy plus the premium 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 must ~~shall~~ be construed as the private placement of insurance, and ~~the provisions of~~ chapter 120 does ~~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. If catastrophe reinsurance is not available at reasonable rates, the corporation need not purchase it, but the corporation shall include the costs of reinsurance to cover its projected 100-year probable maximum loss in its rate calculations even if it does not purchase catastrophe reinsurance.

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, 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 must be paid in full within 15 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 throughout such appointments also hold an appointment as defined in s. 626.015 by an insurer who is authorized to write and is actually writing

or renewing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within this ~~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. Must provide coverage for manufactured or mobile home dwellings. Such coverage must also include the following attached structures:

a. Screened enclosures that are aluminum framed or screened enclosures that are not covered by the same or substantially the same materials as those of the primary dwelling;

b. Carports that are aluminum or carports that are not covered by the same or substantially the same materials as those of the primary dwelling; and

c. Patios that have a roof covering that is constructed of materials that are not the same or substantially the same materials as those of the primary dwelling.

The corporation shall make available a policy for mobile homes

or manufactured homes for a minimum insured value of at least $3,000.

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

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

20. 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.

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

ACKNOWLEDGMENT 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 UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER SURCHARGE, WHICH COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES ARE REGULATED AND APPROVED BY THE STATE.

3. I 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.

4. 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 acknowledgment 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 acknowledgment 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.

(d)1. All prospective employees for senior management positions, as defined by the plan of operation, are subject to background checks as a prerequisite for employment. The office shall conduct the background checks pursuant to ss. 624.34, 624.404(3), and 628.261.

2. On or before July 1 of each year, employees of the corporation must sign and submit a statement attesting that they do not have a conflict of interest, as defined in part III of chapter 112. As a condition of employment, all prospective employees must sign and submit to the corporation a conflict-of-interest statement.

3. The executive director, senior managers, and members of the board of governors are subject to part III of chapter 112, including, but not limited to, the code of ethics and public disclosure and reporting of financial interests, pursuant to s. 112.3145. For purposes of applying part III of chapter 112 to activities of the executive director, senior managers, and members of the board of governors, those persons shall be considered public officers or employees and the corporation shall be considered their agency. Notwithstanding s. 112.3143(2), a board member may not vote on any measure that would inure to his or her special private gain or loss; that he or she knows would inure to the special private gain or loss of

any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312; or that he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Before the vote is taken, such member shall publicly state to the assembly the nature of his or her interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes. Senior managers and board members are also required to file such disclosures with the Commission on Ethics and the Office of Insurance Regulation. The executive director of the corporation or his or her designee shall notify each existing and newly appointed member of the board of governors and senior managers of their duty to comply with the reporting requirements of part III of chapter 112. At least quarterly, the executive director or his or her designee shall submit to the Commission on Ethics a list of names of the senior managers and members of the board of governors who are subject to the public disclosure requirements under s. 112.3145.

4. Notwithstanding s. 112.3148, s. 112.3149, or any other provision of law, an employee or board member may not knowingly

accept, directly or indirectly, any gift or expenditure from a person or entity, or an employee or representative of such person or entity, which has a contractual relationship with the corporation or who is under consideration for a contract. An employee or board member who fails to comply with subparagraph 3. or this subparagraph is subject to penalties provided under ss. 112.317 and 112.3173.

5. Any senior manager of the corporation who is employed on or after January 1, 2007, regardless of the date of hire, who subsequently retires or terminates employment is prohibited from representing another person or entity before the corporation for 2 years after retirement or termination of employment from the corporation.

6. The executive director, members of the board of governors, and senior managers of the corporation are prohibited from having any employment or contractual relationship for 2 years after retirement from or termination of service to the corporation with an insurer that has entered into a take-out bonus agreement with the corporation.

7. At the time of appointment, the executive director must have the experience, character, and qualifications sufficient to qualify as a chief executive officer of an insurer in accordance with s. 624.404(3).

(n)1. Rates for coverage provided by the corporation must be actuarially sound and subject to s. 627.062, except as

otherwise provided in this paragraph. The corporation shall file its recommended rates with the office at least annually. The corporation shall provide any additional information regarding the rates which the office requires. The office shall consider the recommendations of the board and issue a final order establishing the rates for the corporation within 45 days after the recommended rates are filed. The corporation may not pursue an administrative challenge or judicial review of the final order of the office.

2. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided in s. 624.509 to augment the financial resources of the corporation.

3. If ~~After~~ the public hurricane loss-projection model under s. 627.06281 is ~~has been~~ found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, it must ~~the model shall~~ be considered when establishing the windstorm portion of the corporation's rates. The corporation may use the public model results in combination with the results of private models to calculate rates for the windstorm portion of the corporation's rates. This subparagraph does not require or allow the corporation to adopt rates lower than the rates otherwise required or allowed by this paragraph.

4. The corporation must make a recommended actuarially sound rate filing for each personal and commercial line of

business it writes.

5. Notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement a rate increase that ~~which~~, except for sinkhole coverage, does not exceed the following for any single policy issued by the corporation, excluding coverage changes and surcharges:

a. Eleven percent for 2022.

b. Twelve percent for 2023.

c. Thirteen percent for 2024.

d. Fourteen percent for 2025.

e. Fifteen percent for 2026 and all subsequent years.

6. The corporation may also implement an increase to reflect the effect on the corporation of the cash buildup factor pursuant to s. 215.555(5)(b).

7. The corporation's implementation of rates as prescribed in subparagraph 5. must ~~shall~~ cease for any line of business written by the corporation upon the corporation's implementation of actuarially sound rates. Thereafter, the corporation shall annually make a recommended actuarially sound rate filing for each commercial and personal line of business the corporation writes.

(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 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. 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 may ~~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-subparagraph (b) 3.a. 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.

d. Notwithstanding any other law, for purposes of a depopulation, take-out, or keep-out program adopted by the corporation, including an initial or renewal offer of coverage made to a policyholder removed from the corporation pursuant to such program, an eligible surplus lines insurer may participate in the program in the same manner and on the same terms as an authorized insurer, except as provided under this sub-subparagraph.

(I) To qualify for participation, the surplus lines insurer must first obtain approval from the office for its depopulation, take-out, or keep-out plan and then comply with all of the corporation's requirements for the plan applicable to admitted insurers and with all statutory provisions applicable to the removal of policies from the corporation.

(II) In considering a surplus lines insurer's request for approval for its plan, the office shall determine whether the surplus lines insurer meets the following requirements:

(A) Maintains a surplus of $50 million on a company or pooled basis;

(B) Has a superior, excellent, exceptional, or equivalent financial strength rating by a rating agency acceptable to the

office;

(C) Maintains reserves, surplus, reinsurance, and reinsurance equivalents sufficient to cover the insurer's 100-year probable maximum hurricane loss at least twice in a single hurricane season and submits such reinsurance to the office to review for purposes of the take-out;

(D) Provides prominent notice to the policyholder before the assumption of the policy that surplus lines policies are not provided coverage by the Florida Insurance Guaranty Association and provides an outline of any substantial differences in coverage between the existing policy and the policy being offered to the policyholder; and

(E) Provides policy coverage similar to that provided by the corporation.

(III) To obtain approval for a plan, the surplus lines insurer must file the following with the office:

(A) Information requested by the office to demonstrate compliance with s. 624.404(3), including biographical affidavits, fingerprints processed pursuant to s. 624.34, and the results of criminal history records checks for officers and directors of the insurer and its parent or holding company;

(B) A service-of-process consent and agreement form executed by the insurer;

(C) Proof that the insurer has been an eligible or authorized insurer for at least 3 years;

(D) A duly authenticated copy of the insurer's current audited financial statement, in English, which, in the case of statements originally made in the currencies of other countries, expresses all monetary values in United States dollars, at an exchange rate then current and shown in the statement, and including any additional information relative to the insurer as the office may request;

(E) A complete certified copy of the latest official financial statement required by the insurer's domiciliary state, if different from the statement required by sub-sub-sub-subparagraph (D); and

(F) If applicable, a copy of the United States trust account agreement.

This sub-sub-subparagraph does not subject any surplus lines insurer to requirements in addition to part VIII of chapter 626. Surplus lines brokers making an offer of coverage under this sub-sub-subparagraph are not required to comply with s. 626.916(1)(a), (b), (c), or (e).

(IV) Within 10 days after the date of assumption, the surplus lines insurer assuming policies from the corporation shall remit to the Bureau of Collateral Management within the Department of Financial Services a special deposit equal to the unearned premium net of unearned commissions on the assumed block of business. The surplus lines insurer shall submit to the

office, along with the special deposit, an accounting of the policies assumed and the amount of unearned premium for such policies and a sworn affidavit attesting to the accuracy of the accounting by an officer of the surplus lines insurer. Thereafter, the surplus lines insurer shall make a filing within 10 days after the end of each calendar quarter attesting to the unearned premium in force for the previous quarter on policies assumed from the corporation and shall submit additional funds with that filing if the special deposit is insufficient to cover the unearned premium on assumed policies, or shall receive a return of funds within 60 days if the special deposit exceeds the amount of unearned premium required for assumed policies. The special deposit is an asset of the surplus lines insurer which is held by the department for the benefit of state policyholders of the surplus lines insurer in the event of the insolvency of the surplus lines insurer. If an order of liquidation is entered in any state against the surplus lines insurer, the department may use the special deposit for payment of unearned premium or policy claims, return all or part of the deposit to the domiciliary receiver, or use the funds in accordance with any action authorized under part I of chapter 631 or in compliance with any order of a court having jurisdiction over the insolvency.

(V) In advance of a surplus lines insurer assuming a policy, surplus lines brokers representing a surplus lines

insurer on a take-out program shall obtain confirmation, in written or e-mail form, from each producing agent stating that the agent is willing to participate in the take-out program with the surplus lines insurer engaging in the take-out program. The take-out program is also subject to s. 627.3517. If a policyholder is selected for removal from the corporation by a surplus lines insurer and an authorized insurer, the corporation must give priority to the offer of coverage from the authorized insurer.

(VI)(A) A risk that has a dwelling replacement cost of $700,000 or more or a single condominium unit that has a combined dwelling and contents replacement cost of $700,000 or more is not eligible for coverage by the corporation if it is offered comparable coverage from a qualified surplus lines insurer at a premium no greater than 15 percent above the premium charged by the corporation.

(B) A risk that has a dwelling replacement cost below $700,000 or a single condominium unit that has a combined dwelling and contents replacement cost below $700,000 remains eligible for coverage by the corporation if it is offered coverage from a qualified surplus lines insurer.

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.

7. For a policy taken out, assumed, or removed from the corporation, the insurer may, for a period of no more than 3 years, continue to use any of the corporation's policy forms or endorsements that apply to the policy taken out, removed, or assumed without obtaining approval from the office for use of

such policy form or endorsement.

(x)1. The following records of the corporation are confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files. Confidential and exempt underwriting file records may also be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided herein.

b. Claims files, until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law. Confidential and exempt claims file records may be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided herein.

c. Records obtained or generated by an internal auditor pursuant to a routine audit, until the audit is completed, or if the audit is conducted as part of an investigation, until the investigation is closed or ceases to be active. An investigation is considered "active" while the investigation is being conducted with a reasonable, good faith belief that it could

lead to the filing of administrative, civil, or criminal proceedings.

d. Matters reasonably encompassed in privileged attorney-client communications.

e. Proprietary information licensed to the corporation under contract and the contract provides for the confidentiality of such proprietary information.

f. All information relating to the medical condition or medical status of a corporation employee which is not relevant to the employee's capacity to perform his or her duties, except as otherwise provided in this paragraph. Information that is exempt includes ~~shall include~~, but is not limited to, information relating to workers' compensation, insurance benefits, and retirement or disability benefits.

g. Upon an employee's entrance into the employee assistance program, a program to assist any employee who has a behavioral or medical disorder, substance abuse problem, or emotional difficulty that affects the employee's job performance, all records relative to that participation are ~~shall be~~ confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as otherwise provided in s. 112.0455(11).

h. Information relating to negotiations for financing, reinsurance, depopulation, or contractual services, until the conclusion of the negotiations.

i. Minutes of closed meetings regarding underwriting files, and minutes of closed meetings regarding an open claims file until termination of all litigation and settlement of all claims with regard to that claim, except that information otherwise confidential or exempt by law must ~~shall~~ be redacted.

2. If an authorized insurer, a reinsurance intermediary, an eligible surplus lines insurer, or an entity that has filed an application with the office for licensure as a property and casualty insurer in this state is considering writing or assisting in the underwriting of a risk insured by the corporation, relevant information from both the underwriting files and confidential claims files may be released to the insurer, reinsurance intermediary, eligible surplus lines insurer, or entity that has been created to seek authority to write property and casualty insurance in this state, provided that the recipient ~~insurer~~ agrees in writing, notarized and under oath, to maintain the confidentiality of such files. If a policy file is transferred to an insurer, that policy file is no longer a public record because it is not held by an agency subject to ~~the provisions of~~ the public records law. Underwriting files and confidential claims files may also be released to staff and the board of governors of the market assistance plan established pursuant to s. 627.3515, who must retain the confidentiality of such files, except such files may be released to authorized insurers that are considering assuming

the risks to which the files apply, provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. Finally, the corporation or the board or staff of the market assistance plan may make the following information obtained from underwriting files and confidential claims files available to an entity that has obtained a permit to become an authorized insurer, a reinsurer that may provide reinsurance under s. 624.610, a licensed reinsurance broker, a licensed rating organization, a modeling company, or a licensed general lines insurance agent: name, address, and telephone number of the residential property owner or insured; location of the risk; rating information; loss history; and policy type. The receiving person must retain the confidentiality of the information received and may use the information only for the purposes of developing a take-out plan or a rating plan to be submitted to the office for approval or otherwise analyzing the underwriting of a risk or risks insured by the corporation on behalf of the private insurance market. A licensed general lines insurance agent may not use such information for the direct solicitation of policyholders.

3. A policyholder who has filed suit against the corporation has the right to discover the contents of his or her own claims file to the same extent that discovery of such contents would be available from a private insurer in litigation as provided by the Florida Rules of Civil Procedure, the Florida

Evidence Code, and other applicable law. Pursuant to subpoena, a third party has the right to discover the contents of an insured's or applicant's underwriting or claims file to the same extent that discovery of such contents would be available from a private insurer by subpoena as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law, and subject to any confidentiality protections requested by the corporation and agreed to by the seeking party or ordered by the court. The corporation may release confidential underwriting and claims file contents and information as it deems necessary and appropriate to underwrite or service insurance policies and claims, subject to any confidentiality protections deemed necessary and appropriate by the corporation.

4. Portions of meetings of the corporation are exempt from ~~the provisions of~~ s. 286.011 and s. 24(b), Art. I of the State Constitution wherein confidential underwriting files or confidential open claims files are discussed. All portions of corporation meetings which are closed to the public shall be recorded by a court reporter. The court reporter shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of any closed meeting shall be off the record. Subject to the provisions hereof and s. 119.07(1)(d)-(f), the court reporter's notes of any closed meeting shall be retained by the corporation

for a minimum of 5 years. A copy of the transcript, less any exempt matters, of any closed meeting wherein claims are discussed shall become public as to individual claims after settlement of the claim.

(ii) The corporation shall revise the programs adopted pursuant to sub-subparagraph (q)3.a. for personal lines residential policies to maximize policyholder options and encourage increased participation by insurers and agents. After January 1, 2017, a policy may not be taken out of the corporation unless the provisions of this paragraph are met.

1. The corporation must publish a periodic schedule of cycles during which an insurer may identify, and notify the corporation of, policies that the insurer is requesting to take out. A request must include a description of the coverage offered and an estimated premium and must be submitted to the corporation in a form and manner prescribed by the corporation.

2. The corporation must maintain and make available to the agent of record a consolidated list of all insurers requesting to take out a policy. The list must include a description of the coverage offered and the estimated premium for each take-out request.

3. The corporation must provide written notice to the policyholder and the agent of record regarding all insurers requesting to take out the policy, which must inform that a take-out offer that is not more than 20 percent greater than the

corporation's premium renders the risk ineligible for coverage from the corporation ~~and regarding the policyholder's option to accept a take-out offer or to reject all take-out offers and to remain with the corporation~~. The notice must be in a format prescribed by the corporation and include, for each take-out offer:

a. The amount of the estimated premium;

b. A description of the coverage; and

c. A comparison of the estimated premium and coverage offered by the insurer to the estimated premium and coverage provided by the corporation.

Section 3. Section 627.3517, Florida Statutes, is amended to read:

627.3517 Consumer choice.—No provision of s. 627.351, s. 627.3511, or s. 627.3515 shall be construed to impair the right of any insurance risk apportionment plan policyholder, upon receipt of any keep-out ~~keepout~~ or take-out offer, to retain his or her current agent, so long as that agent is duly licensed and appointed by the insurance risk apportionment plan or otherwise authorized to place business with the insurance risk apportionment plan. This right may ~~shall~~ not be canceled, suspended, impeded, abridged, or otherwise compromised by any rule, plan of operation, or depopulation plan, whether through keep-out ~~keepout~~, take-out, midterm assumption, or any other means, of any insurance risk apportionment plan or depopulation

plan, including, but not limited to, those described in s. 627.351, s. 627.3511, or s. 627.3515. The commission shall adopt any rules necessary to cause any insurance risk apportionment plan or market assistance plan under such sections to demonstrate that the operations of the plan do not interfere with, promote, or allow interference with the rights created under this section. If the policyholder's current agent is unable or unwilling to be appointed with the insurer making the take-out or keep-out ~~keepout~~ offer, the policyholder is ~~shall~~ not ~~be~~ disqualified from participation in the appropriate insurance risk apportionment plan because of an offer of coverage in the voluntary market. An offer of full property insurance coverage by the insurer currently insuring either the ex-wind or wind-only coverage on the policy to which the offer applies is ~~shall~~ not ~~be~~ considered a take-out or keep-out ~~keepout~~ offer. Any rule, plan of operation, or plan of depopulation, through keep-out ~~keepout~~, take-out, midterm assumption, or any other means, of any property insurance risk apportionment plan under s. 627.351(2) or (6) is subject to ss. 627.351(2)(b) and (6)(c) and 627.3511(4).

Section 4. Section 627.3518, Florida Statutes, is amended to read:

627.3518 Citizens Property Insurance Corporation policyholder eligibility clearinghouse program. ~~The purpose of this section is to provide a framework for the corporation to~~

~~implement a clearinghouse program by January 1, 2014.~~

(1) As used in this section, the term:

(a) "Corporation" means Citizens Property Insurance Corporation.

(b) "Exclusive agent" means any licensed insurance agent that has, by contract, agreed to act exclusively for one company or group of affiliated insurance companies and is disallowed by the provisions of that contract to directly write for any other unaffiliated insurer absent express consent from the company or group of affiliated insurance companies.

(c) "Independent agent" means any licensed insurance agent not described in paragraph (b).

(d) "Program" means the clearinghouse created under this section.

(2) In order to confirm eligibility with the corporation and to enhance access of new applicants for coverage and existing policyholders of the corporation to offers of coverage from authorized insurers, the corporation shall establish a program for personal residential risks in order to facilitate the diversion of ineligible applicants and existing policyholders from the corporation into the voluntary insurance market. The corporation shall also develop appropriate procedures for facilitating the diversion of ineligible applicants and existing policyholders for commercial residential coverage into the private insurance market ~~and shall report such~~

~~procedures to the President of the Senate and the Speaker of the House of Representatives by January 1, 2014~~.

(3) The corporation board shall establish the clearinghouse program as an organizational unit within the corporation. The program shall have all the rights and responsibilities in carrying out its duties as a licensed general lines agent, but may not be required to employ or engage a licensed general lines agent or to maintain an insurance agency license to carry out its activities in the solicitation and placement of insurance coverage. In establishing the program, the corporation may:

(a) Require all new applications, and all policies due for renewal, to be submitted for coverage to the program in order to facilitate obtaining an offer of coverage from an authorized insurer before binding or renewing coverage by the corporation.

(b) Employ or otherwise contract with individuals or other entities for appropriate administrative or professional services to effectuate the plan within the corporation in accordance with the applicable purchasing requirements under s. 627.351.

(c) Enter into contracts with any authorized insurer to participate in the program and accept an appointment by such insurer.

(d) Provide funds to operate the program. Insurers and agents participating in the program are not required to pay a fee to offset or partially offset the cost of the program or use

the program for renewal of policies initially written through the clearinghouse.

(e) Develop an enhanced application that includes information to assist private insurers in determining whether to make an offer of coverage through the program.

(f) For personal lines residential risks, require, before approving all new applications for coverage by the corporation, that every application be subject to a period of 2 business days when any insurer participating in the program may select the application for coverage. The insurer may issue a binder on any policy selected for coverage for a period of at least 30 days but not more than 60 days.

(4) Any authorized insurer may participate in the program; however, participation is not mandatory for any insurer. Insurers making offers of coverage to new applicants or renewal policyholders through the program:

(a) May not be required to individually appoint any agent whose customer is underwritten and bound through the program. Notwithstanding s. 626.112, insurers are not required to appoint any agent on a policy underwritten through the program for as long as that policy remains with the insurer. Insurers may, at their election, appoint any agent whose customer is initially underwritten and bound through the program. In the event an insurer accepts a policy from an agent who is not appointed pursuant to this paragraph, and thereafter elects to accept a

policy from such agent, the provisions of s. 626.112 requiring appointment apply to the agent.

(b) Must enter into a limited agency agreement with each agent that is not appointed in accordance with paragraph (a) and whose customer is underwritten and bound through the program.

(c) Must enter into its standard agency agreement with each agent whose customer is underwritten and bound through the program when that agent has been appointed by the insurer pursuant to s. 626.112.

(d) Must comply with s. 627.4133(2).

(e) May participate through their single-designated managing general agent or broker; however, the provisions of paragraph (6)(a) regarding ownership, control, and use of the expirations continue to apply.

(f) Must pay to the producing agent a commission equal to that paid by the corporation or the usual and customary commission paid by the insurer for that line of business, whichever is greater.

(5) Notwithstanding s. 627.3517, any applicant for new coverage from the corporation is not eligible for coverage from the corporation if provided an offer of coverage from an authorized insurer through the program at a premium that is at or below the eligibility threshold established in s. 627.351(6)(c)5.a. Whenever an offer of coverage for a personal lines risk is received for a policyholder of the corporation at

renewal from an authorized insurer through the program, ~~if the offer is equal to or less than the corporation's renewal premium for comparable coverage,~~ the risk is not eligible for coverage with the corporation if the offer is at or below the eligibility threshold specified in s. 627.351(6)(c)5.a. In the event that an offer of coverage for a new applicant is received from an authorized insurer through the program, and the premium offered exceeds the eligibility threshold specified ~~contained~~ in s. 627.351(6)(c)5.a., the applicant or insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation. In the event that an offer of coverage for a personal lines risk is received from an authorized insurer at renewal through the program, and the premium offered is at or below the eligibility threshold specified in s. 627.351(6)(c)5.a. ~~more than the corporation's renewal premium for comparable coverage~~, the insured is not eligible to ~~may elect to accept such coverage, or may elect to accept or~~ continue coverage with the corporation. Section 627.351(6)(c)5.a.(I) does not apply to an offer of coverage from an authorized insurer obtained through the program. An applicant for coverage from the corporation who was declared ineligible for coverage at renewal by the corporation in the previous 36 months due to an offer of coverage pursuant to this subsection shall be considered a renewal under this section if the corporation determines that the authorized insurer making the

offer of coverage pursuant to this subsection continues to insure the applicant and increased the rate on the policy in excess of the increase allowed for the corporation under s. 627.351(6)(n)5.

(6) Independent insurance agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Are granted and must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and (II)(B). Such ownership is granted for as long as the insured remains with the agency or until sold or surrendered in writing by the agent. Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such expirations, records, or other written or electronic information may be used to review an application, issue a policy, or for any other purpose necessary for placing such business through the program.

(b) May not be required to be appointed by any insurer participating in the program for policies written solely through the program, notwithstanding the provisions of s. 626.112.

(c) May accept an appointment from any insurer

participating in the program.

(d) May enter into either a standard or limited agency agreement with the insurer, at the insurer's option.

Applicants ineligible for coverage in accordance with subsection (5) remain ineligible if their independent agent is unwilling or unable to enter into a standard or limited agency agreement with an insurer participating in the program.

(7) Exclusive agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and (II)(B). Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such expirations, records, or other written or electronic information may be used to review an application, issue a policy, or for any other purpose necessary for placing such business through the program.

(b) May not be required to be appointed by any insurer participating in the program for policies written solely through the program, notwithstanding the provisions of s. 626.112.

(c) Must only facilitate the placement of an offer of coverage from an insurer whose limited servicing agreement is approved by that exclusive agent's exclusive insurer.

(d) May enter into a limited servicing agreement with the insurer making an offer of coverage, and only after the exclusive agent's insurer has approved the limited servicing agreement terms. The exclusive agent's insurer must approve a limited service agreement for the program for any insurer for which it has approved a service agreement for other purposes.

Applicants ineligible for coverage in accordance with subsection (5) remain ineligible if their exclusive agent is unwilling or unable to enter into a standard or limited agency agreement with an insurer making an offer of coverage to that applicant.

(8) Submission of an application for coverage by the corporation to the program does not constitute the binding of coverage by the corporation, and failure of the program to obtain an offer of coverage by an insurer may not be considered acceptance of coverage of the risk by the corporation.

(9) The 45-day notice of nonrenewal requirement set forth in s. 627.4133(2)(b)5. applies when a policy is nonrenewed by the corporation because the risk has received an offer of coverage pursuant to this section which renders the risk ineligible for coverage by the corporation.

(10) The program may not include commercial nonresidential

policies.

(11) Proprietary business information provided to the corporation's clearinghouse by insurers with respect to identifying and selecting risks for an offer of coverage is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(a) As used in this subsection, the term "proprietary business information" means information, regardless of form or characteristics, which is owned or controlled by an insurer and:

1. Is identified by the insurer as proprietary business information and is intended to be and is treated by the insurer as private in that the disclosure of the information would cause harm to the insurer, an individual, or the company's business operations and has not been disclosed unless disclosed pursuant to a statutory requirement, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public;

2. Is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as provided to the clearinghouse; and

3. Includes:

a. Trade secrets, as defined in s. 688.002.

b. Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

Proprietary business information may be found in underwriting criteria or instructions which are used to identify and select risks through the program for an offer of coverage and are shared with the clearinghouse to facilitate the shopping of risks with the insurer.

(b) The clearinghouse may disclose confidential and exempt proprietary business information:

1. If the insurer to which it pertains gives prior written consent;

2. Pursuant to a court order; or

3. To another state agency in this or another state or to a federal agency if the recipient agrees in writing to maintain the confidential and exempt status of the document, material, or other information and has verified in writing its legal authority to maintain such confidentiality.

Section 5. This act shall take effect July 1, 2022.

INSURANCE & BANKING SUBCOMMITTEE

HB 1307 by Rep. Gregory
Citizens Property Insurance Corporation

AMENDMENT SUMMARY
February 2, 2022

Amendment 1 by Rep. Gregory (Line 763): The amendment makes the following changes to the bill as filed:

- Phases in the percentage, by which an authorized insurer's renewal offer for a Citizens' policyholder may exceed Citizens' premium and make a policyholder ineligible for Citizens' coverage, by 5% per year until it reaches 20% in 2026.
- Clarifies that a policy removed from Citizens under an assumption agreement may remain on Citizens' policy forms for the remainder of the assumption period so that Citizens may continue to provide service to the policyholder for the claims that are payable by the assuming insurer.

Amendment 2 by Rep. Gregory (940): The amendment changes existing statutory language regarding Citizens' purchase of reinsurance so that Citizens is no longer able to include the cost of reinsurance in its rate calculations if it does not purchase reinsurance.

Amendment 3 by Rep. Gregory (1597): The amendment makes the following changes to the bill as filed:

- Phases in the percentage, by which an authorized insurer's take-out offer may exceed Citizens' premium and make a policyholder ineligible for Citizens' coverage, by 5% per year until it reaches 20% in 2026.
- Eliminates language that creates a 36-month exception where a policyholder whose policy has been taken-out of Citizens can still be considered a renewal if the authorized insurer that took the policy raises the policyholder's rates.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	____	(Y/N)
ADOPTED AS AMENDED	____	(Y/N)
ADOPTED W/O OBJECTION	____	(Y/N)
FAILED TO ADOPT	____	(Y/N)
WITHDRAWN	____	(Y/N)
OTHER		

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Gregory offered the following:

Amendment

Remove lines 763-839 and insert:

insurer is more than the following percent greater than the renewal premium for comparable coverage from the corporation:

(I) Five percent for policies that renew during 2023.

(II) Ten percent for policies that renew during 2024.

(III) Fifteen percent for policies that renew during 2025.

(IV) Twenty percent for polices that renew during 2026 and during all subsequent years.

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 removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period.~~ 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. A policyholder removed from the corporation through an assumption agreement does not remain eligible for coverage from the corporation. However, any policy removed from the corporation through an assumption agreement may remain on the corporation's policy forms through the end of the assumption period so that corporation may continue to provide service to the policyholder for the claims that are payable by the assuming insurer.

(v) ~~(I)~~ If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, 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 20 ~~15~~ percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a commercial lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, ~~if the offer is equal to or less than the corporation's renewal premium for comparable coverage,~~ the risk is not eligible for coverage with the corporation unless the premium for coverage from the authorized insurer is more than the following percent greater than the renewal premium for comparable coverage from the corporation:

(I) Five percent for policies that renew during 2023.

(II) Ten percent for policies that renew during 2024.

(III) Fifteen percent for policies that renew during 2025.

(IV) Twenty percent for policies that renew during 2026 and during all subsequent years.

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 removed from the corporation through an assumption agreement does not remain ~~remains~~ eligible for coverage from the corporation ~~until the end of the assumption period~~. However, any policy removed from the corporation through an assumption agreement may remain on the corporation's policy forms through the end of the assumption period so that corporation may continue to provide service to the policyholder for the claims that are payable by the assuming insurer.

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	____	(Y/N)
ADOPTED AS AMENDED	____	(Y/N)
ADOPTED W/O OBJECTION	____	(Y/N)
FAILED TO ADOPT	____	(Y/N)
WITHDRAWN	____	(Y/N)
OTHER		

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Gregory offered the following:

Amendment (with title amendment)

Remove lines 940-945 and insert:

the board of governors.

T I T L E A M E N D M E N T

Remove line 19 and insert:

making technical changes; eliminating costs of reinsurance in rates under certain circumstances; specifying the

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___ (Y/N)
ADOPTED AS AMENDED	___ (Y/N)
ADOPTED W/O OBJECTION	___ (Y/N)
FAILED TO ADOPT	___ (Y/N)
WITHDRAWN	___ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Gregory offered the following:

Amendment (with title amendment)

Remove lines 1597-1779 and insert:

3. If a policyholder receives a take-out offer from an authorized insurer, the risk is no longer eligible for coverage with the corporation unless the premium for coverage from the authorized insurer is more than the following percent greater than the renewal premium for comparable coverage from the corporation:

(I) Five percent for policies effective on or after January 1, 2023.

(II) Ten percent for policies effective on or after January 1, 2024.

(III) Fifteen percent for policies effective on or after January 1, 2025.

(IV) Twenty percent for policies effective on or after January 1, 2026 and in all subsequent years.

~~4~~3. The corporation must provide written notice to the policyholder and the agent of record regarding all insurers requesting to take out the policy, which ~~and regarding the policyholder's option to accept a take-out offer or to reject all take-out offers and to remain with the corporation. The notice~~ must be in a format prescribed by the corporation and include, for each take-out offer:

a. The amount of the estimated premium;

b. A description of the coverage; and

c. A comparison of the estimated premium and coverage offered by the insurer to the estimated premium and coverage provided by the corporation.

Section 3. Section 627.3517, Florida Statutes, is amended to read:

627.3517 Consumer choice.—No provision of s. 627.351, s. 627.3511, or s. 627.3515 shall be construed to impair the right of any insurance risk apportionment plan policyholder, upon receipt of any keep-out ~~keepout~~ or take-out offer, to retain his or her current agent, so long as that agent is duly licensed and appointed by the insurance risk apportionment plan or otherwise

authorized to place business with the insurance risk apportionment plan. This right may ~~shall~~ not be canceled, suspended, impeded, abridged, or otherwise compromised by any rule, plan of operation, or depopulation plan, whether through keep-out ~~keepout~~, take-out, midterm assumption, or any other means, of any insurance risk apportionment plan or depopulation plan, including, but not limited to, those described in s. 627.351, s. 627.3511, or s. 627.3515. The commission shall adopt any rules necessary to cause any insurance risk apportionment plan or market assistance plan under such sections to demonstrate that the operations of the plan do not interfere with, promote, or allow interference with the rights created under this section. If the policyholder's current agent is unable or unwilling to be appointed with the insurer making the take-out or keep-out ~~keepout~~ offer, the policyholder is ~~shall~~ not ~~be~~ disqualified from participation in the appropriate insurance risk apportionment plan because of an offer of coverage in the voluntary market. An offer of full property insurance coverage by the insurer currently insuring either the ex-wind or wind-only coverage on the policy to which the offer applies is ~~shall~~ not ~~be~~ considered a take-out or keep-out ~~keepout~~ offer. Any rule, plan of operation, or plan of depopulation, through keep-out ~~keepout~~, take-out, midterm assumption, or any other means, of any property insurance risk apportionment plan under s. 627.351(2) or (6) is subject to ss.

627.351(2)(b) and (6)(c) and 627.3511(4).

Section 4. Section 627.3518, Florida Statutes, is amended to read:

627.3518 Citizens Property Insurance Corporation policyholder eligibility clearinghouse program. ~~The purpose of this section is to provide a framework for the corporation to implement a clearinghouse program by January 1, 2014.~~

(1) As used in this section, the term:

(a) "Corporation" means Citizens Property Insurance Corporation.

(b) "Exclusive agent" means any licensed insurance agent that has, by contract, agreed to act exclusively for one company or group of affiliated insurance companies and is disallowed by the provisions of that contract to directly write for any other unaffiliated insurer absent express consent from the company or group of affiliated insurance companies.

(c) "Independent agent" means any licensed insurance agent not described in paragraph (b).

(d) "Program" means the clearinghouse created under this section.

(2) In order to confirm eligibility with the corporation and to enhance access of new applicants for coverage and existing policyholders of the corporation to offers of coverage from authorized insurers, the corporation shall establish a program for personal residential risks in order to facilitate

the diversion of ineligible applicants and existing policyholders from the corporation into the voluntary insurance market. The corporation shall also develop appropriate procedures for facilitating the diversion of ineligible applicants and existing policyholders for commercial residential coverage into the private insurance market ~~and shall report such procedures to the President of the Senate and the Speaker of the House of Representatives by January 1, 2014~~.

(3) The corporation board shall establish the clearinghouse program as an organizational unit within the corporation. The program shall have all the rights and responsibilities in carrying out its duties as a licensed general lines agent, but may not be required to employ or engage a licensed general lines agent or to maintain an insurance agency license to carry out its activities in the solicitation and placement of insurance coverage. In establishing the program, the corporation may:

(a) Require all new applications, and all policies due for renewal, to be submitted for coverage to the program in order to facilitate obtaining an offer of coverage from an authorized insurer before binding or renewing coverage by the corporation.

(b) Employ or otherwise contract with individuals or other entities for appropriate administrative or professional services to effectuate the plan within the corporation in accordance with the applicable purchasing requirements under s. 627.351.

(c) Enter into contracts with any authorized insurer to participate in the program and accept an appointment by such insurer.

(d) Provide funds to operate the program. Insurers and agents participating in the program are not required to pay a fee to offset or partially offset the cost of the program or use the program for renewal of policies initially written through the clearinghouse.

(e) Develop an enhanced application that includes information to assist private insurers in determining whether to make an offer of coverage through the program.

(f) For personal lines residential risks, require, before approving all new applications for coverage by the corporation, that every application be subject to a period of 2 business days when any insurer participating in the program may select the application for coverage. The insurer may issue a binder on any policy selected for coverage for a period of at least 30 days but not more than 60 days.

(4) Any authorized insurer may participate in the program; however, participation is not mandatory for any insurer. Insurers making offers of coverage to new applicants or renewal policyholders through the program:

(a) May not be required to individually appoint any agent whose customer is underwritten and bound through the program.

Notwithstanding s. 626.112, insurers are not required to appoint any agent on a policy underwritten through the program for as long as that policy remains with the insurer. Insurers may, at their election, appoint any agent whose customer is initially underwritten and bound through the program. In the event an insurer accepts a policy from an agent who is not appointed pursuant to this paragraph, and thereafter elects to accept a policy from such agent, the provisions of s. 626.112 requiring appointment apply to the agent.

(b) Must enter into a limited agency agreement with each agent that is not appointed in accordance with paragraph (a) and whose customer is underwritten and bound through the program.

(c) Must enter into its standard agency agreement with each agent whose customer is underwritten and bound through the program when that agent has been appointed by the insurer pursuant to s. 626.112.

(d) Must comply with s. 627.4133(2).

(e) May participate through their single-designated managing general agent or broker; however, the provisions of paragraph (6)(a) regarding ownership, control, and use of the expirations continue to apply.

(f) Must pay to the producing agent a commission equal to that paid by the corporation or the usual and customary commission paid by the insurer for that line of business, whichever is greater.

(5) Notwithstanding s. 627.3517, any applicant for new coverage from the corporation is not eligible for coverage from the corporation if provided an offer of coverage from an authorized insurer through the program at a premium that is at or below the eligibility threshold established in s. 627.351(6)(c)5.a. Whenever an offer of coverage for a personal lines risk is received for a policyholder of the corporation at renewal from an authorized insurer through the program, ~~if the offer is equal to or less than the corporation's renewal premium for comparable coverage,~~ the risk is not eligible for coverage with the corporation if the offer is at or below the eligibility threshold specified in s. 627.351(6)(c)5.a. In the event that an offer of coverage for a new applicant is received from an authorized insurer through the program, and the premium offered exceeds the eligibility threshold specified ~~contained~~ in s. 627.351(6)(c)5.a., the applicant or insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation. In the event that an offer of coverage for a personal lines risk is received from an authorized insurer at renewal through the program, and the premium offered is at or below the eligibility threshold specified in s. 627.351(6)(c)5.a. ~~more than the corporation's renewal premium for comparable coverage~~, the insured is not eligible to ~~may elect to accept such coverage, or may elect to accept or~~ continue coverage with the corporation. Section

627.351(6)(c)5.a.(I) does not apply to an offer of coverage from an authorized insurer obtained through the program. ~~An applicant for coverage from the corporation who was declared ineligible for coverage at renewal by the corporation in the previous 36 months due to an offer of coverage pursuant to this subsection shall be considered a renewal under this section if the corporation determines that the authorized insurer making the offer of coverage pursuant to this subsection continues to insure the applicant and increased the rate on the policy in excess of the increase allowed for the corporation under s. 627.351(6)(n)5.~~

T I T L E A M E N D M E N T

Remove lines 39-47 and insert:

record status; making technical changes; revising eligibility for the corporation when insurers request to take out a policy; revising the notice that must be provided by the corporation when insurers request to take out a policy; amending s. 627.3517, F.S.; making technical changes; amending s. 627.3518, F.S.; deleting obsolete provisions relating to the purpose of the corporation's clearinghouse program and reporting requirements; revising procedures for determining eligibility of a risk for coverage with the corporation; revising renewal

status after insurers request to take out a policy; providing an effective