

1 COMMERCIAL AND DWELLING COVERAGE IN ADDITION TO SURCHARGES
2 CURRENTLY IMPOSED ON HOMEOWNERS POLICIES; AND TO MAKE OTHER
3 CHANGES.

4 The General Assembly of North Carolina enacts:

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

6 "Article 45.

7 "Essential Property Insurance for Beach Area Property.

8 **"§ 58-45-1. Declarations and purpose of Article.**

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

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

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

30 **"§ 58-45-5. Definition of terms.**

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

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

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

39 (2a) "Coastal area" means Coastal area. – ~~all~~ All of that area of the State of North
40 Carolina comprising the following counties: Beaufort, Brunswick, Camden,
41 Carteret, Chowan, Craven, Currituck, Dare, Hyde, Jones, New Hanover,
42 Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and
43 Washington. "Coastal area" does not include the portions of these counties
44 that lie within the beach area.

45 (2b) Catastrophe recovery charge. – Any charge collected by member insurers
46 from policyholders statewide, including any charge collected by the
47 Association and Fair Plan from their policyholders, upon issuance or
48 renewal of residential and commercial property insurance policies, other
49 than National Flood Insurance policies, after a deficit event has occurred as
50 provided in G.S. 58-45-47. The amount of the catastrophe recovery charge
51 collected in a particular year shall not exceed an aggregate amount of ten

1 percent (10%) of policy premium. The catastrophe recovery charge shall be
2 limited to the recovery of losses resulting from claims for property damage,
3 allocated loss expenses, and actual costs and expenses directly resulting
4 from the catastrophe recovery charge plan.

5 (2c) Coastal Property Insurance Pool. – The name of which was formerly known
6 as "the Beach Plan" and which is governed by the North Carolina Insurance
7 Underwriting Association. All references to "the Beach Plan" shall mean the
8 Coastal Property Insurance Pool, which is the market of last resort provided
9 by the Association to the beach area and the coastal area.

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

11 (3a) ~~"Crime insurance" means~~ Crime insurance. – insurance–Insurance against
12 losses resulting from robbery, burglary, larceny, and similar crimes, as more
13 specifically defined and limited in the various crime insurance policies, or
14 their successor forms of coverage, approved by the Commissioner and
15 issued by the Association. Such policies shall not be more restrictive than
16 those issued under the Federal Crime Insurance Program authorized by
17 Public Law 91-609.

18 (3b) ~~"Directors" means~~ Directors. – the–The Board of Directors of the Association.

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

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

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

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

13 (6a) ~~"Net direct premiums" means~~Net direct premiums. – ~~gross~~Gross direct
 14 premiums (excluding reinsurance assumed and ceded) written on property in
 15 this State for essential property insurance, farm owners insurance,
 16 homeowners insurance, and the property portion of commercial multiple
 17 peril insurance policies as computed by the Commissioner, less:

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

21 (6b) Named storm. – A weather-related event involving wind that has been
 22 assigned a formal name by the National Hurricane Center, National Weather
 23 Service, World Meteorological Association, or any other generally
 24 recognized scientific or meteorological association that provides formal
 25 names for public use and reference. A named storm includes hurricanes,
 26 tropical depressions, and tropical storms.

27 (6c) Nonrecoupable assessment. – Any assessment levied on and payable by
 28 members of the Association that is not directly recoverable from
 29 policyholders. Prospective exposure to nonrecoupable assessments shall be
 30 considered as an appropriate factor in the making of rates by the North
 31 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.
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, including borrowing from member companies.
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 also shall 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 judgments entered prior to the effective date of this subsection.

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 judgments entered prior to the
9 effective date of this subsection.

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 one million dollars (\$1,000,000) on habitational
47 property. The above limits on habitational property shall apply to the value of the building
48 only. Insurance issued by the Association for commercial property shall not exceed three
49 million dollars (\$3,000,000) on any freestanding structure or any building unit within multiple
50 firewall divisions, provided the aggregate insurance on structures with multiple firewall
51 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. The Association shall ensure that rates accurately reflect the maximum limits
3 for contents coverage and any reduction in contents coverage limits for habitational property.

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

7 **"§ 58-45-45. Rates, rating plans, rating rules, and forms applicable.**

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

15 (a1) Effective January 1, 2010, the Association's rates shall be the North Carolina Rate
16 Bureau Manual Rates plus a surcharge of five percent (5%) of the applicable North Carolina
17 Rate Bureau Manual Rate for wind and hail coverage and a surcharge of fifteen percent (15%)
18 of the applicable North Carolina Rate Bureau Manual Rate for homeowners' insurance
19 including wind and hail coverage. It is the intent of the General Assembly that these surcharges
20 ensure that the Coastal Property Insurance Pool is the market of last resort over and above the
21 manual rate.

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

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

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

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

47 (e) The Association shall file no later than May 1, 2010, a schedule of credits for
48 policyholders based on the presence of mitigation and construction features and on the
49 condition of buildings that it insures. The Association shall develop rules applicable to the
50 operation of the schedule and the mitigation program with approval by the Commissioner. The
51 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 (g) The Association shall consider the purchase of reinsurance each calendar year in
8 order to maintain the ability to pay losses and expenses from a named storm or combination of
9 named storms.

10 **"§ 58-45-46. Unearned premium, loss, and loss expense reserves.**

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

14 **"§ 58-45-47. Deficit event.**

15 (a) In the event of losses and expenses to the Association exceeding available surplus,
16 reinsurance, and other sources of funding of Association losses, the Association is authorized to
17 issue a nonrecoupable assessment upon its members in accordance with its Plan of Operation.
18 Member assessments shall not exceed one billion dollars (\$1,000,000,000) for losses incurred
19 from any event or series of events that occur in a given calendar year, regardless of when such
20 assessments are actually levied on or collected from member companies.

21 (b) When the Association knows that it has incurred losses and loss expenses in a
22 particular calendar year that will exceed the combination of available surplus, reinsurance, and
23 other sources of funding, including permissible member company assessments, then the
24 Association shall immediately give notice to the Commissioner that a deficit event has
25 occurred.

26 (c) Upon a determination by the Association that a deficit event has occurred, the
27 Association shall determine, in its discretion, the appropriate means of financing the deficit,
28 which may include, but is not limited to, the purchase of reinsurance, arranging lines of credit,
29 or other forms of borrowing or financing. If the Association determines that the member
30 companies have paid one billion dollars (\$1,000,000,000) in nonrecoupable assessments for
31 losses and expenses incurred in any given year pursuant to subsection (a) of this section, the
32 Association may, subject to the verification by the Commissioner that the dollar value of losses
33 and expenses has reached the level necessary for a catastrophe recovery charge, authorize
34 member companies to impose a catastrophe recovery charge on their residential and
35 commercial property insurance policyholders statewide. Catastrophe recovery charges shall be
36 charged as a uniform percentage of written premiums as prescribed by the Commissioner and
37 shall not exceed an aggregate amount of ten percent (10%) of the annual policy premium on
38 any one policy of insurance. Catastrophe recovery charges collected under this section shall be
39 transferred directly to the Association on a periodic basis as determined by the Association and
40 ordered by the Commissioner. The Association and the FAIR Plan also shall charge their
41 policyholders a catastrophe recovery charge as provided in this section.

42 (d) The catastrophe recovery charge shall be clearly identified to policyholders on the
43 premium statement, declarations page, or by other appropriate electronic or written method.
44 The identification shall refer to the post-catastrophe loss for which the charge was imposed.
45 Any such catastrophe recovery charge shall not be considered premium for any purpose,
46 including premium taxes or commissions, except that failure to pay the catastrophe recovery
47 charge shall be treated as failure to pay premium and shall be grounds for termination of
48 insurance. The identified catastrophe recovery charge shall be accompanied by an explanation
49 of the charge and shall appear on the medium by which the charge is conveyed to the
50 policyholder. The explanatory language shall be prescribed by the Commissioner.

1 (e) The Association shall report quarterly to the Commissioner providing all financial
2 information for each catastrophe recovery charge authorized by this section, including total
3 catastrophe recovery charge funds recovered to date and any information reasonably requested
4 by the Commissioner.

5 (f) The Association shall recalculate the catastrophe recovery charge amount annually
6 and, subject to procedure approved by the Commissioner, adjust the charge percentage as
7 needed.

8 (g) The catastrophe recovery charge amount shall continue until financing of the deficit
9 event has been paid in full. Upon order of cessation, any catastrophe recovery charge amounts
10 collected by member companies, the Association or the FAIR Plan that exceed amounts
11 necessary for payment of the debt shall be remitted to the Association and added to the surplus
12 for the purposes of offsetting future Association losses or expenses.

13 (h) Nothing contained in this section prohibits the Association from entering into any
14 financing arrangements for the purpose of financing a deficit, provided that the pledge of
15 catastrophe recovery charge amounts under such financing agreements shall not result in the
16 actual levying of any catastrophe recovery charge until after the Association has incurred a
17 deficit and until after the Commissioner has approved implementation of the Association's
18 catastrophe recovery charge plan.

19 **"§ 58-45-50. Appeal from acts of Association to Commissioner; appeal from**
20 **Commissioner to superior court.**

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

31 (b) No later than 10 days before each hearing, the appellant shall file with the
32 Commissioner or the Commissioner's designated hearing officer and shall serve on the appellee
33 a written statement of the appellant's case and any evidence that the appellant intends to offer at
34 the hearing. No later than five days before the hearing, the appellee shall file with the
35 Commissioner or the designated hearing officer and shall serve on the appellant a written
36 statement of the appellee's case and any evidence that the appellee intends to offer at the
37 hearing. Each hearing shall be recorded and may be transcribed. If the matter is between an
38 insurer and the Association, the cost of the recording and transcribing shall be borne equally by
39 the appellant and appellee; provided that upon any final adjudication the prevailing party shall
40 be reimbursed for his share of such costs by the other party. If the matter is between an insured
41 and the Association, the cost of transcribing shall be borne equally by the appellant and
42 appellee; provided that the Commissioner may order the Association to pay recording or
43 transcribing costs for which the insured is financially unable to pay. Each party shall, on a date
44 determined by the Commissioner or the designated hearing officer, but not sooner than 15 days
45 after delivery of the completed transcript to the party, submit to the Commissioner or the
46 designated hearing officer and serve on the other party, a proposed order. The Commissioner or
47 the designated hearing officer shall then issue an order.

48 **"§ 58-45-55. Reports of inspection made available.**

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

1 **"§ 58-45-60. Association and Commissioner immune from liability.**

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

6 **"§ 58-45-65. Association to file annual report with Commissioner.**

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

15 **"§ 58-45-65.1. Association to be audited.**

16 The Association shall be audited on an annual basis by an auditor selected by the
17 Commissioner.

18 **"§ 58-45-70. Commissioner may examine affairs of Association.**

19 The Commissioner may from time to time make an examination into the affairs of the
20 Association when he deems it to be prudent and in undertaking such examination he may hold a
21 public hearing pursuant to the provisions of G.S. 58-2-50. ~~The expenses of such examination~~
22 ~~shall be borne and paid by the Association. When making an examination under this section,~~
23 the Commissioner may retain attorneys, appraisers, independent actuaries, independent
24 certified public accountants, or other professionals and specialists as examiners, the reasonable
25 cost of which shall be borne by the Association. Examinations shall be conducted in
26 accordance with G.S. 58-2-131, 58-2-132, and 58-2-133.

27 **"§ 58-45-71. Report of member companies to Commissioner.**

28 Each member company of the Association shall report by February 1 of each year to the
29 Commissioner the amount of homeowners' coverage, including separate coverage for
30 homeowners' wind and hail, written in the preceding calendar year by that member company in
31 the beach area and the coastal area. The report shall include the number and type of
32 homeowners' policies written by the member company in each area, the total amount of
33 homeowners' coverage for each area, any increases and decreases in homeowners' coverage
34 written in each area from the prior year, and other information as prescribed by the
35 Commissioner and in such form as approved by him.

36 **"§ 58-45-75. Commissioner authorized to promulgate reasonable rules and regulations.**

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

41 **"§ 58-45-80. Premium taxes to be paid through Association.**

42 All premium taxes due on insurance written under this Article shall be remitted by each
43 insurer to the Association; and the Association, as collecting agent for its member companies,
44 shall forward all such taxes to the Secretary of Revenue as provided in Article 8B of Chapter
45 105 of the General Statutes.

46 **"§ 58-45-85. Assessment; inability to pay.**

47 (a) If any insurer fails, by reason of insolvency, to pay any assessment as provided in
48 this Article, the amount assessed each insurer shall be immediately recalculated, excluding the
49 insolvent insurer, so that its assessment is assumed and redistributed among the remaining
50 insurers. Any assessment against an insolvent insurer shall not be a charge against any special

1 deposit fund held under the provisions of Article 5 of this Chapter for the benefit of
2 policyholders.

3 (b) The nonrecoupable assessment of a member insurer may be ordered deferred in
4 whole or in part upon application by the insurer if, in the opinion of the Commissioner or his
5 designee, payment of the assessment would render the insurer insolvent or in danger of
6 insolvency or would otherwise leave the insurer in a condition so that further transaction of the
7 insurer's business would be hazardous to its policyholders. If payment of an assessment against
8 a member insurer is deferred by order of the Commissioner or his designee in whole or in part,
9 the amount by which the assessment is deferred must be assessed against other member
10 insurers in the same manner as provided in this Article. In its order of deferral, or in necessary
11 subsequent orders, the Commissioner or his designee shall prescribe a plan by which the
12 assessment so deferred must be repaid to the Association by the impaired insurer with interest
13 at the six-month treasury bill rate adjusted semiannually. The plan also shall provide for the
14 reimbursement of excess assessments paid by member companies as a result of a deferral of
15 assessments for an impaired insurer.

16 **"§ 58-45-90. Open meetings.**

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

19 **"§ 58-45-95. Information availability.**

20 Information concerning the Association's activities shall be made fully available upon
21 request provided that no competitive information concerning an individual company's business
22 plans, data, or operations may be disclosed by the Association if such company has properly
23 designated such information as being a trade secret pursuant to G.S. 66-152(3) upon submitting
24 such information to the Association. No confidential information may be disclosed by the
25 Association identifying individual policyholders without such policyholders' consent unless
26 such information is provided pursuant to reasonable rules adopted by the Association
27 permitting such information to be disclosed for the purpose of enhancing the availability of
28 insurance that is written in the voluntary market.

29 **"§ 58-45-96. Succession and dissolution.**

30 In the event that a successor organization is created to perform the Association's general
31 functions, the surplus, assets, and liabilities then held by the Association shall be transferred to
32 such successor organization. The pledge or sale of, the lien upon, and the security interest in
33 any rights, revenues, or other assets of the Association created pursuant to any financing
34 arrangements entered into by the Association shall be and remain valid and enforceable on the
35 successor organization, notwithstanding the commencement of any rehabilitation, insolvency,
36 liquidation, bankruptcy, conservatorship, reorganization, or similar proceeding against the
37 Association. No such proceeding shall relieve the Association of its obligation to continue to
38 collect assessments or other revenues pledged pursuant to any financing arrangements. In the
39 event of dissolution, surplus then held shall not be distributed to member insurers."

40 **SECTION 2.** G.S. 58-36-10 reads as rewritten:

41 **"§ 58-36-10. Method of rate making; factors considered.**

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

- 43 (1) Rates or loss costs shall not be excessive, inadequate or unfairly
44 discriminatory.
- 45 (2) Due consideration shall be given to actual loss and expense experience
46 within this State for the most recent three-year period for which that
47 information is available; to prospective loss and expense experience within
48 this State; to the hazards of conflagration and catastrophe; to a reasonable
49 margin for underwriting profit and to contingencies; to dividends, savings, or
50 unabsorbed premium deposits allowed or returned by insurers to their
51 policyholders, members, or subscribers; to investment income earned or

1 realized by insurers from their unearned premium, loss, and loss expense
2 reserve funds generated from business within this State; to past and
3 prospective expenses specially applicable to this State; and to all other
4 relevant factors within this State: Provided, however, that countrywide
5 expense and loss experience and other countrywide data may be considered
6 only where credible North Carolina experience or data is not available.

7 (3) In the case of property insurance rates under this Article, consideration may
8 be given to the experience of property insurance business during the most
9 recent five-year period for which that experience is available. In the case of
10 property insurance rates under this Article, consideration shall be given to
11 the insurance public protection classifications of fire districts established by
12 the Commissioner. The Commissioner shall establish and modify from time
13 to time insurance public protection districts for all rural areas of the State
14 and for cities with populations of 100,000 or fewer, according to the most
15 recent annual population estimates certified by the State Budget Officer. In
16 establishing and modifying these districts, the Commissioner shall use
17 standards at least equivalent to those used by the Insurance Services Office,
18 Inc., or any successor organization. The standards developed by the
19 Commissioner are subject to Article 2A of Chapter 150B of the General
20 Statutes. The insurance public protection classifications established by the
21 Commissioner issued pursuant to the provisions of this Article shall be
22 subject to appeal as provided in G.S. 58-2-75, et seq. The exceptions stated
23 in G.S. 58-2-75(a) do not apply.

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

40 (5) In the case of workers' compensation insurance and employers' liability
41 insurance written in connection therewith, due consideration shall be given
42 to the past and prospective effects of changes in compensation benefits and
43 in legal and medical fees that are provided for in General Statutes Chapter
44 97.

45 (6) To ensure that policyholders in the beach and coastal areas of the North
46 Carolina Insurance Underwriting Association whose risks are of the same
47 class and essentially the same hazard are charged premiums that are
48 commensurate with the risk of loss and premiums that are actuarially correct,
49 the North Carolina Rate Bureau shall revise, monitor, and review the
50 existing territorial boundaries used by the Bureau when appropriate to
51 establish geographic territories in the beach and coastal areas of the

1 Association for rating purposes. In revising these territories, the Bureau shall
2 use statistical data sources available to define such territories to represent
3 relative risk factors that are actuarially sound and not unfairly
4 discriminatory. The new territories and any subsequent amendments
5 proposed by the North Carolina Rate Bureau or Association shall be subject
6 to the Commissioner's approval and shall appear on the Bureau's Web site,
7 the Association's Web site, and the Department's Web site once approved."

8 **SECTION 3.** G.S. 58-36-15 is amended by adding a new subsection to read:

9 "(d1) With respect to property insurance rates, the Bureau shall file no later than May 1,
10 2010, a schedule of credits for policyholders based on the presence of mitigation and
11 construction features and on the condition of buildings that it insures in the beach and coastal
12 areas of the State. The Bureau shall develop rules applicable to the operation of the schedule
13 and the mitigation program with approval by the Commissioner. The schedule shall not be
14 unfairly discriminatory and shall be reviewed by the Bureau annually, with the results reported
15 annually to the Commissioner."

16 **SECTION 4.** Article 36 of Chapter 58 of the General Statutes is amended by
17 adding a new section to read:

18 "§ 58-36-120. Public notice of certain filings.

19 Whenever the North Carolina Rate Bureau files for an increase in insurance rates for
20 residential property insurance, the Bureau shall give public notice in at least two newspapers
21 with statewide distribution and in the North Carolina Register, within 10 business days after the
22 filing, which notice shall state that the Commissioner may or may not schedule and conduct a
23 hearing with respect to the filing. The same information shall be posted on the Web site for the
24 North Carolina Rate Bureau and the North Carolina Department of Insurance Web site within
25 three days after the filing. The requirements of this section shall not apply to filings proposing
26 changes as to forms, relativities, and classifications that are filed at no increase in the overall
27 rate level."

28 **SECTION 5.** G.S. 58-46-55 reads as rewritten:

29 "§ 58-46-55. Rates, rating plans, rating rules, and forms applicable.

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

35 **SECTION 6.** The North Carolina Rate Bureau shall file for approval by the
36 Commissioner no later than February 1, 2010, rating plans for policies under its jurisdiction in
37 the beach and coastal areas of North Carolina that include a deductible for named storm wind
38 and hail losses of one percent (1%) of the insured value of the property.

39 **SECTION 7.** The Legislative Research Commission may study the need for
40 changes in the composition of the Board of Directors of the North Carolina Insurance
41 Association and the method of selection of Board members. The Commission also may study
42 the adequacy of public participation in the filing of rates for property insurance by the North
43 Carolina Rate Bureau, the North Carolina Insurance Underwriting Association, and the North
44 Carolina Joint Underwriting Association and the approval of those rates by the Commissioner,
45 including the time limits for approval or disapproval by the Commissioner of rate filings. In its
46 study, the Commission may examine the feasibility of establishing a permanent public
47 advocacy staff to participate and advocate in rate-making proceedings under Articles 36, 45,
48 and 46 of Chapter 58 of the General Statutes.

49 The Legislative Research Commission may make an interim report to the 2009
50 General Assembly, 2010 Regular Session and shall submit a final report to the 2011 General
51 Assembly.

1 **SECTION 8.** The Legislative Services Officer shall allocate funds appropriated to
2 the General Assembly for the expenditures of the Legislative Research Commission in
3 conducting the study under Section 7 of this act.

4 **SECTION 9.** The provisions of this act are severable and, if any phrase, clause,
5 sentence, or provision is declared to be unconstitutional, is preempted by federal law or
6 regulation, or is otherwise invalid, the validity of the remainder of this act shall not be affected
7 thereby.

8 **SECTION 10.** The provisions of G.S. 58-45-45(a2) as enacted by Section 1 of this
9 act become effective when a rate or rates with a deductible for named storm wind and hail
10 losses of one percent (1%) as required by that subsection become effective, as approved by the
11 Commissioner. The remainder of this act is effective when it becomes law and applies to
12 policies filed, issued, or renewed on or after that date.