

1 DWELLING COVERAGE IN ADDITION TO SURCHARGES CURRENTLY IMPOSED
2 ON HOMEOWNERS POLICIES; DELETE THE TIME LIMIT FOR THE
3 COMMISSIONER TO DISAPPROVE A RATE BUREAU FILING; AND TO MAKE
4 OTHER CHANGES CONSISTENT WITH THE FINDINGS OF THE JOINT SELECT
5 STUDY COMMITTEE ON THE POTENTIAL IMPACT OF MAJOR HURRICANES.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Article 45 of Chapter 58 of the General Statutes reads as rewritten:

8 "Article 45.

9 "Essential Property Insurance for Beach Area Property.

10 **"§ 58-45-1. Declarations and purpose of Article.**

11 (a) It is hereby declared by the General Assembly of North Carolina that an adequate
12 market for essential property insurance is necessary to the economic welfare of the beach and
13 coastal areas of the State of North Carolina and that without such insurance the orderly growth
14 and development of those areas would be severely impeded; that furthermore, adequate
15 insurance upon property in the beach and coastal areas is necessary to enable homeowners and
16 commercial owners to obtain financing for the purchase and improvement of their property;
17 and that while the need for such insurance is increasing, the market for such insurance is not
18 adequate and is likely to become less adequate in the future; and that the present plans to
19 provide adequate insurance on property in the beach and coastal areas, while deserving praise,
20 have not been sufficient to meet the needs of this area. It is further declared that the State has an
21 obligation to provide an equitable method whereby every licensed insurer writing essential
22 property insurance in North Carolina is required to meet its public responsibility instead of
23 shifting the burden to a few willing and public-spirited insurers. It is the purpose of this Article
24 to accept this obligation and to provide a mandatory program to assure an adequate market for
25 essential property insurance in the beach and coastal areas of North Carolina.

26 (b) The General Assembly further declares that it is its intent in creating and, from time
27 to time, amending this Article that the market provided by this Article not be the first market of
28 choice, but the market of last resort.

29 (c) It is the intent of the General Assembly that except for North Carolina gross
30 premium taxes and the fire and lightning tax, the activities of the Association be exempt from
31 State and federal taxation to the fullest extent permitted by law.

32 **"§ 58-45-5. Definition of terms.**

33 As used in this Article, unless the context clearly otherwise requires:

34 (1) ~~"Association" means Association. – the – The~~ North Carolina Insurance
35 Underwriting Association established under this ~~Article;~~ Article.

36 (2) ~~"Beach area" means Beach area. – all – All~~ of that area of the State of North
37 Carolina south and east of the inland waterway from the South Carolina line
38 to Fort Macon (Beaufort Inlet); thence south and east of Core, Pamlico,
39 Roanoke and Currituck sounds to the Virginia line, being those portions of
40 land generally known as the Outer ~~Banks;~~ Banks.

41 (2a) ~~"Coastal area" means Coastal area. – all – All~~ of that area of the State of North
42 Carolina comprising the following counties: Beaufort, Brunswick, Camden,
43 Carteret, Chowan, Craven, Currituck, Dare, Hyde, Jones, New Hanover,
44 Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and
45 Washington. "Coastal area" does not include the portions of these counties
46 that lie within the beach area.

47 (2b) Catastrophic assessment recoupment. – Any recoupment of assessments on
48 member insurers collected by member insurers from policyholders
49 statewide, including Association and Fair Plan policyholders, upon issuance
50 or renewal of residential and commercial property insurance policies, other
51 than National Flood Insurance policies, after a deficit event has occurred as

1 provided in G.S. 58-45-47. The amount of the catastrophic assessment
2 recoupment or recoupments collected in a particular year shall not exceed an
3 aggregate amount of ten percent (10%) of policy premium. A catastrophic
4 assessment recoupment shall be limited to the recovery of losses resulting
5 from claims for property damage and allocated loss expenses.

6 (2c) Coastal Property Insurance Pool. – The name of that which was formerly
7 known as "the Beach Plan" and which is governed by the North Carolina
8 Insurance Underwriting Association. All references to the "Beach Plan" shall
9 mean the Coastal Property Insurance Pool, which is the market of last resort
10 provided by the Association to the Beach area and the Coastal area.

11 (3) Repealed by Session Laws 1991, c. 720, s. 6.

12 (3a) ~~"Crime insurance" means~~Crime insurance. – insurance–Insurance against
13 losses resulting from robbery, burglary, larceny, and similar crimes, as more
14 specifically defined and limited in the various crime insurance policies, or
15 their successor forms of coverage, approved by the Commissioner and
16 issued by the Association. Such policies shall not be more restrictive than
17 those issued under the Federal Crime Insurance Program authorized by
18 Public Law 91-609.

19 (3b) ~~"Directors" means~~Directors. – the–The Board of Directors of the Association.

20 (4) ~~"Essential property insurance" means~~Essential property insurance. –
21 ~~insurance–Insurance~~ against direct loss to property as defined in the standard
22 statutory fire policy and extended coverage, vandalism and malicious
23 mischief endorsements thereon, or their successor forms of coverage, as
24 approved by the ~~Commissioner;~~Commissioner.

25 (5) ~~"Insurable property" means~~Insurable property. – real–Real property at fixed
26 locations in the beach and coastal area, including travel trailers when tied
27 down at a fixed location, or the tangible personal property located therein,
28 but shall not include insurance on motor vehicles; which property is
29 determined by the Association, after inspection and under the criteria
30 specified in the plan of operation, to be in an insurable condition. However,
31 any one and two family dwellings built in substantial accordance with the
32 Federal Manufactured Home Construction and Safety Standards, any
33 predecessor or successor federal or State construction or safety standards,
34 and any further construction or safety standards promulgated by the
35 association and approved by the Commissioner, or the North Carolina
36 Uniform Residential Building Code and any structure or building built in
37 substantial compliance with the North Carolina State Building Code,
38 including the design-wind requirements, which is not otherwise rendered
39 uninsurable by reason of use or occupancy, shall be an insurable risk within
40 the meaning of this Article. However, none of the following factors shall be
41 considered in determining insurable condition: neighborhood, area, location,
42 environmental hazards beyond the control of the applicant or owner of the
43 property. Also, any structure begun on or after January 1, 1970, not built in
44 substantial compliance with the Federal Manufactured Home Construction
45 and Safety Standards, any predecessor or successor federal or State
46 construction or safety standards, and any further construction or safety
47 standards promulgated by the association and approved by the
48 Commissioner, or the North Carolina Uniform Residential Building Code or
49 the North Carolina State Building Code, including the design-wind
50 requirements therein, shall not be an insurable risk. The owner or applicant
51 shall furnish with the application proof in the form of a certificate from a

1 local building inspector, contractor, engineer or architect that the structure is
2 built in substantial accordance with the Federal Manufactured Home
3 Construction and Safety Standards, any predecessor or successor federal or
4 State construction or safety standards, and any further construction or safety
5 standards promulgated by the association and approved by the
6 Commissioner, or the North Carolina Uniform Residential Building Code or
7 the North Carolina State Building Code; however, an individual certificate
8 shall not be necessary where the structure is located within a political
9 subdivision which has certified to the Association on an annual basis that it
10 is enforcing the North Carolina Uniform Residential Building Code or the
11 North Carolina State Building Code and has no plans to discontinue
12 enforcing these codes during that year.

13 (6) Repealed by Session Laws 1995 (Regular Session, 1996), c. 592, s. 2.

14 (6a) ~~"Net direct premiums" means~~Net direct premiums. ~~– gross~~Gross direct
15 premiums (excluding reinsurance assumed and ceded) written on property in
16 this State for essential property insurance, farm owners insurance,
17 homeowners insurance, and the property portion of commercial multiple
18 peril insurance policies as computed by the Commissioner, less:

- 19 a. Return premiums on uncanceled contracts;
- 20 b. Dividends paid or credited to policyholders; and
- 21 c. The unused or unabsorbed portion of premium deposits.

22 (6b) Named storm. – A weather-related event involving wind that has been
23 assigned a formal name by the National Hurricane Center, National Weather
24 Service, World Meteorological Association, or any other generally
25 recognized scientific or meteorological association that provides formal
26 names for public use and reference. A named storm includes hurricanes,
27 tropical depressions, and tropical storms.

28 (6c) Nonrecoupable assessment. – Any assessment levied on and payable by
29 members of the Association that is not directly recoverable from
30 policyholders but which shall be considered as an appropriate factor in the
31 making of rates by the North Carolina Rate Bureau.

32 (7) ~~"Plan of operation" or "plan" means~~Plan of operation. ~~– the~~The plan of
33 operation of the Association approved or promulgated by the Commissioner
34 under this Article.

35 (8) Voluntary market. – Insurance written voluntarily by companies other than
36 through this Article or Article 46 of this Chapter.

37 (9) Voluntary market rates. – Property insurance rates determined or permitted
38 under Article 36, 40, or 41 of this Chapter.

39 **"§ 58-45-6. Persons who can be insured by the Association.**

40 As used in this Article, "person" includes the State of North Carolina and any county, city,
41 or other political subdivision of the State of North Carolina.

42 **"§ 58-45-10. North Carolina Insurance Underwriting Association created.**

43 There is hereby created the North Carolina Insurance Underwriting Association, consisting
44 of all insurers authorized to write and engage in writing within this State, on a direct basis,
45 essential property insurance, except town and county mutual insurance associations and
46 assessable mutual companies as authorized by G.S. 58-7-75(5)b, 58-7-75(5)d, and 58-7-75(7)b
47 and except an insurer who only writes insurance in this State on property exempted from
48 taxation by the provisions of G.S. 105-278.1 through G.S. 105-278.8. Every such insurer shall
49 be a member of the Association and shall remain a member of the Association so long as the
50 Association is in existence as a condition of its authority to continue to transact the business of
51 insurance in this State.

1 **"§ 58-45-15. Powers and duties of Association.**

2 The Association shall, pursuant to the provisions of this Article and the plan of operation,
3 and with respect to the insurance coverages authorized in this Article, have the power on behalf
4 of its members:

- 5 (1) To cause to be issued policies of insurance to ~~applicants;~~applicants.
6 (2) To assume reinsurance from its ~~members;~~members.
7 (3) To cede reinsurance to its members and to purchase reinsurance in behalf of
8 its ~~members.~~members.
9 (4) To pledge the proceeds of assessments, projected reinsurance recoveries,
10 other recoverables, and any other funds available to the Association as the
11 source of revenue for and to secure lines of credit or other borrowings or
12 financing arrangements necessary to fund any actual, projected, or future
13 deficits of the Association.
14 (5) To publish in the North Carolina Register all homeowners' rate filings with
15 the Department of Insurance.

16 **"§ 58-45-20. Temporary directors of Association.**

17 Within 10 days after April 17, 1969, the Commissioner shall appoint a temporary board of
18 directors of this Association, which shall consist of 11 representatives of members of the
19 Association. Such temporary board of directors shall prepare and submit a plan of operation in
20 accordance with G.S. 58-45-30 and shall serve until the permanent board of directors shall take
21 office in accordance with said plan of operation.

22 **"§ 58-45-25. Each member of Association to participate in nonrecoupable assessments. its**
23 **expenses, profits, and losses.**

24 (a) Subject to the limitations contained in G.S. 58-45-47, Each ~~each~~ member of the
25 Association shall participate in the expenses, profits, and losses of nonrecoupable assessments
26 levied by the Association in the proportion that its net direct premium written in this State
27 during the preceding calendar year for residential and commercial properties outside of the
28 beach and coastal areas bears to the aggregate net direct premiums written in this State during
29 the preceding calendar year for residential and commercial properties outside of the beach and
30 coastal areas by all members of the Association, as certified to the Association by the
31 Commissioner. The Commissioner shall certify each member's participation after review of
32 annual statements and any other reports and data necessary to determine participation and may
33 obtain any necessary information or data from any member of the Association for this purpose.
34 Any insurer that is authorized to write and that is engaged in writing any insurance, the writing
35 of which requires the insurer to be a member of the Association under G.S. 58-45-10, shall
36 become a member of the Association on the first day of January after authorization. The
37 determination of the insurer's participation in the Association shall be made as of the date of
38 membership of the insurer in the same manner as for all other members of the Association.

39 (b) All member companies shall receive credit each year for essential property
40 insurance, farmowners insurance, homeowners insurance, and the property portion of
41 commercial multiple peril policies voluntarily written in the beach and coastal areas in
42 accordance with guidelines and procedures to be submitted by the Directors to the
43 Commissioner for approval. Such credits shall also apply to any nonrecoupable assessments
44 levied pursuant to G.S. 58-45-47. The participation of each member company in the expenses,
45 profits, and losses of nonrecoupable assessments levied by the Association shall be reduced
46 accordingly; provided, no credit shall be given where coverage for the peril of wind has been
47 excluded. The guidelines and procedures for granting credit shall encourage and assist each
48 member company to voluntarily write these coverages in the beach and coastal areas for
49 commercial and residential properties.

50 (b1) The accumulated surplus of the Association shall be retained from year to year and
51 used to pay losses, reinsurance costs, and other operating expenses as necessary. No member

1 company shall be entitled to the distribution of any portion of the Association's surplus, except
2 pursuant to contractual obligations incurred prior to the effective date of this law.

3 (b2) The premiums, surplus, assessments, investment income, and other revenue of the
4 Association are funds received for the sole purpose of providing insurance coverage, paying
5 claims for Association policyholders, purchasing reinsurance, securing and repaying debt
6 obligations issued by the Association, and conducting all other activities of the Association, as
7 required or permitted by this Article. Accumulated surplus shall not be removed from the
8 Association or used for other purposes except pursuant to contractual obligations incurred by
9 the Association prior to the effective date of this law.

10 (c) The North Carolina Insurance Underwriting Association shall use the "take out"
11 program, as filed with and approved by the Commissioner, in the coastal area.

12 **§ 58-45-30. Directors to submit plan of operation to Commissioner; review and**
13 **approval; ~~amendments~~ amendments; appeal from Commissioner to superior**
14 **court.**

15 (a) The Directors shall submit to the Commissioner for his review and approval, a
16 proposed plan of operation. The plan shall set forth the number, qualifications, terms of office,
17 and manner of election of the members of the board of directors, and shall grant proper credit
18 annually to each member of the Association for essential property insurance, farmowners,
19 homeowners insurance, and the property portion of commercial multiple peril policies
20 voluntarily written in the beach and coastal areas and shall provide for the efficient,
21 economical, fair and nondiscriminatory administration of the Association and for the prompt
22 and efficient provision of essential property insurance in the beach and coastal areas of North
23 Carolina to promote orderly community development in those areas and to provide means for
24 the adequate maintenance and improvement of the property in those areas. The plan may
25 include the establishment of necessary facilities; management of the Association; the
26 assessment of members to defray losses and expenses; underwriting standards; procedures for
27 the acceptance and cession of reinsurance; procedures for determining the amounts of insurance
28 to be provided to specific risks; time limits and procedures for processing applications for
29 insurance; and any other provisions that are considered necessary by the Commissioner to carry
30 out the purposes of this Article.

31 (b) The proposed plan and any amendments thereto shall be filed with ~~reviewed by the~~
32 Commissioner and approved by him if he finds that such plan fulfills the purposes provided by
33 G.S. 58-45-1. In the review of the proposed plan the Commissioner may, in his discretion,
34 consult with the directors of the Association and may seek any further information which he
35 deems necessary to his decision. If the Commissioner approves the proposed plan, he shall
36 certify such approval to the directors and the plan shall become effective 10 days after such
37 certification. If the Commissioner disapproves all or any part of the proposed plan of operation
38 he shall return the same to the directors with his written statement for the reasons for
39 disapproval and any recommendations he may wish to make. The directors may alter the plan
40 in accordance with the Commissioner's recommendation or may within 30 days from the date
41 of disapproval return a new plan to the Commissioner. Should the directors fail to submit a plan
42 that meets the requirements of this Article ~~a proposed plan of operation within 90 days of April~~
43 ~~17, 1969, or a new plan which is acceptable to the Commissioner,~~ or accept the
44 recommendations of the Commissioner within 30 days after his disapproval of the plan, the
45 Commissioner shall promulgate and place into effect a plan of operation that meets the
46 requirements of this Article certifying the same to the directors of the Association. Any such
47 plan promulgated by the Commissioner shall take effect 10 days after certification to the
48 ~~directors: directors. Provided, however, that until a plan of operation is in effect, pursuant to the~~
49 ~~provisions of this Article, any existing temporary placement facility may be continued in effect~~
50 ~~on a mandatory basis on such terms as the Commissioner may determine.~~

1 (c) The directors of the Association may, subject to the approval of the Commissioner,
2 amend the plan of operation at any time. The Commissioner may review the plan of operation
3 at any time the Commissioner deems expedient or prudent, but not less than once in each
4 calendar year. After review of the plan the Commissioner may amend the plan after
5 consultation with the directors and upon certification to the directors of the amendment. Any
6 order of the Commissioner with respect to the proposed plan of operation or any amendments
7 thereto shall be subject to review upon petition by the Association as provided by G.S. 58-2-75.

8 (d) As used in this subsection, "homeowners' insurance policy" means a multiperil
9 policy providing full coverage of residential property similar to the coverage provided under an
10 HO-2, HO-3, HO-4, or HO-6 policy under Article 36 of this Chapter. The Association shall
11 issue, for principal residences, homeowners' insurance policies approved by the Commissioner.
12 Homeowners' insurance policies shall be available to persons who reside in the beach and
13 coastal areas who meet the Association's underwriting standards and who are unable to obtain
14 homeowners' insurance policies from insurers that are authorized to transact and are actually
15 writing homeowners' insurance policies in this State. The Association shall file for approval by
16 the Commissioner underwriting standards to determine whether property is insurable. The
17 standards shall reflect underwriting standards commonly used in the voluntary homeowners'
18 insurance business. The terms and conditions of the homeowners' insurance policies available
19 under this subsection shall not be more favorable than those of homeowners' insurance policies
20 available in the voluntary market in beach and coastal counties.

21 (e) The Association shall, subject to the Commissioner's approval or modification,
22 provide in the plan of operation for coverage for appropriate classes of manufacturing risks.

23 (f) As used in this section, "plan of operation" includes all written rules, practices, and
24 procedures of the Association, except for staffing and personnel matters.

25 **"§ 58-45-35. Persons eligible to apply to Association for coverage; contents of application.**

26 (a) Any person having an insurable interest in insurable property, may, on or after the
27 effective date of the plan of operation, be entitled to apply to the Association for such coverage
28 and for an inspection of the property. A broker or agent authorized by the applicant may apply
29 on the applicant's behalf. Each application shall contain a statement as to whether or not there
30 are any unpaid premiums due from the applicant for essential property insurance on the
31 property.

32 The term "insurable interest" as used in this subsection shall include any lawful and
33 substantial economic interest in the safety or preservation of property from loss, destruction or
34 pecuniary damage.

35 (b) If the Association determines that the property is insurable and that there is no
36 unpaid premium due from the applicant for prior insurance on the property, the Association,
37 upon receipt of the premium, or part of the premium, as is prescribed in the plan of operation,
38 shall cause to be issued a policy of essential property insurance and shall offer additional
39 extended coverage, optional perils endorsements, business income and extra expense coverage,
40 crime insurance, separate policies of windstorm and hail insurance, or their successor forms of
41 coverage, for a term of one year or three years. Short term policies may also be issued. Any
42 policy issued under this section shall be renewed, upon application, as long as the property is
43 insurable property.

44 (b1) If the Association determines that the property, for which application for a
45 homeowners' policy is made, is insurable, that there is no unpaid premium due from the
46 applicant for prior insurance on the property, and that the underwriting guidelines established
47 by the Association and approved by the Commissioner are met, the Association, upon receipt of
48 the premium, or part of the premium, as is prescribed in the plan of operation, shall cause to be
49 issued a homeowners' insurance policy.

50 (c) If the Association, for any reason, denies an application and refuses to cause to be
51 issued an insurance policy on insurable property to any applicant or takes no action on an

1 application within the time prescribed in the plan of operation, the applicant may appeal to the
2 Commissioner and the Commissioner, or the Commissioner's designee from the
3 Commissioner's staff, after reviewing the facts, may direct the Association to issue or cause to
4 be issued an insurance policy to the applicant. In carrying out the Commissioner's duties under
5 this section, the Commissioner may request, and the Association shall provide, any information
6 the Commissioner deems necessary to a determination concerning the reason for the denial or
7 delay of the application.

8 (d) An agent who is licensed under Article 33 of this Chapter as an agent of a company
9 which is a member of the Association established under this Article shall not be deemed an
10 agent of the Association. The foregoing notwithstanding, an agent of a company which is a
11 member of the Association shall have the authority, subject to the underwriting guidelines
12 established by the Association, to temporarily bind coverage with the Association. The
13 Association shall establish rules and procedures, including any limitations for binding
14 authority, in the plan of operation.

15 Any unearned premium on the temporary binder shall be returned to the policyholder if the
16 Association refuses to issue a policy. Nothing in this section shall prevent the Association from
17 suspending binding authority in accordance with its plan of operation.

18 (e) Policies of windstorm and hail insurance provided for in subsection (b) of this
19 section are available only for risks in the beach and coastal areas for which essential property
20 insurance has been written by licensed insurers. Whenever such other essential property
21 insurance written by licensed insurers includes replacement cost coverage, the Association shall
22 also offer replacement cost coverage. In order to be eligible for a policy of windstorm and hail
23 insurance, the applicant shall provide the Association, along with the premium payment for the
24 windstorm and hail insurance, a certificate that the essential property insurance is in force. The
25 policy forms for windstorm and hail insurance shall be filed by the Association with the
26 Commissioner for the Commissioner's approval before they may be used. Catastrophic losses,
27 as determined by the Association and approved by the Commissioner, that are covered under
28 the windstorm and hail coverage in the beach and coastal areas shall be adjusted by the licensed
29 insurer that issued the essential property insurance and not by the Association. The Association
30 shall reimburse the insurer for reasonable expenses incurred by the insurer in adjusting
31 windstorm and hail losses.

32 **"§ 58-45-36. Temporary contracts of insurance.**

33 Consistent with G.S. 58-45-35(d), the Association shall be temporarily bound by a written
34 temporary binder of insurance issued by any duly licensed insurance agent or broker. Coverage
35 shall be effective upon payment to the agent or broker of the entire premium or part of the
36 premium, as prescribed by the Association's plan of operation. Nothing in this section shall
37 impair or restrict the rights of the Association under G.S. 58-45-35(b) to decline to issue a
38 policy based upon a lack of insurability as determined by the Association or the existence of an
39 unpaid premium due from the applicant.

40 **"§ 58-45-40. Association members may cede insurance to Association.**

41 Any member of the Association may cede to the Association essential property insurance
42 written on insurable property, to the extent, if any, and on the terms and conditions set forth in
43 the plan of operation.

44 **"§ 58-45-41. Coverage limits.**

45 (a) The Association shall cause to be issued insurance up to the reasonable value of the
46 insurable property, subject to a maximum of seven hundred fifty thousand dollars (\$750,000)
47 on habitational property. The above limits on habitational property shall apply to the value of
48 the building only. Insurance issued by the Association for commercial property shall not exceed
49 three million dollars (\$3,000,000) on any freestanding structure or any building unit within
50 multiple firewall divisions, provided the aggregate insurance on structures with multiple
51 firewall divisions shall not exceed six million dollars (\$6,000,000) on all interest at one risk.

1 (b) Contents of habitational property can be insured up to forty percent (40%) of the
2 building value.

3 (c) If the value of the property exceeds the maximum coverage limits as described in
4 this section, the Association shall not issue coverage without the insured's purchase of excess
5 coverage to the full value of the property insured.

6 **"§ 58-45-45. Rates, rating plans, rating rules, and forms applicable.**

7 (a) Rates shall not be excessive, inadequate, or unfairly discriminatory. Except as
8 provided in ~~subsection (b)~~ subsections (a1), (a2), and (b) of this section, the rates, rating plans,
9 rating rules, and forms applicable to the insurance written by the Association shall be in
10 accordance with the most recent manual rates or adjusted loss costs and forms that are legally
11 in effect in the State. Except as provided in subsection (c) of this section, no special surcharge,
12 other than those presently in effect, may be applied to the property insurance rates of properties
13 located in the beach and coastal areas.

14 (a1) Effective January 1, 2010, the Association's rates shall be the North Carolina Rate
15 Bureau Manual Rates plus a surcharge of ten percent (10%) of the applicable North Carolina
16 Rate Bureau Manual Rate for wind and hail coverage and a surcharge of twenty percent (20%)
17 of the applicable North Carolina Rate Bureau Manual Rate for homeowners' insurance
18 including wind and hail coverage. It is the intent of the General Assembly that these surcharges
19 ensure that the Coastal Property Insurance Pool is the market of last resort over and above the
20 manual rate.

21 (a2) The Association shall offer a deductible for named storm wind and hail losses of
22 one percent (1%) of the insured value of the property for all policies and may offer any other
23 deductible options provided by the North Carolina Rate Bureau, so long as the deductible is not
24 lower than one percent (1%) of the insured value of the property applicable to named storm
25 wind and hail losses.

26 (b) The rates, rating plans, and rating rules for the separate policies of windstorm and
27 hail insurance described in G.S. 58-45-35(b) shall be filed by the Association with the
28 Commissioner for the Commissioner's approval, disapproval, or modification. The provisions
29 of Articles 40 and 41 of this Chapter shall govern the filings. Policy deductible plans,
30 consistent with G.S. 58-45-1(b), may be filed by the Association with the Commissioner for the
31 Commissioner's approval, disapproval, or modification.

32 (c) Notwithstanding subsection (a) of this section, the Association may, subject to the
33 prior approval of the Commissioner, adopt a schedule of special surcharges above
34 corresponding manual rates and the rates set out in subsection (a1) of this section relating to
35 homeowners' insurance—homeowners', dwelling, and commercial policies issued by the
36 Association pursuant to G.S. 58-45-30(d)—Association, including coverage for separate policies
37 of windstorm and hail written by the Association pursuant to G.S. 58-45-35(b) and (e) in
38 conjunction with policies written pursuant to Article 36 of this Chapter. Such schedule may
39 reflect any differences in risk that can be demonstrated to have a probable effect on losses or
40 expenses. Notwithstanding subsections (a) and (b) of this section, the provisions of
41 G.S. 58-36-10(1), 36-15(a), 58-36-20, and 58-36-25 shall apply to such filings.

42 (d) When the Association files rates, classification plans, rating plans, rating systems, or
43 surcharges, the procedures of G.S. 58-40-25 through G.S. 58-40-45 shall apply, and the appeal
44 procedures of G.S. 58-2-80 and G.S. 58-2-85 shall apply to filings under this section, except as
45 otherwise provided.

46 (e) The Association shall file no later than May 1, 2010, a schedule of credits for
47 policyholders based on the presence of mitigation and construction features and on the
48 condition of buildings that it insures. The Association shall develop rules applicable to the
49 operation of the schedule and mitigation program with approval by the Commissioner. The
50 schedule shall not be unfairly discriminatory and shall be reviewed by the Association

1 annually, with the results included as part of the Association's annual report to the
2 Commissioner.

3 (f) The Association shall file not later than May 1, 2010, with the Commissioner an
4 installment plan for premium payments and shall accept other methods of payment that are the
5 same as those filed by the North Carolina Rate Bureau. The Association shall collect an
6 installment fee if premiums are paid other than on an annual basis.

7 **"§ 58-45-46. Unearned premium, loss, and loss expense reserves.**

8 The Association shall make provisions for reserving unearned premiums and reserving for
9 losses, including incurred but not reported losses, and loss expenses, in accordance with
10 G.S. 58-3-71, 58-3-75, and 58-3-81.

11 **"§ 58-45-47. Deficit event.**

12 (a) When the Association knows that it has incurred losses and allocated loss expenses
13 in a particular calendar year that result in an assessment of its member companies exceeding
14 one billion dollars (\$1,000,000,000), then the Association shall immediately give notice to the
15 Commissioner that a deficit event has occurred.

16 (b) Upon a determination by the Association that a deficit event has occurred, the
17 Association shall determine, in its discretion, the appropriate means of financing the deficit,
18 which may include, but is not limited to, the purchase of reinsurance, arranging lines of credit,
19 or other forms of borrowing or financing. If the Association determines that the member
20 companies have paid one billion dollars (\$1,000,000,000) in assessments in any given year
21 pursuant to subsection (a) of this section, the Association may, subject to the approval and
22 order of the Commissioner, authorize member companies to charge a catastrophic assessment
23 recoupment on their residential and commercial property insurance policyholders statewide to
24 recover any assessment paid by member companies exceeding one billion dollars
25 (\$1,000,000,000). Catastrophic assessment recoupment or recoupments under this section shall
26 not exceed an aggregate amount of ten percent (10%) of the annual policy premium on any one
27 policy of insurance. The catastrophic assessment recoupment collected under this section shall
28 be transferred directly to the Association on a periodic basis as determined by the Association
29 and ordered by the Commissioner. The Association and the FAIR Plan shall also charge their
30 policyholders the assessment recoupment as provided in this section.

31 (c) The catastrophic assessment recoupment shall be clearly identified to policyholders
32 on the premium statement, declarations page, or by other appropriate electronic or written
33 method. The identification shall refer to the post-catastrophe loss for which the assessment was
34 imposed. Any such catastrophic assessment recoupment shall not be considered premium for
35 any purpose, including premium taxes or commissions, except that failure to pay the
36 catastrophic assessment recoupment shall be treated as failure to pay premium and shall be
37 grounds for termination of insurance. The identified catastrophic assessment recoupment shall
38 be accompanied by an explanation of the assessment recoupment and shall appear on the
39 medium by which the assessment recoupment is conveyed to the policyholder. The explanatory
40 language shall be prescribed by the Commissioner.

41 (d) The Association shall report quarterly to the Commissioner providing all financial
42 information for each catastrophic assessment recoupment authorized by this section, including
43 total assessment recoupment funds recovered to date and any information reasonably requested
44 by the Commissioner.

45 (e) Nothing contained in this section prohibits the Association from entering into any
46 financing arrangements for the purpose of financing a deficit, provided that the pledge of
47 catastrophic assessment recoupment amounts under such financing agreements shall not result
48 in the actual levying of any assessment recoupment until after the Association has incurred a
49 deficit and until after the Commissioner has approved implementation of the Association's
50 assessment recoupment plan.

1 **"§ 58-45-50. Appeal from acts of Association to Commissioner; appeal from**
2 **Commissioner to superior court.**

3 (a) Any person or any insurer who may be aggrieved by an act, ruling, or decision of
4 the Association other than an act, ruling, or decision relating to (i) the cause or amount of a
5 claimed loss or (ii) the reasonableness of expenses incurred by an insurer in adjusting
6 windstorm and hail losses, may, within 30 days after the ruling, appeal to the Commissioner.
7 Any hearings held by the Commissioner under the appeal shall be in accordance with rules
8 adopted by the Commissioner: Provided, however, the Commissioner is authorized to appoint a
9 member of the Commissioner's staff as deputy commissioner for the purpose of hearing those
10 appeals and a ruling based upon the hearing shall have the same effect as if heard by the
11 Commissioner. All persons or insureds aggrieved by any order or decision of the Commissioner
12 may appeal as is provided in G.S. 58-2-75.

13 (b) No later than 10 days before each hearing, the appellant shall file with the
14 Commissioner or the Commissioner's designated hearing officer and shall serve on the appellee
15 a written statement of the appellant's case and any evidence that the appellant intends to offer at
16 the hearing. No later than five days before the hearing, the appellee shall file with the
17 Commissioner or the designated hearing officer and shall serve on the appellant a written
18 statement of the appellee's case and any evidence that the appellee intends to offer at the
19 hearing. Each hearing shall be recorded and may be transcribed. If the matter is between an
20 insurer and the Association, the cost of the recording and transcribing shall be borne equally by
21 the appellant and appellee; provided that upon any final adjudication the prevailing party shall
22 be reimbursed for his share of such costs by the other party. If the matter is between an insured
23 and the Association, the cost of transcribing shall be borne equally by the appellant and
24 appellee; provided that the Commissioner may order the Association to pay recording or
25 transcribing costs for which the insured is financially unable to pay. Each party shall, on a date
26 determined by the Commissioner or the designated hearing officer, but not sooner than 15 days
27 after delivery of the completed transcript to the party, submit to the Commissioner or the
28 designated hearing officer and serve on the other party, a proposed order. The Commissioner or
29 the designated hearing officer shall then issue an order.

30 **"§ 58-45-55. Reports of inspection made available.**

31 All reports of inspection performed by or on behalf of the Association shall be made
32 available to the members of the Association, applicants, agent or broker, and the
33 Commissioner.

34 **"§ 58-45-60. Association and Commissioner immune from liability.**

35 There shall be no liability on the part of and no cause of action of any nature shall arise
36 against any member insurer, the Association or its agents or employees, the board of directors,
37 or the Commissioner or his representatives for any action taken by them in good faith in the
38 performance of their powers and duties under this Article.

39 **"§ 58-45-65. Association to file annual report with Commissioner.**

40 The Association shall file in the office of the Commissioner on an annual basis on or before
41 January 1 a statement which shall summarize the transactions, conditions, operations and
42 affairs of the Association during the preceding year. Such statement shall contain such matters
43 and information as are prescribed by the Commissioner and shall be in such form as is
44 approved by him. The Commissioner may at any time require the Association to furnish to him
45 any additional information with respect to its transactions or any other matter which the
46 Commissioner deems to be material to assist him in evaluating the operation and experience of
47 the Association.

48 **"§ 58-45-65.1. Association to be audited.**

49 The Association shall be audited on an annual basis by an auditor selected by the
50 Commissioner.

51 **"§ 58-45-70. Commissioner may examine affairs of Association.**

1 The Commissioner may from time to time make an examination into the affairs of the
2 Association when he deems it to be prudent and in undertaking such examination he may hold a
3 public hearing pursuant to the provisions of G.S. 58-2-50. The expenses of such examination
4 shall be borne and paid by the Association.

5 **"§ 58-45-71. Report of member companies to Commissioner.**

6 Each member company of the Association shall report by February 1 of each year to the
7 Commissioner the amount of homeowners' coverage, including separate coverage for
8 homeowners' wind and hail, written in the preceding calendar year by that member company in
9 the beach area and the coastal area. The report shall include the number and type of
10 homeowners' policies written by the member company in each area, the total amount of
11 homeowners' coverage for each area, any increases and decreases in homeowners' coverage
12 written in each area from the prior year, and other information as prescribed by the
13 Commissioner and in such form as approved by him.

14 **"§ 58-45-75. Commissioner authorized to promulgate reasonable rules and regulations.**

15 The Commissioner shall have authority to make reasonable rules and regulations, not
16 inconsistent with law, to enforce, carry out and make effective the provisions of this Article.
17 The Commissioner shall not be liable for any act or omission in connection with the
18 administration of the duties imposed upon him by the provisions of this Article.

19 **"§ 58-45-80. Premium taxes to be paid through Association.**

20 All premium taxes due on insurance written under this Article shall be remitted by each
21 insurer to the Association; and the Association, as collecting agent for its member companies,
22 shall forward all such taxes to the Secretary of Revenue as provided in Article 8B of Chapter
23 105 of the General Statutes.

24 **"§ 58-45-85. Assessment; inability to pay.**

25 (a) If any insurer fails, by reason of insolvency, to pay any assessment as provided in
26 this Article, the amount assessed each insurer shall be immediately recalculated, excluding the
27 insolvent insurer, so that its assessment is assumed and redistributed among the remaining
28 insurers. Any assessment against an insolvent insurer shall not be a charge against any special
29 deposit fund held under the provisions of Article 5 of this Chapter for the benefit of
30 policyholders.

31 (b) The nonrecoupable assessment of a member insurer may be ordered deferred in
32 whole or in part upon application by the insurer if, in the opinion of the Commissioner or his
33 designee, payment of the assessment would render the insurer insolvent or in danger of
34 insolvency or would otherwise leave the insurer in a condition so that further transaction of the
35 insurer's business would be hazardous to its policyholders. If payment of an assessment against
36 a member insurer is deferred by order of the Commissioner or his designee in whole or in part,
37 the amount by which the assessment is deferred must be assessed against other member
38 insurers in the same manner as provided in this Article. In its order of deferral, or in necessary
39 subsequent orders, the Commissioner or his designee shall prescribe a plan by which the
40 assessment so deferred must be repaid to the Association by the impaired insurer with interest
41 at the six-month treasury bill rate adjusted semiannually. The plan also shall provide for the
42 reimbursement of excess assessments paid by member companies as a result of a deferral of
43 assessments for an impaired insurer.

44 **"§ 58-45-90. Open meetings.**

45 The Association is subject to the Open Meetings Act, Article 33C of Chapter 143 of the
46 General Statutes, as amended.

47 **"§ 58-45-95. Information availability.**

48 Information concerning the Association's activities shall be made fully available upon
49 request by any company or Board member of the Association, provided that no competitive
50 information concerning an individual company's business plans, data, or operations may be
51 disclosed by the Association if such company has properly designated such information as

1 being a trade secret pursuant to G.S. 66-152(3) upon submitting such information to the
2 Association. No confidential information may be disclosed by the Association identifying
3 individual policyholders without such policyholders' consent unless such information is
4 provided pursuant to reasonable rules adopted by the Association permitting such information
5 to be disclosed for the purpose of enhancing the availability of insurance that is written in the
6 voluntary market.

7 **"§ 58-45-96. Succession and dissolution.**

8 In the event that a successor organization is created to perform the Association's general
9 functions, the surplus, assets, and liabilities then held by the Association shall be transferred to
10 such successor organization. The pledge or sale of, the lien upon, and the security interest in
11 any rights, revenues, or other assets of the Association created pursuant to any financing
12 arrangements entered into by the Association shall be and remain valid and enforceable on the
13 successor organization, notwithstanding the commencement of any rehabilitation, insolvency,
14 liquidation, bankruptcy, conservatorship, reorganization, or similar proceeding against the
15 Association. No such proceeding shall relieve the Association of its obligation to continue to
16 collect assessments or other revenues pledged pursuant to any financing arrangements. In the
17 event of dissolution, surplus then held shall not be distributed to member insurers."

18 **SECTION 2.** Article 6 of Chapter 58 of the General Statues is amended by adding
19 a new section to read:

20 **"§ 58-6-26. Additional insurance regulatory charge for the North Carolina Underwriting**
21 **Association.**

22 There is levied an annual charge on the North Carolina Underwriting Association, created
23 under G.S. 58-45-10, for the purpose of reimbursing the General Fund for the appropriations to
24 the Department of Insurance to pay its expenses incurred in regulating the Association. The
25 percentage rate shall be set by the Department each year. The minimum rate the Department
26 may impose is one and one-half percent (1.5%). The percentage rate may not exceed the rate
27 necessary to defray the costs incurred by the Department for the additional responsibilities of
28 the Department imposed under G.S. 58-45-30. The percentage rate is applied to the premium
29 taxes remitted to the Association by its members in G.S. 58-45-80. The charge levied on the
30 Association is payable at the time the Association forwards the taxes remitted by its members
31 to the Department of Revenue. The proceeds of the charge levied under this section shall be
32 credited to the Insurance Regulatory Fund created under G.S. 58-6-25 and used in the manner
33 set forth in that section. This charge is in addition to the charge imposed under G.S. 58-6-25."

34 **SECTION 3.** G.S. 58-36-10 reads as rewritten:

35 **"§ 58-36-10. Method of rate making; factors considered.**

36 The following standards shall apply to the making and use of rates:

- 37 (1) Rates or loss costs shall not be excessive, inadequate or unfairly
38 discriminatory.
- 39 (2) Due consideration shall be given to actual loss and expense experience
40 within this State for the most recent three-year period for which that
41 information is available; to prospective loss and expense experience within
42 this State; to the hazards of conflagration and catastrophe; to a reasonable
43 margin for underwriting profit and to contingencies; to dividends, savings, or
44 unabsorbed premium deposits allowed or returned by insurers to their
45 policyholders, members, or subscribers; to investment income earned or
46 realized by insurers from their unearned premium, loss, and loss expense
47 reserve funds generated from business within this State; to past and
48 prospective expenses specially applicable to this State; and to all other
49 relevant factors within this State: Provided, however, that countrywide
50 expense and loss experience and other countrywide data may be considered
51 only where credible North Carolina experience or data is not available.

- 1 (3) In the case of property insurance rates under this Article, consideration may
2 be given to the experience of property insurance business during the most
3 recent five-year period for which that experience is available. In the case of
4 property insurance rates under this Article, consideration shall be given to
5 the insurance public protection classifications of fire districts established by
6 the Commissioner. The Commissioner shall establish and modify from time
7 to time insurance public protection districts for all rural areas of the State
8 and for cities with populations of 100,000 or fewer, according to the most
9 recent annual population estimates certified by the State Budget Officer. In
10 establishing and modifying these districts, the Commissioner shall use
11 standards at least equivalent to those used by the Insurance Services Office,
12 Inc., or any successor organization. The standards developed by the
13 Commissioner are subject to Article 2A of Chapter 150B of the General
14 Statutes. The insurance public protection classifications established by the
15 Commissioner issued pursuant to the provisions of this Article shall be
16 subject to appeal as provided in G.S. 58-2-75, et seq. The exceptions stated
17 in G.S. 58-2-75(a) do not apply.
- 18 (4) Risks may be grouped by classifications and lines of insurance for
19 establishment of rates, loss costs, and base premiums. Classification rates
20 may be modified to produce rates for individual risks in accordance with
21 rating plans that establish standards for measuring variations in hazards or
22 expense provisions or both. Those standards may measure any differences
23 among risks that can be demonstrated to have a probable effect upon losses
24 or expenses. The Bureau shall establish and implement a comprehensive
25 classification rating plan for motor vehicle insurance under its jurisdiction.
26 No such classification plans shall base any standard or rating plan for private
27 passenger (nonfleet) motor vehicles, in whole or in part, directly or
28 indirectly, upon the age or gender of the persons insured. The Bureau shall at
29 least once every three years make a complete review of the filed
30 classification rates to determine whether they are proper and supported by
31 statistical evidence, and shall at least once every 10 years make a complete
32 review of the territories for nonfleet private passenger motor vehicle
33 insurance to determine whether they are proper and reasonable.
- 34 (5) In the case of workers' compensation insurance and employers' liability
35 insurance written in connection therewith, due consideration shall be given
36 to the past and prospective effects of changes in compensation benefits and
37 in legal and medical fees that are provided for in General Statutes Chapter
38 97.
- 39 (6) To ensure that policyholders in the beach and coastal areas of the North
40 Carolina Insurance Underwriting Association whose risks are of the same
41 class and essentially the same hazard are charged premiums that are
42 commensurate with the risk of loss and premiums that are actuarially correct,
43 the North Carolina Rate Bureau shall revise, monitor, and review the
44 existing territorial boundaries used by the Bureau when appropriate to
45 establish geographic territories in the beach and coastal areas of the
46 Association for rating purposes. In revising these territories, the Bureau shall
47 use statistical data sources available to define such territories to represent
48 relative risk factors that are actuarially sound and not unfairly
49 discriminatory. The new territories and any subsequent amendments
50 proposed by the North Carolina Rate Bureau or Association shall be subject

1 to the Commissioner's approval and shall appear on the Bureau's Web site,
2 the Association's Web site, and the Department's Web site once approved."

3 **SECTION 4.** G.S. 58-36-20(a) reads as rewritten:

4 "(a) At any time within 50 days after the date of any filing, the Commissioner may give
5 written notice to the Bureau specifying in what respect and to what extent the Commissioner
6 contends the filing fails to comply with the requirements of this Article and fixing a date for
7 hearing not less than 30 days from the date of mailing of such notice. At the hearing the factors
8 specified in G.S. 58-36-10 shall be considered. If the Commissioner after hearing finds that the
9 filing does not comply with the provisions of this Article, he may issue his order determining
10 wherein and to what extent such filing is deemed to be improper and fixing a date thereafter,
11 within a reasonable time, after which the filing shall no longer be effective. ~~Any order of~~
12 ~~disapproval under this section must be entered within 210 days after the date the filing is~~
13 ~~received by the Commissioner."~~

14 **SECTION 5.** Article 36 of Chapter 58 of the General Statutes is amended by
15 adding a new section to read:

16 "**§ 58-36-120. Public notice of certain filings.**

17 Whenever the North Carolina Rate Bureau files for an increase in insurance rates for
18 residential property insurance, the Bureau shall give public notice in at least two newspapers
19 with statewide distribution and in the North Carolina Register, within 10 business days after the
20 filing, which notice shall state that the Commissioner may or may not schedule and conduct a
21 hearing with respect to the filing. The same information shall be posted on the Web site for the
22 North Carolina Rate Bureau and the North Carolina Department of Insurance Web site within
23 three days after the filing."

24 **SECTION 6.** G.S. 58-46-55 reads as rewritten:

25 "**§ 58-46-55. Rates, rating plans, rating rules, and forms applicable.**

26 (a) The rates, rating plans, rating rules, and forms applicable to the insurance written by
27 the association shall be in accordance with the most recent manual rates or adjusted loss costs
28 and forms that are legally in effect in this State. No special surcharge, other than those
29 presently in effect, may be applied to the property insurance rates of properties located in the
30 geographic areas to which this Article applies.

31 (b) The surcharges set out in G.S. 58-45-45 shall not apply to policies written in the
32 FAIR Plan."

33 **SECTION 7.** The North Carolina Rate Bureau shall file for approval by the
34 Commissioner no later than February 1, 2010, rating plans for policies under its jurisdiction in
35 the beach and coastal areas of North Carolina that include a deductible for named storm wind
36 and hail losses of one percent (1%) of the insured value of the property.

37 **SECTION 8.** The provisions of G.S. 58-45-45(a2) as enacted by Section 1 of this
38 act become effective when a rate or rates with a deductible for named storm wind and hail
39 losses of one percent (1%) as required by that subsection become effective, as approved by the
40 Commissioner. The remainder of this act is effective when it becomes law and applies to
41 policies filed, issued, or renewed on or after that date.