*** § 5412. Additional powers of the association.** (a) As used in this article:

(1) "Commercial risk insurance", "public entity insurance" and "professional liability insurance" have the meanings ascribed to them by section one hundred seven of this chapter, except that motor vehicle insurance and medical malpractice liability insurance are excluded from such meanings for purposes of this article;

(2) "Market" means a line, subline or classification (other than a classification delineated by geographic location) of property/casualty insurance not subject to subsection (b) of section two thousand three hundred five, section two thousand three hundred twenty-eight or section three thousand four hundred twenty-five of this chapter. Provided, however, a "market" shall also include homeowners insurance as defined in subsection (h) of section five thousand four hundred one of this article. A "market" shall also include mandatory minimum surety bonds required pursuant to section two hundred fifty-eight-b of the agriculture and markets law.

(b) The association shall begin, or resume after any suspension, its insurance underwriting operations for any market only after the superintendent has determined after a hearing on a record that it is necessary, due to unavailability of meaningful coverage in a particular voluntary market, to activate the association to write coverage for such market. In making a determination of necessity pursuant to this subsection, the superintendent may consider such factors as: the extent and nature of competition; size and significance of the coverage; availability of adequate limits of coverage; efficacy of any market assistance program administered by the superintendent including but not limited to actual placement of coverage through a voluntary market assistance program at the time such determination is to be made; reinsurance availability; extent of consumer complaints to the department of financial services; extent of denials and restrictions of coverage; volume of cancellations and nonrenewals; or changing conditions in the economic, judicial and social environment. If, after activating the association in regard to a particular market, the superintendent determines that ready availability of meaningful coverage in such voluntary market has been restored, the association shall thereupon suspend its underwriting in regard to such market. The

superintendent shall, no later than October first, nineteen hundred eighty-six, activate the association to write particular markets in regard to public entities, unless the superintendent determines that activation is unnecessary because public entities are able to secure meaningful coverage in voluntary markets, including through any market assistance program administered by the superintendent.

(c) The directors of the association, after consultation with the superintendent, shall forthwith prepare a plan of operation, subject to approval by the superintendent who shall act expeditiously thereon, and the directors shall take all other necessary steps on and after the effective date of this section to prepare for prompt implementation of the association's powers in the event that any market is activated by the superintendent pursuant to subsection (b) of this section. The directors of the association may, on their own initiative or at the request of the superintendent, amend the plan subject to approval by the superintendent. The superintendent may direct that the plan of operation, or amendments to such plan, shall include specified limits of coverage for particular markets activated.

(d) Upon activation by the superintendent of any market pursuant to subsection (b) of this section, all insurers (excluding assessment cooperative fire insurers) authorized to write and engaged in writing on a direct basis within this state commercial risk, public entity or professional liability insurance, including commercial multiple peril policies, shall participate as members in the association. Every such insurer shall be and remain a member of the association as a condition of its authority to continue to transact such insurance in this state. In addition to the credit provided pursuant to subsection (f) of section five thousand four hundred five of this article, the superintendent may by regulation provide for additional credits to such insurers that voluntarily provide a market for those risks that the superintendent determines to be extremely difficult to place in the voluntary market.

(e) The association shall with respect to any market activated by the superintendent pursuant to subsection (b) of this section issue policies in accordance with the association's plan of operation, and shall maintain separate accounts and records for premiums, losses, expenses and investment income attributable to such insurance. Assessments of insurers for expenses and any losses of the association in connection

with such insurance shall be based on an insurer's net direct premiums attributable to the types of insurance specified in subsection (a) of this section. Rates shall be based upon loss and expense experience of the risks insured by the association pursuant to this section and shall be on an actuarially sound basis, calculated to be self-supporting at the lowest possible rates consistent with the maintenance of solvency of the association and of reasonable reserves, surplus and expenses, including commissions. The provisions of subsection (d) of section five thousand four hundred five of this article shall not apply to insurance written pursuant to this section.

(f) The superintendent may also activate the association for purposes of providing excess or umbrella coverages in connection with a market. Hazards that the superintendent determines are uninsurable shall be excluded from coverages which the association is required to furnish.

(g) The provisions of this section shall cease to be of any force or effect on or after June thirtieth, two thousand twenty-nine, except that policies issued or other obligations incurred by the association shall not be impaired by the expiration of this section and the association shall continue for the purpose of servicing such policies and performing such obligations.

* NB Expires June 30, 2029