

Regular Session, 2003

HOUSE BILL NO. 1788

BY REPRESENTATIVE MORRISH AND SENATOR DARDENNE

AN ACT

To amend and reenact R.S. 22:691(C), (E), and (F)(2) and to enact R.S.

22:691(H) and Subpart B of Part XXX of Chapter 1 of Title 22 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 22:1430 through 1430.17, and to repeal R.S. 22:1406.1 through 1406.13 and 1431 through 1445, relative to residential and commercial property insurance; to provide for the office of property and casualty relative to the standard fire insurance contract; to provide for cancellation notice; to provide for loss payable; to provide for terrorism coverage; to provide for the Louisiana Citizens Property Insurance Corporation; to provide for the FAIR Plan; to provide for the Coastal Plan; to provide for a board of directors; to provide for the Louisiana Insurance Rating Commission; to provide for corporate powers; to provide for certain immunity; to provide for a plan of operation; to provide for assessments; to provide for charges and surcharges; to provide for participating insurers; to provide for eligibility; to provide for insurance; to provide for rates; to provide for contributions by the state; to provide for plan deficits; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:691(C), (E), and (F)(2) are hereby amended and reenacted and R.S. 22:691(H) and Subpart B of Part XXX of Chapter 1 of Title 22 of the Louisiana Revised Statutes of 1950, comprised of R.S. 22:1430 through 1430.17, are hereby enacted to read as follows:

§691. Fire insurance contract; standard provisions; variations

* * *

C. Binders or other contracts for temporary insurance may be made, orally or in writing, and shall be deemed to include all the terms of such standard fire insurance policy and all such applicable endorsements, not disapproved by the ~~fire insurance division~~ office of property and casualty as may be designated in such contract of temporary insurance; except that the cancellation clause thereof specifying the hour of the day at which the insurance shall commence, may be superseded by the express terms of such contract of temporary insurance.

* * *

E.(1) Appropriate forms of other contracts or endorsements whereby the interest in the property described in such policy shall be insured against one or more of the perils which the insurer is empowered to assume, in addition to the perils covered by said standard fire insurance policy, may be approved and may, unless at any time disapproved by the ~~fire insurance division~~ office of property and casualty, be used in connection with a standard fire insurance policy and such forms may contain provisions and stipulations inconsistent with the standard policy if applicable only to such other perils. The first page of the policy may, in a form approved by the ~~fire insurance division~~ office of property and casualty, be rearranged to provide space for the listing of amounts of insurance, rates and premiums for the basic coverages insured under the standard form of policy and for additional coverages insured under endorsements attached, and such

other data as may be conveniently included for duplication on daily reports for office records.

(2) Any policy or contract otherwise subject to the provisions of Subsections A and B hereof, which includes either on an unspecified basis as to the coverage or for a single premium, coverage against the peril of fire and substantial coverage against other perils need not comply with the provisions of Subsections A and B hereof, provided (1) such policy or contract shall afford coverage, with respect to the peril of fire, not less than the coverage afforded by said standard fire policy, (2) the provisions in relation to mortgagee interests and obligations in said standard fire policy may be incorporated therein without change, (3) such policy or contract is complete as to all of its terms without reference to the standard form of fire insurance policy or any other policy, and (4) the commissioner is satisfied that such policy or contract complies with the provisions hereof. The pages of the Standard Fire Insurance Policy may be renumbered and the format rearranged for convenience in the preparation of individual contracts, and to provide space for the listing of rates and premiums for coverages insured thereunder or under endorsement attached or printed thereon, and such other data as may be conveniently included for duplication on daily reports for office records.

F. The form of the standard fire insurance policy of the state of Louisiana (with permission to substitute for the word "company" a more accurate descriptive term for the type of insurer) shall be as follows:

* * *

(2) SECOND PAGE OF STANDARD FIRE POLICY

Concealment, fraud -- This entire policy shall be void if, whether before or after a loss, the insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the insured therein, or in case of any fraud or false swearing by the insured relating thereto.

Uninsurable and excepted property -- This policy shall not cover accounts, bills, currency, deeds, evidence of debt, money or securities; nor, unless specifically named hereon in writing, bullion or manuscripts.

Perils not included -- This company shall not be liable for loss by fire or other perils insured against in this policy caused, directly or indirectly, by:

(a) enemy attack by armed forces, including action taken by military, naval or air forces in resisting an actual or an immediately impending enemy attack; (b) invasion; (c) insurrection; (d) rebellion; (e) revolution; (f) civil war; (g) usurped power; (h) order of any civil authority except acts of destruction at the time of and for the purpose of preventing the spread of fire, provided that such fire did not originate from any of the perils excluded by this policy; (i) neglect of the insured to use all reasonable means to save and preserve the property at and after a loss, or when the property is endangered by fire in neighboring premises; (j) nor shall this Company be liable for loss by theft.

Other insurance -- Other insurance may be prohibited or the amount of insurance may be limited by endorsement attached hereto.

Conditions suspending or restricting insurance. Unless otherwise provided in writing added hereto, this Company shall not be liable for loss occurring:

(a) While the hazard is increased by any means within the control or knowledge of the insured; or

(b) While a described building, whether intended for occupancy by owner or tenant, is vacant, or unoccupied beyond a period of sixty consecutive days; or

(c) As a result of explosion or riot, unless fire ensue, and in that event for loss by fire only.

Other perils or subjects -- Any other peril to be insured against or subject of insurance to be covered in this policy shall be by endorsement in writing hereon or added hereto.

Added provisions -- The extent of the application of insurance under this policy and of the contribution to be made by this Company in case of loss, and any other provision or agreement not inconsistent with the provisions of this policy, may be provided for in writing added hereto, but no provisions may be waived except such as by the terms of this policy is subject to change.

Waiver provisions -- No permission affecting this insurance shall exist, or waiver of any provision be valid unless granted herein or expressed in writing added hereto. No provision, stipulation, or forfeiture shall be held to be waived by any requirement or proceeding on the part of this Company relating to appraisal or to any examination provided for herein.

Cancellation of policy -- This policy shall be canceled at any time at the request of the insured, in which case this Company shall,

upon demand and surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. This policy may be canceled at any time by this Company by giving to the insured a ~~twenty~~ thirty days written notice of cancellation, or ten days written notice when cancellation is for nonpayment of premium, with or without tender of the excess paid premium above the pro rata premium for the expired time which excess, if not tendered, shall be refunded on demand. Notice of cancellation shall state that said excess premium, if not tendered, will be refunded on demand. Upon the written request of the named insured, the insurer shall provide to the insured in writing the reasons for cancellation of the policy. There shall be no liability on the part of and no cause of action of any nature shall arise against any insurer or its agents, employees, or representatives for any action taken by them to provide the reasons for cancellation as required by this Paragraph.

Mortgagee interest and obligations -- If loss hereunder is made payable in whole or in part, to a designated mortgagee not named herein as the insured, such interest in this policy may be canceled by delivering or mailing to such mortgagee a ~~twenty~~ thirty days written notice of cancellation, or a ten days written notice of cancellation if cancellation is for nonpayment of premium.

If the insured fails to render proof of loss such mortgagee, upon notice, shall render proof of loss in form herein specified within sixty (60) days thereafter and shall be subject to the provisions hereof relating to appraisal and time of payment and of bringing suit. If this Company shall claim that no liability existed as to the mortgagor or owner, it shall, to the extent of payment of loss to the mortgagee, be

subrogated to all the mortgagee's rights of recovery, but without impairing mortgagee's rights to sue; or it may pay off the mortgage debt and require an assignment thereof and of the mortgage. Other provisions relating to the interests and obligations of such mortgagee may be added hereto by agreement in writing.

Pro rata liability -- This Company shall not be liable for a greater proportion of any loss than the amount hereby insured shall bear to the whole insurance covering the property against the peril involved, whether collectible or not.

Requirements in case loss occurs -- The insured shall give immediate written notice to this Company of any loss, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged, and undamaged property, showing in detail quantities, costs, actual cash value, and amount of loss claimed; and within sixty days after loss, unless such time is extended in writing by this Company, the insured shall render to this Company a proof of loss, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: the time and origin of the loss, the interest of the insured and of all others in the property, the actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession, or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on

leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and, if required, verified plans and specifications of any building, fixtures, or machinery destroyed or damaged. The insured, as often as may be reasonably required shall exhibit to any person designated by this Company all that remains of any property herein described, and submit to examinations under oath by any person named by this Company, and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by this Company or its representatives, and shall permit extracts and copies thereof to be made.

Appraisal -- In case the insured and this Company shall fail to agree as to the actual cash value or the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within twenty days of such demand. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen days to agree upon such umpire, then on request of the insured or this Company such umpire shall be selected by a judge of a court of record in the state in which the property covered is located. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with this Company shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.

Company's options -- It shall be optional with this Company to take all, or any part, of the property at the agreed or appraised value, and also to repair, rebuild, or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within thirty days after the receipt of the proof of loss herein required.

Abandonment -- There can be no abandonment to this Company of any property.

When loss payable -- The amount of loss for which this Company may be liable shall be payable ~~sixty~~ thirty days after proof of loss, as herein provided, is received by this Company and ascertainment of the loss is made either by agreement between the insured and this Company expressed in writing or by filing with this Company of an award as herein provided.

Suit -- No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and unless commenced within twelve months next after the inception of the loss.

Subrogation -- This Company may require from the insured an assignment of all right of recovery against any party for loss to the extent that payment therefor is made by this Company.

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H. For the purposes of commercial property and casualty insurance policies, the standard policy of fire insurance prescribed by this Part shall not cover loss or damage caused, directly or indirectly, by terrorism, unless an endorsement specifically assuming coverage for loss or damage caused by terrorism is attached to the policy. Insurers

issuing commercial property and casualty insurance policies against the peril of fire and other perils permitted under this Section are hereby authorized to add to the policy by endorsement or include within the policy statement that the policy does not cover such loss.

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SUBPART B. LOUISIANA CITIZENS PROPERTY

INSURANCE CORPORATION

§1430. Louisiana Citizens Property Insurance Corporation; declaration and purpose; construction

It is hereby declared by the Legislature of Louisiana that an adequate market for fire with extended coverage and vandalism and malicious mischief insurance and homeowners coverage is necessary to the economic welfare of the state, including the coastal areas of the state, and that without such insurance the orderly growth and development of the state would be severely impeded; and that adequate insurance upon property is necessary to enable owners of homes and commercial owners to obtain financing for the purchase and improvement of their property. It is further declared that the state has an obligation to provide an equitable method whereby every licensed insurer writing fire, extended coverage and vandalism and malicious mischief and, if necessary, homeowners coverage on a direct basis in Louisiana is required to meet its public responsibility instead of shifting the burden to a few willing and public-spirited insurers. While deserving praise, the financing mechanisms of the former plans were insufficient to meet the needs of this area. It is the purpose of this Subpart to accept this obligation and to provide a mandatory program to assure an adequate market for fire, extended coverage and vandalism

and malicious mischief and, if necessary, homeowners insurance in the coastal and other areas of Louisiana. The legislature intends by this Subpart that property insurance be provided and that it continues, as long as necessary, through an entity organized to achieve efficiencies and economies, all toward the achievement of the foregoing public purposes. Therefore, the Louisiana Citizens Property Insurance Corporation, a nonprofit corporation, is hereinafter created, and said corporation shall operate insurance plans which shall function exclusively as residual market mechanisms to provide essential property insurance for residential and commercial property, solely for applicants who are in good faith entitled, but are unable, to procure insurance through the voluntary market. The legislature further intends that the corporation work toward the ultimate depopulation of these residual market insurance plans. Because it is essential for the corporation to have the maximum financial resources to pay claims following a catastrophic hurricane, it is the intent of the legislature 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.

§1430.1. Definitions

As used in this Subpart, unless the context otherwise requires:

(1) "Assessable insureds" means insureds who procure a policy of insurance for one or more subject lines of business in this state.

(2) "Assessable insurers" means insurers authorized to write one or more subject lines of business in this state.

(3) "Coastal area" means all of that area of the state designated in the plan of operation submitted by the governing board, approved by

the Louisiana Insurance Rating Commission and designated as Coastal Plan (Louisiana Insurance Underwriting Plan) area.

(4) "Coastal Plan" means the successor to that program established by Act 35 of the 1970 Regular Session to provide a residual market for adequate insurance on property in the coastal areas of the state, now available as a program of the Louisiana Citizens Property Insurance Corporation.

(5) "Corporation" means the Louisiana Citizens Property Insurance Corporation, and includes the residual market insurance programs known as the "Coastal Plan" and the "FAIR Plan".

(6) "Essential property insurance" means any of the following coverages against direct loss to property as defined by the plan of operation approved by the Louisiana Insurance Rating Commission:

(a) Fire, with or without extended coverage and vandalism and malicious mischief.

(b) Windstorm and hail without fire, but only with respect to dwellings and commercial properties on a monoline basis.

(c) Homeowners.

(7) "FAIR Plan" means the successor to that program established by Act 424 of the 1992 Regular Session, and designated as the "Fair Access to Insurance Requirements Plan" to provide a residual market for adequate insurance on property in the state, now available as a program of the Louisiana Citizens Property Insurance Corporation.

(8) "Governing board" means that board of directors which is established under R.S. 22:1430.3 and, where appropriate, any designee of the governing board.

(9) "Insurable property" means real and tangible personal property at a fixed location in Louisiana when such property is in an insurable condition and basic property insurance is not obtainable in the voluntary market and as further defined by the governing board.

(10) "Net direct premiums" means gross direct premiums, excluding reinsurance assumed, written for subject lines of business, less return premiums, dividends paid or credited to policyholders, or the unused or unabsorbed portions of premium deposits. In no event shall premiums on industrial fire insurance policies be considered as net direct premiums.

(11) "Plan of operation" means the document setting the rules of operation of the corporation, as promulgated by the governing board and approved by the Louisiana Senate Committee on Insurance and the Louisiana House Committee on Insurance pursuant to the provisions of this Subpart.

(12) "Subject lines of business" means the following lines of business: fire, allied lines, farmowners multiperil, homeowners multiperil, and the property insurance portion of commercial multiperil policies.

§1430.2. Creation of the Louisiana Citizens Property Insurance Corporation

A. There is created a nonprofit corporation to be known as the "Louisiana Citizens Property Insurance Corporation", which shall operate residual market insurance programs, designated as the Coastal Plan and the FAIR Plan, sometimes hereinafter referred to as "the plans", as successors to the Louisiana Insurance Underwriting Plan (Coastal Plan) and the Louisiana Joint Reinsurance Plan (FAIR Plan);

and whose domicile for purpose of suit shall be East Baton Rouge Parish, Louisiana. All insurers authorized to write, and engaged in writing, property insurance in the state of Louisiana shall participate in the Coastal Plan and the FAIR Plan as a condition of their authority to transact insurance in this state. The corporation shall perform its functions under a plan of operation established and approved under R.S. 22:1430.7 and shall exercise its powers through a board of directors established under R.S. 22:1430.3.

B.(1) Assets of the corporation shall not be considered part of the general fund of the state. The state shall not budget for or provide general fund appropriations to the corporation, and the debts, claims, obligations, and liabilities of the corporation shall not be considered to be a debt of the state or a pledge of its credit.

(2) The corporation shall be prohibited from making contributions to any political party, political organization, public official, or candidate for public office, whether federal, state or local in nature.

(3) All compensated employees of the corporation shall be subject to the provisions of Article X, Part I, Section 9 of the Louisiana Constitution of 1974, 'Prohibitions Against Political Activities', as if they were employees of the state, except members of the governing board of the corporation.

C. Neither the corporation nor the plans shall be required to obtain a certificate of authority from the commissioner of insurance, nor shall they participate in the Louisiana Insurance Guaranty Association.

D.(1) Notwithstanding the provisions of Subsections A and B of this Section, and except as provided by Paragraph (2) of this Subsection, the corporation shall be subject to R.S. 42:4.1 through 13 and to R.S. 44:1 through 41, and may be considered as if it were a public body for the purpose of those provisions.

(2) The corporation may hold an executive session pursuant to R.S. 42:6 for discussion of one or more of the following, and R.S. 44:1 through 41 shall not apply to any documents as enumerated in R.S. 44:1(A)(2) which relate to one or more of the following:

(a) Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files.

(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 for 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, or either of the plans prior to enactment of this Subpart, under contract, where 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 which is exempt 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 an employee assistance program, a program to assist any employee who has a behavioral or medical disorder, substance abuse problem, or emotional difficulty which affects the employee's job performance, all records relative to that participation shall be confidential.

(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 will be redacted.

(3) When an authorized insurer is considering underwriting a specific risk insured by the corporation, relevant underwriting files and confidential claims files may be released to the insurer provided the insurer agrees in writing, notarized and under oath, to maintain the

confidentiality of such files. When a file is transferred to an insurer that file is no longer a public record because it is not held by an agency subject to the provisions of the public records law. Notwithstanding the provisions of this Subsection, the corporation shall not provide either a partial or complete list of the plans' insureds, applicants or claimants to any voluntary insurer.

§1430.3. Board of directors of corporation

A. The governing body of the corporation shall be a board of directors which shall consist of the following members, who shall be representative of the state's population as near as practicable:

(1) The commissioner of the Department of Insurance, or an employee of the Department of Insurance as his designee.

(2) The state treasurer, or an employee of the Department of the Treasury as his designee.

(3) The chairman of the House Committee on Insurance, or a member of that committee designated by the chairman.

(4) The chairman of the Senate Committee on Insurance, or a member of that committee designated by the chairman.

(5) Five representatives appointed by the governor, one from a list of two nominees from the domestic insurer with the largest direct written premium in the state of the subject lines of business; one from a list of two nominees from an insurer with at least one percent of the aggregate statewide direct written premium of the subject lines of business; and the remaining three representatives shall be appointed at large.

(6) One member appointed by the commissioner from a list of three nominees from the Professional Insurance Agents of Louisiana, or its successor.

(7) One member appointed by the commissioner from a list of three nominees from the Independent Insurance Agents of Louisiana, or its successor.

(8) One member appointed by the governor from a list of three nominees from the National Association of Independent Insurers, or its successor.

(9) One member appointed by the governor from a list of three nominees from the American Insurance Association, or its successor.

(10) One member appointed by the governor from a list of three nominees from the Alliance of American Insurers, or its successor.

(11) One member appointed by the governor from a list of two nominees from the insurer with the largest direct written premium in the state of the subject lines of business.

B. The quorum necessary for transaction of business is hereby established as seven members of the board in attendance.

C. The members of the board shall elect the chairman.

D. The members of the board shall receive no salary, but each member shall be reimbursed for necessary travel and other expenses actually incurred while in attendance at the meetings of the board or on business for the board.

§1430.4. Coastal Plan and FAIR Plan; re-created and continued

A. There is hereby re-created and continued the Louisiana Insurance Underwriting Plan (Coastal Plan), which beginning January 1, 2004, shall be available as an insurance program of the Louisiana

Citizens Property Insurance Corporation. All assessable insurers shall participate in assessments levied by the Coastal Plan, so long as the Coastal Plan is in existence, as a condition of continuing authority to transact the business of insurance in this state.

B. There is hereby re-created and continued the Louisiana Joint Reinsurance Plan (FAIR Plan), which beginning January 1, 2004, shall be available as an insurance program of the Louisiana Citizens Property Insurance Corporation. All assessable insurers shall participate in assessments levied by the FAIR Plan, so long as the FAIR Plan is in existence, as a condition of continuing authority to transact the business of insurance in this state.

§1430.5. Immunity from liability

A. There shall be no liability on the part of and no cause of action of any nature shall arise against the Louisiana Insurance Rating Commission or any of its staff, or against the governing board of the Louisiana Citizens Property Insurance Corporation or anyone acting on behalf of the corporation or the plans, or against any servicing carrier or carriers, or against any assessable insurer, or against any participating insurance producer, or against the Department of Insurance or its representatives, for any action taken by them in the performance of their duties or responsibilities under this Subpart.

B. Such immunity from liability does not apply to:

(1) Any of the persons or entities listed in Subsection A hereof for any willful tort or criminal act.

(2) The corporation, or insurance producers placing business with one of the plans, for breach of any contract or agreement pertaining to insurance coverage.

(3) The corporation with respect to issuance or payment of debt.

(4) Any assessable insurer with respect to any action to enforce such insurer's obligations to the corporation under this Subpart.

§1430.6. Powers and duties of Louisiana Citizens Property Insurance Corporation

A. The Louisiana Citizens Property Insurance Corporation shall operate insurance plans which shall function exclusively as residual market mechanisms to provide essential property insurance for residential and commercial property for applicants who are in good faith entitled, but are unable, to procure insurance through the voluntary market. The corporation shall not offer private or commercial automobile or vehicle insurance. The corporation shall operate according to a plan of operation pursuant to R.S. 22:1430.7.

B. The governing board of the corporation shall, pursuant to the provisions of this Subpart and the plan of operation and with respect to essential property insurance on insurable property, have the power:

(1) To cause to be issued policies of insurance to eligible applicants; and

(2) To employ or retain such persons as are necessary to perform the duties of the corporation.

C. The corporation may:

(1) Purchase reinsurance on risks insured by the corporation and the plans.

(2) Borrow funds necessary to effect the purposes of this Subpart. In connection therewith, the corporation may agree to such terms and conditions as it deems necessary and proper and the corporation may assign to the state or any agency or authority thereof,

or to any private entity, the right to the receipt of assessments levied by the corporation on behalf of one or more of the plans, to the extent necessary to provide for the payment of bonds issued by the state or such agency or authority, or such private agency, for the purpose of providing for the repayment of such borrowings.

(3) Sue or be sued. The power to sue includes the power and right to intervene as a party before any court in this state in any matter involving the plans or the corporation's powers and duties.

(4) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this Subpart.

D. The corporation shall:

(1) Maintain separate accounts and records for the Coastal Plan and the FAIR Plan for all policies, revenues, assets, liabilities, losses, and expenses.

(2) Retain any profits or excess reserves generated, to be used to offset deficits incurred by the plans. Such retained funds shall be invested pursuant to the limitations set forth in this Title for insurers.

(3) Develop and annually reassess a reasonable and prudent reinsurance program, for the benefit of the policyholders of the plans, to enhance the capability of the corporation to timely and efficiently handle claims from a hurricane or other natural disaster.

(4) Take all actions necessary to facilitate and maintain tax-free status for the income and operations of the corporation and the plans, and to facilitate tax-free status for bonds or other indebtedness issued by or on behalf of the corporation or the plans.

(5) Upon depopulation of the plans, such that less than one thousand policies are written in a plan year, and a determination by the

governing board that the declaration and purpose as set forth in R.S. 22:1430 no longer requires operation of the plans, and with approval of the Louisiana Senate Committee on Insurance and the Louisiana House Committee on Insurance and the commissioner of insurance, effectuate a plan of dissolution of the corporation. Upon dissolution, the assets of the corporation shall be applied first to pay all debts, liabilities, and obligations of the corporation, including the establishment of reasonable reserves for any contingent liabilities or obligations, and all remaining assets of the corporation shall become property of the state and be deposited in the general fund. However, no dissolution shall take effect as long as the corporation has bonds or other financial obligations outstanding unless adequate provision has been made for the payment of the bonds or other financial obligations pursuant to the documents authorizing the issuance of the bonds or other financial obligations.

(6) Perform such other acts as are necessary or proper to effectuate the purpose of this Subpart.

§1430.7. Plan of operation of Louisiana Citizens Property Insurance Corporation

A.(1) A plan of operation adopted by the governing board of the Louisiana Citizens Property Insurance Corporation shall be filed with and approved by the Louisiana Senate Committee on Insurance and the Louisiana House Committee on Insurance, and filed with the office of property and casualty of the Department of Insurance. The plan of operation shall include the establishment of necessary facilities and operating procedures; management of the corporation; procedures for assessment of assessable insurers and assessable insureds to defray

deficits in one or more of the plans; underwriting standards; procedures for the purchase and cession of reinsurance; procedures for determining the amounts of insurance to be provided to specific risks; procedures for the development of requests for proposals, which shall incorporate an open access plan, and shall be prerequisite to any servicing company contract; procedures for processing applicants for insurance; provisions for attaining depopulation of the plans; and such other provisions as may be deemed necessary to carry out the purposes of this Subpart.

(2) The Louisiana Senate Committee on Insurance and the Louisiana House Committee on Insurance and the office of property and casualty may, in their discretion, consult with the governing board of the corporation and may seek any further information deemed necessary.

B.(1) The governing board of the corporation may, subject to the approval of the Louisiana Senate Committee on Insurance and the Louisiana House Committee on Insurance, amend the plan of operation at any time. The Louisiana Senate Committee on Insurance and the Louisiana House Committee on Insurance and the office of property and casualty may review the plan of operation at any time deemed prudent, but not less than once in each calendar year.

(2) Notwithstanding the provisions of Paragraph (1) of this Subsection, the governing board of the corporation shall not have the authority to amend the plan of operation to expand on the declaration and purpose as set forth in R.S. 22:1430, or to expand on the essential property insurance and subject lines of business as defined in R.S. 22:1430.1.

C. The Louisiana Senate Committee on Insurance and the Louisiana House Committee on Insurance may, by order, withdraw all or part of a plan of operation if it determines that conditions have changed since approval was granted, or that the public purpose of the corporation and the plans require changes in the plan of operation.

§1430.8. Functions of assessable insurers participating in the Coastal Plan

A. All assessable insurers shall participate in assessments of the Coastal Plan in the proportion that the net direct premium of such participant written in this state during the preceding calendar year bears to the aggregate net direct premiums written in this state by all assessable insurers during the preceding calendar year as certified to the governing board of the Louisiana Citizens Property Insurance Corporation by the Louisiana Insurance Rating Commission after review of annual statements, other reports and other statistics the Louisiana Insurance Rating Commission shall deem necessary to provide the information herein required and which the Louisiana Insurance Rating Commission is hereby authorized and empowered to obtain from all assessable insurers. Assessable insurers shall not participate in the gains or losses of the Coastal Plan.

B. The governing board of the corporation may adopt, in accordance with the plan of operation approved by the Louisiana Senate Committee on Insurance and the Louisiana House Committee on Insurance, a credit schedule for essential property insurance voluntarily written in the coastal areas, and participation by assessable insurers in the writings in the Coastal Plan may be reduced in accordance with the

provisions of such credit schedule. The governing board shall define the term "essential property insurance" for the purposes of this Section.

C. Any insurer who becomes authorized to engage in writing property insurance within Louisiana and who engages in writing property insurance within Louisiana shall become an assessable insurer in the Coastal Plan on January first, immediately following such authorization, and shall cease to be an assessable insurer one 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.

§1430.9. Functions of insurers participating in the FAIR Plan

A. All assessable insurers shall participate in assessments of the FAIR Plan in the proportion that the net direct premium of such participant written in this state during the preceding calendar years bears to the aggregate net direct premiums written in this state by all assessable insurers during the preceding calendar year as certified to the governing board of the corporation after review of annual statements, other reports, and other statistics necessary to provide the information herein required and which the Louisiana Insurance Rating Commission is hereby authorized and empowered to obtain from all assessable insurers. Assessable insurers shall not participate in the gains or losses of the FAIR Plan.

B. The governing board of the corporation may adopt, in accordance with the plan of operation approved by the Louisiana Senate Committee on Insurance and the Louisiana House Committee on Insurance, a credit schedule for essential property insurance voluntarily written, and participation by assessable insurers in the writings in the

FAIR Plan may be reduced in accordance with the provisions of such credit schedule. The governing board shall define the term "essential property insurance" for the purposes of this Section.

C. Any insurer who becomes authorized to engage in writing property insurance within Louisiana and who engages in writing property insurance within Louisiana shall become an assessable insurer in the FAIR Plan on January first immediately following such authorization, and shall cease to be an assessable insurer one 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.

§1430.10. Assessable insureds

A. All persons who procure one or more subject lines of business from an assessable insurer are subject to emergency assessment by the corporation, and are referred to collectively as "assessable insureds".

B. When an emergency assessment is levied by the corporation, the assessment percentage applicable to each assessable insured is the ratio of the total amount being assessed by the corporation to the aggregate statewide direct written premium for the subject lines of business for the prior year.

C. Emergency assessments levied by the corporation on assessable insureds shall be collected by all assessable insurers at the time an assessable insured procures a policy of insurance for a subject line of business. Assessable insurers shall remit the collected emergency assessments to the corporation in accordance with

guidelines included in the corporation's plan of operation. Emergency assessments shall not be considered premium.

D. Assessable insurers shall be permitted to recoup all regular assessments from their voluntary policyholders by applying a surcharge to all policies issued for subject lines of business. The surcharge shall be a uniform percentage of premium, but shall not be considered premium. Assessable insurers shall cease to collect the recoupment surcharge once the full amount of the regular assessment has been collected. If an assessable insurer recoups more than its fair share of a regular assessment, all funds collected in excess of the insurer's share of the regular assessment shall be remitted to the corporation for use in defraying future deficits. Assessable insurers shall notify the department at least thirty days in advance of the commencement of such a surcharge.

§1430.11. Eligibility; application

A. Any person having an insurable interest in insurable property is entitled to apply to the corporation, directly or through a representative, for such coverage through the Coastal Plan or the FAIR Plan, and for an inspection of the property. Every such application shall be submitted on forms prescribed by the governing board of the corporation and on file with the office of property and casualty of the Department of Insurance.

B. The term "insurable interest" as used in this Section shall be deemed to include any lawful and substantial economic interest in the safety and preservation of property from loss, destruction, or pecuniary damage.

C. If the corporation determines that the property is insurable, the corporation, upon receipt of the premium or such portion thereof as is prescribed for either the Coastal Plan or the FAIR Plan, shall cause to be issued the appropriate policy of essential property insurance for a term not exceeding one year. Any policy issued pursuant to the provisions of this Section shall be renewed annually, upon payment of premium due, so long as the property meets the definition of "insurable property".

D. If the corporation for any reason denies an application and refuses to cause to be issued an insurance policy on insurable property to any applicant, or takes no action on an application within the time prescribed in the plan of operation, such applicant may appeal to the Louisiana Insurance Rating Commission and the said commission or a member of the commission's staff designated by it, after reviewing the facts, may direct the corporation to issue, or cause to be issued, an appropriate insurance policy to the applicant. In carrying out its duties pursuant to this Section, the Louisiana Insurance Rating Commission may request and the corporation shall provide any information which the Louisiana Insurance Rating Commission deems necessary to a determination concerning the reason for the denial or delay of the application.

§1430.12. Rates, rating plans, and rate rules applicable

A. As residual markets, the plans made available by the Louisiana Citizens Property Insurance Corporation are not intended to offer rates competitive with the voluntary market. Rates for policies issued under the Coastal Plan and the FAIR Plan shall be set by the governing board of the Louisiana Citizens Property Insurance

Corporation, adjusted annually, shall be actuarially justified, and for each parish, the average rates of the plans for each line of business for personal lines residential policies, excluding rates for wind-only policies, shall exceed by at least ten percent the average rates charged by the insurer that had the highest average rate in that parish among the ten insurers with the greatest total direct written premium in the state for that line of business in the preceding year; except that, with respect to mobile home coverages, the average rates of the plans shall exceed by at least ten percent the average rates charged by the insurer that had the highest average rate in that parish among the five insurers with the greatest total written premium for mobile homeowners' policies in the state in the preceding year. Such rates shall include an appropriate catastrophe loading factor, and may include rules for classification of risks insured hereunder and rate modifications hereof.

B. In addition to the rates otherwise determined pursuant to this Section, including the premium tax provided for in R.S. 22:1065, the corporation shall impose and collect an additional amount equal to the premium tax provided for in R.S. 22:1065 to augment the financial resources of the corporation. Said additional amount equal to the premium tax shall be designated as a charge accruing to the state of Louisiana, but shall be retained by the corporation as a state contribution to the corporation for the public purpose as set forth in R.S. 22:1430.

C. The corporation shall make a rate filing at least once a year for the plans, and nothing in this Section shall require or permit the corporation to adopt a rate that is inadequate under R.S. 22:1401 et seq. Subject to the provisions of Subsections A and B of this Section, the

rates shall be approved by the Louisiana Insurance Rating Commission prior to use.

§1430.13. Reports of inspection

All reports of inspection performed by the corporation shall be made available to the assessable insurers participating in the Coastal Plan and the FAIR Plan, and the Louisiana Insurance Rating Commission. An applicant or his representative shall be entitled to a copy of any inspection report on property in which the applicant has an insurable interest.

§1430.14. Annual and quarterly reports

A. The corporation shall file in the office of the Louisiana Insurance Rating Commission, and in the office of property and casualty of the Department of Insurance, annual and quarterly statements as required for authorized insurers pursuant to R.S. 22:1451; and annual audited statements which shall summarize the transactions, conditions, operations, and affairs of the Coastal Plan during the preceding fiscal year ending June thirtieth, and the transactions, conditions, operations, and affairs of the FAIR Plan during the preceding fiscal year ending September thirtieth.

B. The corporation shall report quarterly to the Louisiana Insurance Rating Commission and the office of property and casualty on the types, premium, exposure, and distribution by parish of its policies in force, and submit such other reports as may be required by the Louisiana Insurance Rating Commission to fulfill its responsibilities.

§1430.15. Examination of corporation

The commissioner of insurance shall make examinations of the Louisiana Citizens Property Insurance Corporation and the plans in the manner as provided by R.S. 22:1301 for examination of insurers. The expense of such examinations shall be borne and paid by the corporation. The corporation and the plans shall be subject to examination by the legislative auditor.

§1430.16. Plan deficits; financing

A. In the event that the governing board of the Louisiana Citizens Property Insurance Corporation determines that a deficit exists in either the Coastal Plan or the FAIR Plan, the corporation may levy regular and emergency assessments for each affected plan in order to remedy such deficit. An assessment shall not be levied on assessable insurers and assessable insureds unless and until all profits and excess reserves over and above reasonably anticipated recurring operating costs have been exhausted and the governing board has projected a deficit in the plan for which an assessment is to be levied.

B. When the deficit incurred in a particular calendar year is not greater than ten 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.

C. When the deficit incurred in a particular calendar year exceeds ten 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 in an amount equal to the greater of ten percent of the deficit or ten percent

of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year. Any remaining deficit shall be recovered through emergency assessments.

D. Each assessable insurer's share of any regular assessment under Subsection B or C of this Section shall be calculated in accordance with R.S. 22:1430.8 and 1430.9. Assessments levied by the corporation on assessable insurers under Subsection B or C of this Section shall be paid as required by the corporation's plan of operation.

E. Upon a determination by the governing board that a deficit in a plan exceeds the amount that will be recovered through regular assessments under Subsection B or C of this Section, the governing board shall levy, after verification by the department, emergency assessments, for as many years as necessary to cover the deficits, to be collected by assessable insurers and the corporation and collected from all assessable insureds upon issuance or renewal of policies for subject lines of business, excluding National Flood Insurance policies. The amount of the emergency assessment collected in a particular year shall be a uniform percentage of that year's direct written premium for subject lines of business and all plan accounts of the corporation, excluding National Flood Insurance Program policy premiums, as annually determined by the governing board and verified by the department. The department shall verify the arithmetic calculations involved in the governing board's determination within thirty days after receipt of the information on which the determination was based. 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 assessable insurers in accordance with guidelines included in the corporation's plan of operation. The emergency assessments so collected shall be held by the corporation solely in the applicable plan account. The aggregate amount of emergency assessments levied for a plan under this Subsection in any calendar year may not exceed the greater of ten percent of the amount needed to cover the original deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing of the original deficit, or ten percent of the aggregate statewide direct written premium for subject lines of business and for all plan accounts of the corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit. Emergency assessments shall be shown separately on the declarations page of policies issued for subject lines of business, and shall not be considered premium, nor subject to any premium taxes or other charges.

F. Policies issued by the corporation shall be subject to emergency assessments, as specified in Subsection E hereof. Furthermore, when a regular assessment is levied, all policies shall be subject to a market equalization charge. The market equalization charge shall be a uniform percentage of premium. The market equalization charge percentage shall be the ratio of the total regular assessment levied by the corporation to the aggregate statewide direct written premium for subject lines of business for the prior year. The market equalization charge shall not be considered premium.

Assessable insurers shall notify the Louisiana Insurance Rating Commission at least thirty days in advance of the commencement of such a charge.

G. The corporation may pledge the proceeds of assessments, insurance and reinsurance recoverables, surcharges, and other funds available to the corporation as the source of revenue for and to secure bonds or other indebtedness, 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 governing 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 Subsection B or C of this Section, and emergency assessments under Subsection E of this Section. Emergency assessments collected under Subsection E of this Section are not part of an insurer's rates, are not premium, and are not subject to premium tax, fees, or commissions. However, failure to pay the emergency assessment shall be treated as failure to pay premium. The emergency assessments under Subsection E of this Section 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 other indebtedness.

H. The office of property and casualty shall determine annually the aggregate statewide written premium in subject lines of business and shall 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 Section and the corporation's financing obligations.

I. All bonds, other indebtedness, lines of credit, or other financing mechanisms under this Section shall be approved by the Louisiana State Bond Commission.

J. Under no circumstances shall it be construed that the full faith and credit of the state of Louisiana be used to secure the bonds or indebtedness issued under this Section. Any offering documents associated with any debts under this Section shall clearly state it is not secured by the full faith and credit of the state.

§1430.17. Louisiana Citizens Property Insurance Corporation not taxable

The corporation shall be considered a political instrumentality of the state, and shall be exempt from any corporate income tax. However, the corporation is not and shall not be deemed a department, unit, or agency of the state. All debts, claims, obligations, and liabilities of the corporation, whenever and however incurred, shall be the debts, claims, obligations, and liabilities of the corporation only, and not of the state, its agencies, officers, or employees. Corporation funds shall not be considered part of the general fund of the state, and

the state shall not appropriate corporation funds. The state's contribution to the corporation is limited to those funds collected by the corporation pursuant to the authority granted under R.S. 22:1430.12(B) of this Subpart, and the state shall not budget for or provide general fund appropriations to the corporation. The premiums, assessments, investment income, and other revenue of the corporation are funds received for providing property insurance coverage as required by this Section, paying claims for Louisiana citizens insured by the corporation's plans, securing and repaying debt obligations issued by the corporation, and conducting all other activities of the corporation, and shall not be considered taxes, fees, licenses, or charges for services imposed by the legislature on individuals, businesses, or agencies outside state government. It is the intent of the legislature that the tax exemptions provided in this Section will augment the financial resources of the corporation to better enable fulfillment of the public purpose. Any bonds issued by or on behalf of the corporation and the plans, their transfer, and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation of every kind by the state and any political subdivision or local unit or other instrumentality thereof.

Section 2. R.S. 22:1406.1 through 1406.13 and 1431 through 1445 are hereby repealed in their entirety.

Section 3. The Louisiana State Law Institute is hereby authorized and requested to redesignate R.S. 22:1401 through 1424 as Subpart A of Part XXX of Chapter 1 of Title 22 and entitled as "Subpart A. Rate Making Procedures and Organizations"; and to redesignate R.S. 22:1446 and 1447 as Subpart C

of Part XXX of Chapter 1 of Title 22 and entitled as "Subpart C. Rules, Enforcement, and Miscellaneous Provisions".

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____