

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 1305

Short Title: Beach Plan Changes.

(Public)

Sponsors: Representative Holliman.

Referred to: Insurance, if favorable, Finance.

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE NORTH CAROLINA BEACH PLAN AS  
RECOMMENDED BY THE JOINT SELECT STUDY COMMITTEE ON THE  
POTENTIAL IMPACT OF MAJOR HURRICANES ON THE NORTH CAROLINA  
INSURANCE INDUSTRY.

The General Assembly of North Carolina enacts:

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

"Article 45.

"Essential Property Insurance for Beach Area Property.

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

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

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

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

**§ 58-45-5. Definition of terms.**

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

- (1) "~~Association~~" means Association. – ~~the~~ The North Carolina Insurance Underwriting Association established under this Article;
- (2) "~~Beach area~~" means Beach area. – ~~all~~ All of that area of the State of North Carolina south and east of the inland waterway from the South Carolina line



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- 1 to Fort Macon (Beaufort Inlet); thence south and east of Core, Pamlico,  
2 Roanoke and Currituck sounds to the Virginia line, being those portions of  
3 land generally known as the Outer Banks;
- 4 (2a) ~~"Coastal area" means~~Coastal area. – ~~all~~All of that area of the State of North  
5 Carolina comprising the following counties: Beaufort, Brunswick, Camden,  
6 Carteret, Chowan, Craven, Currituck, Dare, Hyde, Jones, New Hanover,  
7 Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and  
8 Washington. "Coastal area" does not include the portions of these counties  
9 that lie within the beach 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;
- 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, farmowners 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) Market of last resort. – The Association's rates, forms, endorsements, rules,  
22 underwriting standards, operations, procedures, and other factors shall not be  
23 more favorable than corresponding factors in the voluntary market.

24 (6c) Nonrecoupable assessment. – Any assessment levied on and payable by  
25 members of the Association that is not directly recoverable from  
26 policyholders, but which shall be included as an appropriate factor in the  
27 making of rates.

28 (7) ~~"Plan of operation" or "plan" means~~Plan of operation. – ~~the~~The plan of  
29 operation of the Association approved or promulgated by the Commissioner  
30 under this Article.

31 (8) Probable maximum loss. – The amount equal to one hundred percent (100%)  
32 of all property losses projected by commonly accepted modeling forecasts to  
33 be incurred in a single storm year at a specified return interval assuming  
34 various degrees of severity of hurricanes and other weather-related storms.

35 (9) Property insurance. – For purposes of this Article coverage, on residential  
36 and commercial real estate risks on any applicable lines regulated by  
37 Chapter 40 of the General Statutes.

38 (10) Recoupable assessment. – Any assessment collected by member insurers  
39 from policyholders statewide upon issuance or renewal of property insurance  
40 policies other than National Flood Insurance policies. The amount of the  
41 recoupable assessment collected in a particular year shall be a uniform  
42 percentage of that year's direct written premium for property insurance for  
43 all member insurers, excluding National Flood Insurance policy premiums,  
44 as annually determined by the Association and verified by the Department of  
45 Insurance.

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

48 (12) Voluntary market rates. – Rates determined or permitted by Article 21 of  
49 this Chapter, G.S. 58-36-15, 58-36-30(b), and 58-40-30.

50 **"§ 58-45-6. Persons who can be insured by the Association.**

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

3 **"§ 58-45-10. North Carolina Insurance Underwriting Association created.**

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

13 **"§ 58-45-15. Powers and duties of Association.**

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

- 17 (1) To cause to be issued policies of insurance to applicants;
- 18 (2) To assume reinsurance from its members;
- 19 (3) To cede reinsurance to its members and to purchase reinsurance in behalf of  
20 its ~~members~~ members; and
- 21 (4) To require insureds of the Association to purchase federal flood insurance  
22 where applicable and available in order to obtain replacement cost or other  
23 preferential forms, endorsements, or coverages.

24 **"§ 58-45-20. Temporary directors of Association.**

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

30 **"§ 58-45-25. Each member of Association to participate in its ~~expenses, profits, and~~  
31 ~~losses~~ expenses and losses.**

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

47 (b) All member companies shall receive credit each year for essential property  
48 insurance, farmowners insurance, homeowners insurance, and the property portion of  
49 commercial multiple peril policies voluntarily written in the beach and coastal areas in  
50 accordance with guidelines and procedures to be submitted by the Directors to the  
51 Commissioner for approval. Such credits shall also apply to any nonrecoupable assessments

1 levied pursuant to G.S. 58-48-47. The participation of each member company in the ~~expenses,~~  
2 ~~profits, and losses~~expenses and losses of the Association shall be reduced accordingly;  
3 provided, no credit shall be given where coverage for the peril of wind has been excluded. The  
4 guidelines and procedures for granting credit shall encourage and assist each member company  
5 to voluntarily write these coverages in the beach and coastal areas for commercial and  
6 residential properties.

7 (b1) The accumulated surplus of the Association shall be retained from year to year and  
8 used to pay losses, reinsurance costs, and other operating expenses as necessary. No member  
9 company shall be entitled to the distribution of any portion of the Association's surplus.

10 (c) The North Carolina Insurance Underwriting Association shall use the "take out"  
11 program, as filed with the 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: ~~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 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 and three million dollars (\$3,000,000) on commercial property on any  
48 freestanding structure or any building unit within multiple firewall divisions, provided the  
49 aggregate insurance on structures with multiple firewall divisions shall not exceed six million  
50 dollars (\$6,000,000) on all interest at one risk. The separate policies of windstorm and hail for  
51 habitational property shall be subject to a maximum of seven hundred fifty thousand dollars

1 (\$750,000). The separate homeowners insurance policies shall be subject to a maximum of  
2 seven hundred fifty thousand dollars (\$750,000) Coverage A-Dwelling and a maximum of one  
3 hundred thousand dollars (\$100,000) approved Floater Coverage.

4 (b) 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) of this section, the rates, rating plans, rating rules, and forms  
10 applicable to the insurance written by the Association shall be in accordance with the most  
11 recent manual rates or adjusted loss costs and forms that are legally in effect in the State.  
12 Except as provided in ~~subsection (e)~~ subsections (c) and (c1) of this section, no special  
13 surcharge, other than those presently in effect, may be applied to the property insurance rates of  
14 properties located in the beach and coastal areas.

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

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

31 (c1) Surcharges set forth in subsection (c) of this section shall be examined by actuaries  
32 retained by the Association to determine whether the surcharges are actuarially sound and  
33 appropriate. In so doing, the Association will consider the results of at least two computer  
34 model analyses of its exposure. Such computer models shall be ones commonly relied upon in  
35 the insurance and reinsurance business. The Association shall further consider factors set forth  
36 in subsections (a), (b), and (c) of this section, past and prospective losses and expenses, the cost  
37 of its reinsurance program, its need to build and maintain surplus, the risk and volatility of its  
38 exposure, and any other reasonable factor.

39 (c2) Beginning July 1, 2010, the Association shall submit to the Commissioner for  
40 review by July 1 of every two years a report on the surcharges under this section and any  
41 relevant factors related to these surcharges for the Commissioner's review. A copy of the report  
42 shall also be submitted to the Joint Legislative Commission on Governmental Operations of the  
43 General Assembly and the Chairs of the House of Representatives Committee on Insurance and  
44 the Senate Committee on Commerce.

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

48 (e) The Association may file a schedule of credits for policyholders based on the  
49 presence of mitigation and construction features and on the condition of buildings that it  
50 insures. Such filings are subject to the procedures and standards of this section.



1       (f)     On or before May 1, 2010, the Association shall by any combination of earned  
2 premiums, retained surplus, and reinsurance attain and thereafter maintain the ability to pay  
3 losses and expenses from a hurricane or combination of hurricanes expected to occur at  
4 probable maximum loss levels of 1:100. On and after May 1, 2010, the required combination of  
5 earned premium, surplus, and reinsurance shall increase every two years by increasing the  
6 probable maximum loss targets by 10 years, until such time on May 1, 2022, the Association is  
7 protected with respect to a level of probable maximum losses at a level of 1:150.

8       (g)     The dollar amount of expected probable maximum losses at specified return  
9 intervals shall be determined by an analysis of the Association's exposure to loss by two or  
10 more hurricane modelers that are generally relied upon in the insurance and reinsurance  
11 industries. The Association may determine the probable maximum loss amount by averaging  
12 the results of modelers used by the Association for such review or such other method as the  
13 Association may in its discretion utilize.

14 **"§ 58-45-46. Unearned premium, loss, and loss expense reserves.**

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

18 **"§ 58-45-47. Post-catastrophe deficit event.**

19       (a)     When the Association knows or has reason to believe that, as a result of the  
20 occurrence of a hurricane or a series of hurricanes or other weather-related events, it has or will  
21 soon incur losses that exceed the combination of its surplus, reinsurance, and other prefunded  
22 sources of paying claims, then the Association shall immediately give notice to the  
23 Commissioner that such a post-catastrophe deficit event has occurred.

24       (b)     When the post-catastrophe deficit incurred in a particular calendar year is XX  
25 percent or less of the aggregate statewide direct written premium for property insurance for the  
26 prior calendar year for all member insurers, the Association shall levy a nonrecoupable  
27 assessment on member insurers in an amount equal to the deficit. Member companies shall be  
28 entitled to all applicable credits they have earned under G.S. 58-45-25. The General Assembly  
29 finds that the potential for unlimited deficit assessments under this subsection may induce  
30 insurers to attempt to reduce their writings in the voluntary market, and that such actions would  
31 worsen the availability problems that the Association was created to remedy. It is the intent of  
32 the General Assembly that insurers remain fully responsible for paying nonrecoupable  
33 assessments and collecting recoupable assessments for any deficits of the Association.

34       (c)     Upon a determination by the Association that a deficit exceeds the amount that will  
35 be recovered through nonrecoupable assessments on member insurers pursuant to subsection  
36 (b) of this section, the Association shall levy, after verification by the Department of Insurance,  
37 recoupable assessments in the year or years following levy of the assessments, provided that  
38 the amount of such recoupable assessments collected in any calendar year shall not exceed XX  
39 percent of the annual premiums on any one policy of insurance. The Department shall verify  
40 the arithmetic calculations involved in the Association's determination within 30 days after  
41 receipt of the information on which the determination was based. Notwithstanding any other  
42 provision of law, each member insurer and the Association shall collect recoupable assessments  
43 for its policyholders without such obligation being affected by any credit, limitation,  
44 exemption, or deferment. The recoupable assessments so collected by member insurers shall be  
45 transferred directly to the Association on a periodic basis as determined by the Association.  
46 The aggregate amount of recoupable assessments levied under this subsection may not exceed  
47 XX percent of the aggregate statewide direct written premium for property insurance written by  
48 member insurers for the prior year, plus interest, fees, commissions, required reserves, and  
49 other costs associated with financing the original deficit. The recoupable assessments shall be  
50 clearly identified to policyholders on the premium statement, declarations page, or by other  
51 appropriate electronic or written method. The identification shall be in a form approved by the

1 Commissioner and shall refer to the post-catastrophe loss for which the assessment was  
2 imposed. Failure to pay the recoupable assessment shall be treated as failure to pay premium.

3 (d) The Association shall report quarterly to the Commissioner providing all financial  
4 information for each recoupable assessment authorized by this section, including total  
5 assessment funds recovered to date and any information reasonably requested by the  
6 Commissioner.

7 **"§ 58-45-48. Review and approval of recoupable assessments by the Commissioner.**

8 Upon application by the Association or on his own initiative, the Commissioner has the  
9 duty and power to adjust the percentage of any recoupable assessment previously established as  
10 necessary to achieve the objectives of G.S. 58-45-1 and G.S. 58-45-47, taking into  
11 consideration any relevant factors, including any indebtedness of insurers resulting from the  
12 excess deficit event, the rate of recovery, the anticipated length of total recovery, the impact of  
13 other losses from weather-related events, and other relevant factors.

14 **"§ 58-45-50. Appeal from acts of Association to Commissioner; appeal from**  
15 **Commissioner to superior court.**

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

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

43 **"§ 58-45-55. Reports of inspection made available.**

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

47 **"§ 58-45-60. Association and Commissioner immune from liability.**

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

1 **"§ 58-45-65. Association to file annual report with Commissioner.**

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

10 **"§ 58-45-70. Commissioner may examine affairs of Association.**

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

15 **"§ 58-45-75. Commissioner authorized to promulgate reasonable rules and regulations.**

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

20 **"§ 58-45-80. Premium taxes to be paid through Association.**

21 All premium taxes due on insurance written under this Article shall be remitted by each  
22 insurer to the Association; and the Association, as collecting agent for its member companies,  
23 shall forward all such taxes to the Secretary of Revenue as provided in Article 8B of Chapter  
24 105 of the General Statutes.

25 **"§ 58-45-85. Assessment; inability to pay.**

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

32 **"§ 58-45-90. Open meetings.**

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

35 **"§ 58-45-95. Information availability.**

36 Information concerning the Association's activities shall be made fully available upon  
37 request by any company or Board member of the Association; provided, that no competitive  
38 information concerning an individual company's business plans, data, or operations may be  
39 disclosed by the Association if such company has properly designated such information as  
40 being a trade secret pursuant to G.S. 66-152(3) upon submitting such information to the  
41 Association; and provided further that no confidential information may be disclosed by the  
42 Association identifying individual policyholders without such policyholder's consent unless  
43 such information is provided pursuant to reasonable rules adopted by the Association  
44 permitting such information to be disclosed for the purpose of enhancing the availability of  
45 insurance that is written in the voluntary market.

46 **"§ 58-45-96. Succession and dissolution.**

47 In the event that a successor organization is created to perform the Association's general  
48 functions, the surplus then held by the Association shall be transferred to such successor  
49 organization."

50 **SECTION 2.** This act is effective when it becomes law and applies to policies  
51 filed, issued, and renewed on or after that date.