



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

8 The General Assembly of North Carolina enacts:

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

10 "Article 45.

11 "Essential Property Insurance for Beach Area Property.

12 **§ 58-45-1. Declarations and purpose of Article.**

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

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

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

34 **§ 58-45-5. Definition of terms.**

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

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

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

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

49 (2b) Coastal Property Insurance Pool. – The name of that which was formerly  
50 known as "the Beach Plan" and which is governed by the North Carolina  
51 Insurance Underwriting Association. All references to the "Beach Plan" shall

- 1                    mean the Coastal Property Insurance Pool, which is the market of last resort  
2                    provided by the Association to the Beach area and the Coastal area.
- 3                    (3) Repealed by Session Laws 1991, c. 720, s. 6.
- 4                    (3a) "~~Crime insurance~~" means Crime insurance. – ~~insurance~~–Insurance against  
5                    losses resulting from robbery, burglary, larceny, and similar crimes, as more  
6                    specifically defined and limited in the various crime insurance policies, or  
7                    their successor forms of coverage, approved by the Commissioner and  
8                    issued by the Association. Such policies shall not be more restrictive than  
9                    those issued under the Federal Crime Insurance Program authorized by  
10                    Public Law 91-609.
- 11                    (3b) "~~Directors~~" means Directors. – ~~the~~–The Board of Directors of the Association.
- 12                    (4) "~~Essential property insurance~~" means Essential property insurance. –  
13                    ~~insurance~~–Insurance against direct loss to property as defined in the standard  
14                    statutory fire policy and extended coverage, vandalism and malicious  
15                    mischief endorsements thereon, or their successor forms of coverage, as  
16                    approved by the ~~Commissioner~~; Commissioner.
- 17                    (5) "~~Insurable property~~" means Insurable property. – ~~real~~–Real property at fixed  
18                    locations in the beach and coastal area, including travel trailers when tied  
19                    down at a fixed location, or the tangible personal property located therein,  
20                    but shall not include insurance on motor vehicles; which property is  
21                    determined by the Association, after inspection and under the criteria  
22                    specified in the plan of operation, to be in an insurable condition. However,  
23                    any one and two family dwellings built in substantial accordance with the  
24                    Federal Manufactured Home Construction and Safety Standards, any  
25                    predecessor or successor federal or State construction or safety standards,  
26                    and any further construction or safety standards promulgated by the  
27                    association and approved by the Commissioner, or the North Carolina  
28                    Uniform Residential Building Code and any structure or building built in  
29                    substantial compliance with the North Carolina State Building Code,  
30                    including the design-wind requirements, which is not otherwise rendered  
31                    uninsurable by reason of use or occupancy, shall be an insurable risk within  
32                    the meaning of this Article. However, none of the following factors shall be  
33                    considered in determining insurable condition: neighborhood, area, location,  
34                    environmental hazards beyond the control of the applicant or owner of the  
35                    property. Also, any structure begun on or after January 1, 1970, not built in  
36                    substantial compliance with the Federal Manufactured Home Construction  
37                    and Safety Standards, any predecessor or successor federal or State  
38                    construction or safety standards, and any further construction or safety  
39                    standards promulgated by the association and approved by the  
40                    Commissioner, or the North Carolina Uniform Residential Building Code or  
41                    the North Carolina State Building Code, including the design-wind  
42                    requirements therein, shall not be an insurable risk. The owner or applicant  
43                    shall furnish with the application proof in the form of a certificate from a  
44                    local building inspector, contractor, engineer or architect that the structure is  
45                    built in substantial accordance with the Federal Manufactured Home  
46                    Construction and Safety Standards, any predecessor or successor federal or  
47                    State construction or safety standards, and any further construction or safety  
48                    standards promulgated by the association and approved by the  
49                    Commissioner, or the North Carolina Uniform Residential Building Code or  
50                    the North Carolina State Building Code; however, an individual certificate  
51                    shall not be necessary where the structure is located within a political

1 subdivision which has certified to the Association on an annual basis that it  
2 is enforcing the North Carolina Uniform Residential Building Code or the  
3 North Carolina State Building Code and has no plans to discontinue  
4 enforcing these codes during that year.

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

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

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

14 (6b) Nonrecoupable assessment. – Any assessment levied on and payable by  
15 members of the Association that is not directly recoverable from  
16 policyholders but which shall be considered as an appropriate factor in the  
17 making of rates by the North Carolina Rate Bureau.

18 (7) ~~"Plan of operation" or "plan" means~~Plan of operation. – the~~The~~ plan of  
19 operation of the Association approved or promulgated by the Commissioner  
20 under this Article.

21 (8) Catastrophic assessment recoupment. – Any recoupment of assessments on  
22 member insurers collected by member insurers from policyholders  
23 statewide, including Association and Fair Plan policyholders, upon issuance  
24 or renewal of residential and commercial property insurance policies, other  
25 than National Flood Insurance policies, after a deficit event has occurred as  
26 provided in G.S. 58-45-47. The amount of the catastrophic assessment  
27 recoupment or recoupments collected in a particular year shall not exceed an  
28 aggregate amount of ten percent (10%) of policy premium. A catastrophic  
29 assessment recoupment shall be limited to the recovery of losses resulting  
30 from claims for property damage and allocated loss expenses.

31 (9) Voluntary market. – Insurance written voluntarily by companies other than  
32 through this Article or Article 46 of this Chapter.

33 (10) Voluntary market rates. – Property insurance rates determined or permitted  
34 under Articles 36, 40, or 41 of this Chapter.

35 **"§ 58-45-6. Persons who can be insured by the Association.**

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

38 **"§ 58-45-10. North Carolina Insurance Underwriting Association created.**

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

48 **"§ 58-45-15. Powers and duties of Association.**

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

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

15 **"§ 58-45-20. Temporary directors of Association.**

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

21 **"§ 58-45-25. Each member of Association to participate in nonrecoupable assessments. its**  
22 **expenses, profits, and losses.**

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

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

49 (b1) The accumulated surplus of the Association shall be retained from year to year and  
50 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 wind and hail coverage of one percent  
22 (1%) of the insured value of the property for all policies and may offer any other deductible  
23 options provided by the North Carolina Rate Bureau, so long as the deductible is not lower than  
24 one percent (1%) of the insured value of the property applicable to wind and hail losses.

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

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

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

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

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

5 **"§ 58-45-46. Unearned premium, loss, and loss expense reserves.**

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

9 **"§ 58-45-47. Deficit event.**

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

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

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

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

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

49 **"§ 58-45-50. Appeal from acts of Association to Commissioner; appeal from**  
50 **Commissioner to superior court.**

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

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

28 **"§ 58-45-55. Reports of inspection made available.**

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

32 **"§ 58-45-60. Association and Commissioner immune from liability.**

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

37 **"§ 58-45-65. Association to file annual report with Commissioner.**

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

46 **"§ 58-45-70. Commissioner may examine affairs of Association.**

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

51 **"§ 58-45-71. Report of member companies to Commissioner.**

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

9 **"§ 58-45-75. Commissioner authorized to promulgate reasonable rules and regulations.**

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

14 **"§ 58-45-80. Premium taxes to be paid through Association.**

15 All premium taxes due on insurance written under this Article shall be remitted by each  
16 insurer to the Association; and the Association, as collecting agent for its member companies,  
17 shall forward all such taxes to the Secretary of Revenue as provided in Article 8B of Chapter  
18 105 of the General Statutes.

19 **"§ 58-45-85. Assessment; inability to pay.**

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

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

39 **"§ 58-45-90. Open meetings.**

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

42 **"§ 58-45-95. Information availability.**

43 Information concerning the Association's activities shall be made fully available upon  
44 request by any company or Board member of the Association; provided, that no competitive  
45 information concerning an individual company's business plans, data, or operations may be  
46 disclosed by the Association if such company has properly designated such information as  
47 being a trade secret pursuant to G.S. 66-152(3) upon submitting such information to the  
48 Association. No confidential information may be disclosed by the Association identifying  
49 individual policyholders without such policyholders' consent unless such information is  
50 provided pursuant to reasonable rules adopted by the Association permitting such information

1 to be disclosed for the purpose of enhancing the availability of insurance that is written in the  
2 voluntary market.

3 **"§ 58-45-96. Succession and dissolution.**

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

14 **SECTION 2.** Article 6 of Chapter 58 of the General Statutes is amended by adding  
15 a new section to read:

16 **"§ 58-6-26. Additional insurance regulatory charge for the North Carolina Underwriting**  
17 **Association.**

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

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

31 **"§ 58-36-10. Method of rate making; factors considered.**

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

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

1 the insurance public protection classifications of fire districts established by  
2 the Commissioner. The Commissioner shall establish and modify from time  
3 to time insurance public protection districts for all rural areas of the State  
4 and for cities with populations of 100,000 or fewer, according to the most  
5 recent annual population estimates certified by the State Budget Officer. In  
6 establishing and modifying these districts, the Commissioner shall use  
7 standards at least equivalent to those used by the Insurance Services Office,  
8 Inc., or any successor organization. The standards developed by the  
9 Commissioner are subject to Article 2A of Chapter 150B of the General  
10 Statutes. The insurance public protection classifications established by the  
11 Commissioner issued pursuant to the provisions of this Article shall be  
12 subject to appeal as provided in G.S. 58-2-75, et seq. The exceptions stated  
13 in G.S. 58-2-75(a) do not apply.

14 (4) Risks may be grouped by classifications and lines of insurance for  
15 establishment of rates, loss costs, and base premiums. Classification rates  
16 may be modified to produce rates for individual risks in accordance with  
17 rating plans that establish standards for measuring variations in hazards or  
18 expense provisions or both. Those standards may measure any differences  
19 among risks that can be demonstrated to have a probable effect upon losses  
20 or expenses. The Bureau shall establish and implement a comprehensive  
21 classification rating plan for motor vehicle insurance under its jurisdiction.  
22 No such classification plans shall base any standard or rating plan for private  
23 passenger (nonfleet) motor vehicles, in whole or in part, directly or  
24 indirectly, upon the age or gender of the persons insured. The Bureau shall at  
25 least once every three years make a complete review of the filed  
26 classification rates to determine whether they are proper and supported by  
27 statistical evidence, and shall at least once every 10 years make a complete  
28 review of the territories for nonfleet private passenger motor vehicle  
29 insurance to determine whether they are proper and reasonable.

30 (5) In the case of workers' compensation insurance and employers' liability  
31 insurance written in connection therewith, due consideration shall be given  
32 to the past and prospective effects of changes in compensation benefits and  
33 in legal and medical fees that are provided for in General Statutes Chapter  
34 97.

35 (6) To ensure that policyholders in the beach and coastal areas of the North  
36 Carolina Insurance Underwriting Association whose risks are of the same  
37 class and essentially the same hazard are charged premiums that are  
38 commensurate with the risk of loss and premiums that are actuarially correct,  
39 the North Carolina Rate Bureau shall revise, monitor, and review the  
40 existing territorial boundaries used by the Bureau when appropriate to  
41 establish geographic territories in the beach and coastal areas of the  
42 Association for rating purposes. In revising these territories, the Bureau shall  
43 use statistical data sources available to define such territories to represent  
44 relative risk factors that are actuarially sound and not unfairly  
45 discriminatory. The new territories and any subsequent amendments  
46 proposed by the North Carolina Rate Bureau or Association shall be subject  
47 to the Commissioner's approval and shall appear on the Bureau's Web site,  
48 the Association's Web site, and the Department's Web site once approved."

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

50 "(a) At any time within 50 days after the date of any filing, the Commissioner may give  
51 written notice to the Bureau specifying in what respect and to what extent the Commissioner

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

9 **SECTION 5.** Article 36 of Chapter 58 is amended by adding a new section to read:

10 **"§ 58-36-120. Public notice of certain filings.**

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

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

19 **"§ 58-46-55. Rates, rating plans, rating rules, and forms applicable.**

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

25 (b) The surcharges set out in G.S. 58-45-45 shall not apply to policies written in the  
26 FAIR plan."

27 **SECTION 7.** This act is effective when it becomes law and applies to policies  
28 filed, issued, and renewed on or after that date.