



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

5 The General Assembly of North Carolina enacts:

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

7 "Article 45.

8 "Essential Property Insurance for Beach Area Property.

9 **"§ 58-45-1. Declarations and purpose of Article.**

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

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

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

31 **"§ 58-45-5. Definition of terms.**

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

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

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

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

46 (2b) Coastal Property Insurance Pool. – The name of that which was formerly  
47 known as "the Beach Plan" and which is governed by the North Carolina  
48 Insurance Underwriting Association. All references to the "Beach Plan" shall  
49 mean the Coastal Property Insurance Pool, which is the market of last resort  
50 provided by the Association to the Beach area and the Coastal area.

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

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

North Carolina State Building Code and has no plans to discontinue enforcing these codes during that year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) To cause to be issued policies of insurance to ~~applicants;~~applicants.
- (2) To assume reinsurance from its ~~members;~~members.

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

13 **"§ 58-45-20. Temporary directors of Association.**

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

19 **"§ 58-45-25. Each member of Association to participate in nonrecoupable assessments. its**  
20 **expenses, profits, and losses.**

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

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

47 (b1) The accumulated surplus of the Association shall be retained from year to year and  
48 used to pay losses, reinsurance costs, and other operating expenses as necessary. No member  
49 company shall be entitled to the distribution of any portion of the Association's surplus, except  
50 pursuant to contractual obligations incurred prior to the effective date of this law.

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

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

10 **§ 58-45-30. Directors to submit plan of operation to Commissioner; review and**  
11 **approval; ~~amendments.~~amendments; appeal from Commissioner to superior**  
12 **court.**

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

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

49        (c) The directors of the Association may, subject to the approval of the Commissioner,  
50 amend the plan of operation at any time. The Commissioner may review the plan of operation  
51 at any time the Commissioner deems expedient or prudent, but not less than once in each

1 calendar year. After review of the plan the Commissioner may amend the plan after  
2 consultation with the directors and upon certification to the directors of the amendment. Any  
3 order of the Commissioner with respect to the proposed plan of operation or any amendments  
4 thereto shall be subject to review upon petition by the Association as provided by G.S. 58-2-75.

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

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

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

22 **"§ 58-45-35. Persons eligible to apply to Association for coverage; contents of application.**

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

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

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

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

47 (c) If the Association, for any reason, denies an application and refuses to cause to be  
48 issued an insurance policy on insurable property to any applicant or takes no action on an  
49 application within the time prescribed in the plan of operation, the applicant may appeal to the  
50 Commissioner and the Commissioner, or the Commissioner's designee from the  
51 Commissioner's staff, after reviewing the facts, may direct the Association to issue or cause to

1 be issued an insurance policy to the applicant. In carrying out the Commissioner's duties under  
2 this section, the Commissioner may request, and the Association shall provide, any information  
3 the Commissioner deems necessary to a determination concerning the reason for the denial or  
4 delay of the application.

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

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

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

29 **"§ 58-45-36. Temporary contracts of insurance.**

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

37 **"§ 58-45-40. Association members may cede insurance to Association.**

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

41 **"§ 58-45-41. Coverage limits.**

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

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

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

4 **"§ 58-45-45. Rates, rating plans, rating rules, and forms applicable.**

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

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

19       (a2) The Association shall offer a deductible for wind and hail coverage of one percent  
20 (1%) of the insured value of the property for all policies and may offer any other deductible  
21 options provided by the North Carolina Rate Bureau, so long as the deductible is not lower than  
22 one percent (1%) of the insured value of the property applicable to wind and hail losses.

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

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

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

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

50       (f) The Association shall file not later than May 1, 2010, with the Commissioner an  
51 installment plan for premium payments and shall accept other methods of payment that are the

1 same as those filed by the North Carolina Rate Bureau. The Association shall collect an  
2 installment fee if premiums are paid other than on an annual basis.

3 **"§ 58-45-46. Unearned premium, loss, and loss expense reserves.**

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

7 **"§ 58-45-47. Deficit event.**

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

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

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

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

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

47 **"§ 58-45-50. Appeal from acts of Association to Commissioner; appeal from**  
48 **Commissioner to superior court.**

49 (a) Any person or any insurer who may be aggrieved by an act, ruling, or decision of  
50 the Association other than an act, ruling, or decision relating to (i) the cause or amount of a  
51 claimed loss or (ii) the reasonableness of expenses incurred by an insurer in adjusting

1 windstorm and hail losses, may, within 30 days after the ruling, appeal to the Commissioner.  
2 Any hearings held by the Commissioner under the appeal shall be in accordance with rules  
3 adopted by the Commissioner: Provided, however, the Commissioner is authorized to appoint a  
4 member of the Commissioner's staff as deputy commissioner for the purpose of hearing those  
5 appeals and a ruling based upon the hearing shall have the same effect as if heard by the  
6 Commissioner. All persons or insureds aggrieved by any order or decision of the Commissioner  
7 may appeal as is provided in G.S. 58-2-75.

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

25 **"§ 58-45-55. Reports of inspection made available.**

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

29 **"§ 58-45-60. Association and Commissioner immune from liability.**

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

34 **"§ 58-45-65. Association to file annual report with Commissioner.**

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

43 **"§ 58-45-70. Commissioner may examine affairs of Association.**

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

48 **"§ 58-45-71. Report of member companies to Commissioner.**

49 Each member company of the Association shall report by February 1 of each year to the  
50 Commissioner the amount of homeowners' coverage, including separate coverage for  
51 homeowners' wind and hail, written in the preceding calendar year by that member company in

1 the beach area and the coastal area. The report shall include the number and type of  
2 homeowners' policies written by the member company in each area, the total amount of  
3 homeowners' coverage for each area, any increases and decreases in homeowners' coverage  
4 written in each area from the prior year, and other information as prescribed by the  
5 Commissioner and in such form as approved by him.

6 **"§ 58-45-75. Commissioner authorized to promulgate reasonable rules and regulations.**

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

11 **"§ 58-45-80. Premium taxes to be paid through Association.**

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

16 **"§ 58-45-85. Assessment; inability to pay.**

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

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

36 **"§ 58-45-90. Open meetings.**

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

39 **"§ 58-45-95. Information availability.**

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

50 **"§ 58-45-96. Succession and dissolution.**

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

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

13 **"§ 58-6-26. Additional insurance regulatory charge for the North Carolina Underwriting**  
14 **Association.**

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

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

28 **"§ 58-36-10. Method of rate making; factors considered.**

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

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

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

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

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

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

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

47 "(a) At any time within 50 days after the date of any filing, the Commissioner may give  
48 written notice to the Bureau specifying in what respect and to what extent the Commissioner  
49 contends the filing fails to comply with the requirements of this Article and fixing a date for  
50 hearing not less than 30 days from the date of mailing of such notice. At the hearing the factors  
51 specified in G.S. 58-36-10 shall be considered. If the Commissioner after hearing finds that the

1 filing does not comply with the provisions of this Article, he may issue his order determining  
2 wherein and to what extent such filing is deemed to be improper and fixing a date thereafter,  
3 within a reasonable time, after which the filing shall no longer be effective. ~~Any order of~~  
4 ~~disapproval under this section must be entered within 210 days after the date the filing is~~  
5 ~~received by the Commissioner."~~

6 **SECTION 5.** Article 36 of Chapter 58 is amended by adding a new section to read:  
7 **"§ 58-36-120. Public notice of certain filings.**

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

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

16 **"§ 58-46-55. Rates, rating plans, rating rules, and forms applicable.**

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

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

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