§ 6907. Transition provisions. A licensed insurer writing financial guaranty insurance prior to the effective date of this article, but which is not authorized to write financial guaranty insurance in this state, shall be subject to all the provisions of this article, except section six thousand nine hundred two of this article, and:

(a) may, unless the superintendent determines after notice and an opportunity to be heard that such activity poses a hazard to the insurer, its policyholders or to the public, continue to write financial guaranties (except guaranties of municipal bonds) of the types authorized by subsection (b) of section six thousand nine hundred four of this article applicable to financial guaranty insurance corporations, subject to the following conditions:

(1) For a transition period not to exceed sixty months from the effective date of this article, if the insurer has and maintains surplus to policyholders of at least seventy-five million dollars (for the purpose of this paragraph, if the insurer is a foreign insurer, its surplus to policyholders shall be computed as if it were a domestic insurer); provided that:

(A) during the sixty month transition period, the amount of surplus to policyholders needed to meet the single and aggregate risk limitations imposed by this article must be less than four percent of the insurer's surplus to policyholders;

(B) within nine months of the effective date of this article, the insurer shall file a reasonable plan of operation, acceptable to the superintendent, which shall contain:

(i) a reasonable timetable and appropriate procedures to implement that timetable to make a determination as to whether or not the insurer will make application to organize a financial guaranty insurance corporation during the aforesaid sixty month period;

(ii) the types and projected diversification of guaranties that will be issued during the transition period;

(iii) the underwriting procedures that will be followed;

(iv) oversight methods;

(v) investment policies; and

(vi) such other matters as may be prescribed by the superintendent. The plan of operation shall be deemed acceptable unless, within sixty days of its filing, the superintendent notifies the insurer of any

specific objections to such plan. The plan shall be updated in the event of a material change with respect to the foregoing and at least annually;

(C) if the insurer has determined that it will not organize a financial guaranty insurance corporation, within thirty days after that determination it shall notify the superintendent, cease writing policies of financial guaranty insurance and comply with the provisions of paragraph four of this subsection; and

(D) the insurer shall file such additional statements or reports as may be required by the superintendent.

(2) For a transition period not to exceed ninety-six months from the effective date of this article, if the insurer has and maintains surplus to policyholders of at least one hundred fifty million dollars (for the purpose of this section, surplus to policyholders means the aggregate surplus to policyholders of said insurer and other member companies of an inter-company pool, and if the insurer is a foreign insurer its surplus to policyholders shall be computed as if it were a domestic insurer) and the aggregate financial guaranty written premium of said insurer and other member companies of an inter-company pool shall have been at least one million dollars in any one of the five years ending December thirty-first, nineteen hundred eighty-eight, provided that:

(A) during the first sixty months of the transition period, the amount of surplus to policyholders needed to meet the aggregate risk limitations imposed by this article must be less than four percent of the insurer's surplus to policyholders. After such sixty month period, provided the insurer complies with subparagraph (D) of this paragraph, the amount of surplus to policyholders needed to meet such aggregate risk limitations must be less than five percent of the insurer's surplus to policyholders for the succeeding twelve month period and less than six percent for the next succeeding twenty-four month period;

(B) during the transition period, the amount of surplus to policyholders needed to meet the single risk limitations imposed by paragraphs two through five of subsection (d) of section six thousand nine hundred four of this article must be less than twenty percent of the insurer's surplus to policyholders, except that the single risk limitation with respect to investment grade obligations under such paragraph five shall be the lesser of eighty million dollars or seven

percent of the insurer's surplus to policyholders;

(C) during the transition period, notwithstanding the last sentence of paragraph one of subsection (b) of section six thousand nine hundred four, industrial development bonds shall not be included in the investment grade requirements set forth in such sentence.

(D) during the transition period, reinsurance in the form of intercompany pooling agreements, shall not be subject to subparagraphs (C), (D), (E) and (F) of paragraph two of subsection (a) of section six thousand nine hundred six of this article, if such intercompany pooling agreements were in effect on January first, nineteen hundred eighty-nine, and reinsurance placed with insurers which are subject to the provisions of paragraph two of subsection (a) of section six thousand nine hundred six and are not members of the ceding company's intercompany pooling agreement may not exceed sixty percent of the total exposures insured net of collateral remaining after deducting any reinsurance placed with another financial guaranty insurance corporation or an insurer writing only financial guaranty insurance as is or would be permitted by this article;

(E) within sixty months of the effective date of this article, the insurer shall file a reasonable plan of operation, acceptable to the superintendent, which shall contain:

(i) a reasonable timetable and appropriate procedures to implement that timetable to make a determination as to whether or not the insurer will make application to organize a financial guaranty insurance corporation during the aforesaid ninety-six month period;

(ii) the types and projected diversification of guaranties that will be issued during the transition period;

(iii) the underwriting procedures that will be followed;

(iv) oversight methods;

(v) investment policies; and

(vi) such other matters as may be prescribed by the superintendent. The plan of operation shall be deemed acceptable unless, within sixty days of its filing, the superintendent notifies the insurer of any specific objections to such plan. The plan shall be updated in the event of a material change with respect to the foregoing and at least annually;

(F) if the insurer has determined that it will not organize a

financial guaranty insurance corporation, within thirty days after that determination it shall notify the superintendent, cease writing policies of financial guaranty insurance and comply with the provisions of paragraph four of this subsection; and

(G) the insurer shall file such additional statements or reports as may be required by the superintendent.

(3) For a transition period not to exceed twelve months from the effective date of this article, in the case of an insurer transacting only financial guaranty insurance prior to the effective date of this article and which qualifies for licensing as a financial guaranty insurance corporation under section six thousand nine hundred two of this article, provided that it makes application to amend its current license to that of a financial guaranty insurance corporation licensed to transact only those kinds of insurance permitted pursuant to section six thousand nine hundred two of this article within sixty days of the effective date of this article, and provided that, for purposes of this paragraph, an insurer shall be deemed to be transacting only financial guaranty insurance prior to the effective date of this article if, with the approval of the superintendent, it has reinsured all of any other insurance liabilities with one or more authorized insurers or has otherwise made provision for such liabilities.

(4) For a transition period not to exceed nine months, in the case of an insurer that does not qualify under either paragraph one, two or three of this subsection or does not file a plan of operation pursuant to paragraph one or two of this subsection, such insurer shall cease writing any new financial guaranty insurance business and may:

(A) reinsure its net in force business with a licensed financial guaranty insurance corporation; or

(B) subject to the prior approval of its domiciliary commissioner, reinsure all or part of its net in force business in accordance with the requirements of paragraph two of subsection (a) of section six thousand nine hundred six of this article, except that subparagraphs (D), (E) and (F) of paragraph two of such subsection shall not be applicable. The assuming insurer shall maintain reserves of such reinsured business in the manner applicable to the ceding insurer under this paragraph; or

(C) thereafter continue the risks then in force and, with thirty days prior written notice to its domiciliary commissioner, issue new

financial guaranty policies, provided that the issuing of such policies is reasonably prudent to mitigate either the amount of or possibility of loss in connection with business transacted prior to the effective date of this article. Provided, however, an insurer must receive the prior approval of its domiciliary commissioner before issuing any new financial guaranty insurance policies that would have the effect of increasing its risk of loss;

(b) shall, for all guaranties in force prior to the effective date of this article, including those which fall under the definition of financial guaranty insurance contained in subsection (a) of section six thousand nine hundred one of this article, be subject to the reserve requirements applicable for municipal bond guaranties in effect prior to the effective date of this article. To the extent that the insurer's contingency reserves maintained as of the effective date of this article are less than those required for municipal bond guaranties, the insurer shall have three years to bring its reserves into compliance, except that a part of the reserve may be released proportional to the reduction in aggregate net liability resulting from reinsurance, provided that the reinsurer shall, on the effective date of the reinsurance, establish a reserve in an amount equal to the amount released and, in addition, a part of the reserve may be released with the approval of the superintendent upon demonstration that the amount carried is excessive in relation to the corporation's outstanding obligations; and

(c) shall be subject to the reserve requirements specified in section six thousand nine hundred three of this article for all policies of financial guaranty insurance issued on or after the effective date of this article.