

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1305
Committee Substitute Favorable 7/1/09
Committee Substitute #2 Favorable 7/13/09
Senate Commerce Committee Substitute Adopted 8/5/09
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Short Title: Beach Plan Changes.

(Public)

Sponsors:

Referred to:

April 9, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CHANGES TO THE COASTAL PROPERTY INSURANCE POOL,
3 PRESENTLY KNOWN AS THE BEACH PLAN, AS RECOMMENDED BY THE JOINT
4 SELECT STUDY COMMITTEE ON THE POTENTIAL IMPACT OF MAJOR
5 HURRICANES ON THE NORTH CAROLINA INSURANCE INDUSTRY, AND TO
6 MAKE OTHER CHANGES.

7 The General Assembly of North Carolina enacts:

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

9 "Article 45.

10 "Essential Property Insurance for Beach Area Property.

11 **"§ 58-45-1. Declarations and purpose of Article.**

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

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

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

33 **"§ 58-45-5. Definition of terms.**



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

- 2 (1) ~~"Association" means~~Association. ~~– the–The~~ North Carolina Insurance
3 Underwriting Association established under this ~~Article;~~Article.
4 (2) ~~"Beach area" means~~Beach area. ~~– all–All~~ of that area of the State of North
5 Carolina south and east of the inland waterway from the South Carolina line
6 to Fort Macon (Beaufort Inlet); thence south and east of Core, Pamlico,
7 Roanoke and Currituck sounds to the Virginia line, being those portions of
8 land generally known as the Outer ~~Banks;~~Banks.
9 (2a) ~~"Coastal area" means~~Coastal area. ~~– all–All~~ of that area of the State of North
10 Carolina comprising the following counties: Beaufort, Brunswick, Camden,
11 Carteret, Chowan, Craven, Currituck, Dare, Hyde, Jones, New Hanover,
12 Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and
13 Washington. "Coastal area" does not include the portions of these counties
14 that lie within the beach area.
15 (2b) Catastrophe recovery charge. – Any charge collected by member insurers
16 from policyholders statewide, including any charge collected by the
17 Association and Fair Plan from their policyholders, upon issuance or
18 renewal of residential and commercial property insurance policies, other
19 than National Flood Insurance policies, after a deficit event has occurred as
20 provided in G.S. 58-45-47. The amount of the catastrophe recovery charge
21 collected in a particular year shall not exceed an aggregate amount of ten
22 percent (10%) of policy premium. The catastrophe recovery charge shall be
23 limited to the recovery of losses resulting from claims for property damage,
24 allocated loss expenses, and actual costs and expenses directly resulting
25 from the catastrophe recovery charge plan.
26 (2c) Coastal Property Insurance Pool. – The name of which was formerly known
27 as "the Beach Plan" and which is governed by the North Carolina Insurance
28 Underwriting Association. All references to "the Beach Plan" shall mean the
29 Coastal Property Insurance Pool, which is the market of last resort provided
30 by the Association to the beach area and the coastal area.
31 (3) Repealed by Session Laws 1991, c. 720, s. 6.
32 (3a) ~~"Crime insurance" means~~Crime insurance. ~~– insurance–Insurance~~ against
33 losses resulting from robbery, burglary, larceny, and similar crimes, as more
34 specifically defined and limited in the various crime insurance policies, or
35 their successor forms of coverage, approved by the Commissioner and
36 issued by the Association. Such policies shall not be more restrictive than
37 those issued under the Federal Crime Insurance Program authorized by
38 Public Law 91-609.
39 (3b) ~~"Directors" means~~Directors. ~~– the–The~~ Board of Directors of the Association.
40 (4) ~~"Essential property insurance" means~~Essential property insurance. ~~–~~
41 ~~insurance–Insurance~~ against direct loss to property as defined in the standard
42 statutory fire policy and extended coverage, vandalism and malicious
43 mischief endorsements thereon, or their successor forms of coverage, as
44 approved by the ~~Commissioner;~~Commissioner.
45 (5) ~~"Insurable property" means~~Insurable property. ~~– real–Real~~ property at fixed
46 locations in the beach and coastal area, including travel trailers when tied
47 down at a fixed location, or the tangible personal property located therein,
48 but shall not include insurance on motor vehicles; which property is
49 determined by the Association, after inspection and under the criteria
50 specified in the plan of operation, to be in an insurable condition. However,
51 any one and two family dwellings built in substantial accordance with the

1 Federal Manufactured Home Construction and Safety Standards, any
2 predecessor or successor federal or State construction or safety standards,
3 and any further construction or safety standards promulgated by the
4 association and approved by the Commissioner, or the North Carolina
5 Uniform Residential Building Code and any structure or building built in
6 substantial compliance with the North Carolina State Building Code,
7 including the design-wind requirements, which is not otherwise rendered
8 uninsurable by reason of use or occupancy, shall be an insurable risk within
9 the meaning of this Article. However, none of the following factors shall be
10 considered in determining insurable condition: neighborhood, area, location,
11 environmental hazards beyond the control of the applicant or owner of the
12 property. Also, any structure begun on or after January 1, 1970, not built in
13 substantial compliance with the Federal Manufactured Home Construction
14 and Safety Standards, any predecessor or successor federal or State
15 construction or safety standards, and any further construction or safety
16 standards promulgated by the association and approved by the
17 Commissioner, or the North Carolina Uniform Residential Building Code or
18 the North Carolina State Building Code, including the design-wind
19 requirements therein, shall not be an insurable risk. The owner or applicant
20 shall furnish with the application proof in the form of a certificate from a
21 local building inspector, contractor, engineer or architect that the structure is
22 built in substantial accordance with the Federal Manufactured Home
23 Construction and Safety Standards, any predecessor or successor federal or
24 State construction or safety standards, and any further construction or safety
25 standards promulgated by the association and approved by the
26 Commissioner, or the North Carolina Uniform Residential Building Code or
27 the North Carolina State Building Code; however, an individual certificate
28 shall not be necessary where the structure is located within a political
29 subdivision which has certified to the Association on an annual basis that it
30 is enforcing the North Carolina Uniform Residential Building Code or the
31 North Carolina State Building Code and has no plans to discontinue
32 enforcing these codes during that year.

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

34 (6a) ~~"Net direct premiums" means~~Net direct premiums. – ~~gross~~Gross direct
35 premiums (excluding reinsurance assumed and ceded) written on property in
36 this State for essential property insurance, farm owners insurance,
37 homeowners insurance, and the property portion of commercial multiple
38 peril insurance policies as computed by the Commissioner, less:

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

42 (6b) Named storm. – A weather-related event involving wind that has been
43 assigned a formal name by the National Hurricane Center, National Weather
44 Service, World Meteorological Association, or any other generally
45 recognized scientific or meteorological association that provides formal
46 names for public use and reference. A named storm includes hurricanes,
47 tropical depressions, and tropical storms.

48 (6c) Nonrecoupable assessment. – Any assessment levied on and payable by
49 members of the Association that is not directly recoverable from
50 policyholders. Prospective exposure to nonrecoupable assessments shall be

1 considered as an appropriate factor in the making of rates by the North
 2 Carolina Rate Bureau.

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

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

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

10 **"§ 58-45-6. Persons who can be insured by the Association.**

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

13 **"§ 58-45-10. North Carolina Insurance Underwriting Association created.**

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

23 **"§ 58-45-15. Powers and duties of Association.**

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

27 (1) To cause to be issued policies of insurance to ~~applicants;~~ applicants.

28 (2) To assume reinsurance from its ~~members;~~ members.

29 (3) To cede reinsurance to its members and to purchase reinsurance in behalf of
 30 its members.

31 (4) To pledge the proceeds of assessments, projected reinsurance recoveries,
 32 other recoverables, and any other funds available to the Association as the
 33 source of revenue for and to secure lines of credit or other borrowings or
 34 financing arrangements necessary to fund any actual, projected, or future
 35 deficits of the Association, including borrowing from member companies.

36 (5) To publish in the North Carolina Register all homeowners' rate filings with
 37 the Department of Insurance.

38 **"§ 58-45-20. Temporary directors of Association.**

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

44 **"§ 58-45-25. Each member of Association to participate in nonrecoupable assessments. its**
 45 **expenses, profits, and losses.**

46 (a) Subject to the limitations contained in G.S. 58-45-47, Each ~~each~~ member of the
 47 Association shall participate in the ~~expenses, profits, and losses of~~ nonrecoupable assessments
 48 levied by the Association in the proportion that its net direct premium written in this State
 49 during the preceding calendar year for residential and commercial properties outside of the
 50 beach and coastal areas bears to the aggregate net direct premiums written in this State during
 51 the preceding calendar year for residential and commercial properties outside of the beach and

1 coastal areas by all members of the Association, as certified to the Association by the
2 Commissioner. The Commissioner shall certify each member's participation after review of
3 annual statements and any other reports and data necessary to determine participation and may
4 obtain any necessary information or data from any member of the Association for this purpose.
5 Any insurer that is authorized to write and that is engaged in writing any insurance, the writing
6 of which requires the insurer to be a member of the Association under G.S. 58-45-10, shall
7 become a member of the Association on the first day of January after authorization. The
8 determination of the insurer's participation in the Association shall be made as of the date of
9 membership of the insurer in the same manner as for all other members of the Association.

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

21 (b1) The accumulated surplus of the Association shall be retained from year to year and
22 used to pay losses, reinsurance costs, and other operating expenses as necessary. No member
23 company shall be entitled to the distribution of any portion of the Association's surplus, except
24 pursuant to judgments entered prior to the effective date of this subsection.

25 (b2) The premiums, surplus, assessments, investment income, and other revenue of the
26 Association are funds received for the sole purpose of providing insurance coverage, paying
27 claims for Association policyholders, purchasing reinsurance, securing and repaying debt
28 obligations issued by the Association, and conducting all other activities of the Association, as
29 required or permitted by this Article. Accumulated surplus shall not be removed from the
30 Association or used for other purposes except pursuant to judgments entered prior to the
31 effective date of this subsection.

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

34 **§ 58-45-30. Directors to submit plan of operation to Commissioner; review and**
35 **approval; ~~amendments.~~amendments; appeal from Commissioner to superior**
36 **court.**

37 (a) The Directors shall submit to the Commissioner for his review and approval, a
38 proposed plan of operation. The plan shall set forth the number, qualifications, terms of office,
39 and manner of election of the members of the board of directors, and shall grant proper credit
40 annually to each member of the Association for essential property insurance, farmowners,
41 homeowners insurance, and the property portion of commercial multiple peril policies
42 voluntarily written in the beach and coastal areas and shall provide for the efficient,
43 economical, fair and nondiscriminatory administration of the Association and for the prompt
44 and efficient provision of essential property insurance in the beach and coastal areas of North
45 Carolina to promote orderly community development in those areas and to provide means for
46 the adequate maintenance and improvement of the property in those areas. The plan may
47 include the establishment of necessary facilities; management of the Association; the
48 assessment of members to defray losses and expenses; underwriting standards; procedures for
49 the acceptance and cession of reinsurance; procedures for determining the amounts of insurance
50 to be provided to specific risks; time limits and procedures for processing applications for

1 insurance; and any other provisions that are considered necessary by the Commissioner to carry
2 out the purposes of this Article.

3 (b) The proposed plan and any amendments thereto shall be filed with ~~reviewed by the~~
4 Commissioner and approved by him if he finds that such plan fulfills the purposes provided by
5 G.S. 58-45-1. In the review of the proposed plan the Commissioner may, in his discretion,
6 consult with the directors of the Association and may seek any further information which he
7 deems necessary to his decision. If the Commissioner approves the proposed plan, he shall
8 certify such approval to the directors and the plan shall become effective 10 days after such
9 certification. If the Commissioner disapproves all or any part of the proposed plan of operation
10 he shall return the same to the directors with his written statement for the reasons for
11 disapproval and any recommendations he may wish to make. The directors may alter the plan
12 in accordance with the Commissioner's recommendation or may within 30 days from the date
13 of disapproval return a new plan to the Commissioner. Should the directors fail to submit a plan
14 that meets the requirements of this Article ~~a proposed plan of operation within 90 days of April~~
15 ~~17, 1969, or a new plan which is acceptable to the Commissioner,~~ or accept the
16 recommendations of the Commissioner within 30 days after his disapproval of the plan, the
17 Commissioner shall promulgate and place into effect a plan of operation that meets the
18 requirements of this Article certifying the same to the directors of the Association. Any such
19 plan promulgated by the Commissioner shall take effect 10 days after certification to the
20 ~~directors: directors. Provided, however, that until a plan of operation is in effect, pursuant to the~~
21 ~~provisions of this Article, any existing temporary placement facility may be continued in effect~~
22 ~~on a mandatory basis on such terms as the Commissioner may determine.~~

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

30 (d) As used in this subsection, "homeowners' insurance policy" means a multiperil
31 policy providing full coverage of residential property similar to the coverage provided under an
32 HO-2, HO-3, HO-4, or HO-6 policy under Article 36 of this Chapter. The Association shall
33 issue, for principal residences, homeowners' insurance policies approved by the Commissioner.
34 Homeowners' insurance policies shall be available to persons who reside in the beach and
35 coastal areas who meet the Association's underwriting standards and who are unable to obtain
36 homeowners' insurance policies from insurers that are authorized to transact and are actually
37 writing homeowners' insurance policies in this State. The Association shall file for approval by
38 the Commissioner underwriting standards to determine whether property is insurable. The
39 standards shall reflect underwriting standards commonly used in the voluntary homeowners'
40 insurance business. The terms and conditions of the homeowners' insurance policies available
41 under this subsection shall not be more favorable than those of homeowners' insurance policies
42 available in the voluntary market in beach and coastal counties.

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

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

47 **"§ 58-45-35. Persons eligible to apply to Association for coverage; contents of application.**

48 (a) Any person having an insurable interest in insurable property, may, on or after the
49 effective date of the plan of operation, be entitled to apply to the Association for such coverage
50 and for an inspection of the property. A broker or agent authorized by the applicant may apply
51 on the applicant's behalf. Each application shall contain a statement as to whether or not there

1 are any unpaid premiums due from the applicant for essential property insurance on the
2 property.

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

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

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

21 (c) If the Association, for any reason, denies an application and refuses to cause to be
22 issued an insurance policy on insurable property to any applicant or takes no action on an
23 application within the time prescribed in the plan of operation, the applicant may appeal to the
24 Commissioner and the Commissioner, or the Commissioner's designee from the
25 Commissioner's staff, after reviewing the facts, may direct the Association to issue or cause to
26 be issued an insurance policy to the applicant. In carrying out the Commissioner's duties under
27 this section, the Commissioner may request, and the Association shall provide, any information
28 the Commissioner deems necessary to a determination concerning the reason for the denial or
29 delay of the application.

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

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

40 (e) Policies of windstorm and hail insurance provided for in subsection (b) of this
41 section are available only for risks in the beach and coastal areas for which essential property
42 insurance has been written by licensed insurers. Whenever such other essential property
43 insurance written by licensed insurers includes replacement cost coverage, the Association shall
44 also offer replacement cost coverage. In order to be eligible for a policy of windstorm and hail
45 insurance, the applicant shall provide the Association, along with the premium payment for the
46 windstorm and hail insurance, a certificate that the essential property insurance is in force. The
47 policy forms for windstorm and hail insurance shall be filed by the Association with the
48 Commissioner for the Commissioner's approval before they may be used. Catastrophic losses,
49 as determined by the Association and approved by the Commissioner, that are covered under
50 the windstorm and hail coverage in the beach and coastal areas shall be adjusted by the licensed
51 insurer that issued the essential property insurance and not by the Association. The Association

1 shall reimburse the insurer for reasonable expenses incurred by the insurer in adjusting
2 windstorm and hail losses.

3 **"§ 58-45-36. Temporary contracts of insurance.**

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

11 **"§ 58-45-40. Association members may cede insurance to Association.**

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

15 **"§ 58-45-41. Coverage limits.**

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

23 (b) Contents of habitational property can be insured up to forty percent (40%) of the
24 building value. The Association shall ensure that rates accurately reflect the maximum limits
25 for contents coverage and any reduction in contents coverage limits for habitational property.

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

29 **"§ 58-45-45. Rates, rating plans, rating rules, and forms applicable.**

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

37 (a1) The Association's rates shall be the North Carolina Rate Bureau Manual Rates plus
38 a surcharge of five percent (5%) of the applicable North Carolina Rate Bureau Manual Rate for
39 wind and hail coverage and a surcharge of fifteen percent (15%) of the applicable North
40 Carolina Rate Bureau Manual Rate for homeowners' insurance including wind and hail
41 coverage. It is the intent of the General Assembly that these surcharges ensure that the Coastal
42 Property Insurance Pool is the market of last resort over and above the manual rate.

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

48 (b) The rates, rating plans, and rating rules for the separate policies of windstorm and
49 hail insurance described in G.S. 58-45-35(b) shall be filed by the Association with the
50 Commissioner for the Commissioner's approval, disapproval, or modification. The provisions
51 of Articles 40 and 41 of this Chapter shall govern the filings. Policy deductible plans,

1 consistent with G.S. 58-45-1(b), may be filed by the Association with the Commissioner for the
2 Commissioner's approval, disapproval, or modification.

3 ~~(c) Notwithstanding subsection (a) of this section, the Association may, subject to the~~
4 ~~prior approval of the Commissioner, adopt a schedule of special surcharges relating to~~
5 ~~homeowners' insurance policies issued by the Association pursuant to G.S. 58-45-30(d). Such~~
6 ~~schedule may reflect any differences in risk that can be demonstrated to have a probable effect~~
7 ~~on losses or expenses. Notwithstanding subsections (a) and (b) of this section, the provisions of~~
8 ~~G.S. 58-36-10(1), 36-15(a), 58-36-20, and 58-36-25 shall apply to such filings.~~

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

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

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

24 (g) The Association shall consider the purchase of reinsurance each calendar year in
25 order to maintain the ability to pay losses and expenses from a named storm or combination of
26 named storms.

27 **"§ 58-45-46. Unearned premium, loss, and loss expense reserves.**

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

31 **"§ 58-45-47. Deficit event.**

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

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

43 (c) Upon a determination by the Association that a deficit event has occurred, the
44 Association shall determine, in its discretion, the appropriate means of financing the deficit,
45 which may include, but is not limited to, the purchase of reinsurance, arranging lines of credit,
46 or other forms of borrowing or financing. If the Association determines that the member
47 companies have paid one billion dollars (\$1,000,000,000) in nonrecoupable assessments for
48 losses and expenses incurred in any given year pursuant to subsection (a) of this section, the
49 Association may, subject to the verification by the Commissioner that the dollar value of losses
50 and expenses has reached the level necessary for a catastrophe recovery charge, authorize
51 member companies to impose a catastrophe recovery charge on their residential and

1 commercial property insurance policyholders statewide. Catastrophe recovery charges shall be
2 charged as a uniform percentage of written premiums as prescribed by the Commissioner and
3 shall not exceed an aggregate amount of ten percent (10%) of the annual policy premium on
4 any one policy of insurance. Catastrophe recovery charges collected under this section shall be
5 transferred directly to the Association on a periodic basis as determined by the Association and
6 ordered by the Commissioner. The Association and the FAIR Plan also shall charge their
7 policyholders a catastrophe recovery charge as provided in this section.

8 (d) The catastrophe recovery charge shall be clearly identified to policyholders on the
9 premium statement, declarations page, or by other appropriate electronic or written method.
10 The identification shall refer to the post-catastrophe loss for which the charge was imposed.
11 Any such catastrophe recovery charge shall not be considered premium for any purpose,
12 including premium taxes or commissions, except that failure to pay the catastrophe recovery
13 charge shall be treated as failure to pay premium and shall be grounds for termination of
14 insurance. The identified catastrophe recovery charge shall be accompanied by an explanation
15 of the charge and shall appear on the medium by which the charge is conveyed to the
16 policyholder. The explanatory language shall be prescribed by the Commissioner.

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

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

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

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

35 **"§ 58-45-50. Appeal from acts of Association to Commissioner; appeal from**
36 **Commissioner to superior court.**

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

47 (b) No later than 10 days before each hearing, the appellant shall file with the
48 Commissioner or the Commissioner's designated hearing officer and shall serve on the appellee
49 a written statement of the appellant's case and any evidence that the appellant intends to offer at
50 the hearing. No later than five days before the hearing, the appellee shall file with the
51 Commissioner or the designated hearing officer and shall serve on the appellant a written

1 statement of the appellee's case and any evidence that the appellee intends to offer at the
2 hearing. Each hearing shall be recorded and may be transcribed. If the matter is between an
3 insurer and the Association, the cost of the recording and transcribing shall be borne equally by
4 the appellant and appellee; provided that upon any final adjudication the prevailing party shall
5 be reimbursed for his share of such costs by the other party. If the matter is between an insured
6 and the Association, the cost of transcribing shall be borne equally by the appellant and
7 appellee; provided that the Commissioner may order the Association to pay recording or
8 transcribing costs for which the insured is financially unable to pay. Each party shall, on a date
9 determined by the Commissioner or the designated hearing officer, but not sooner than 15 days
10 after delivery of the completed transcript to the party, submit to the Commissioner or the
11 designated hearing officer and serve on the other party, a proposed order. The Commissioner or
12 the designated hearing officer shall then issue an order.

13 **"§ 58-45-55. Reports of inspection made available.**

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

17 **"§ 58-45-60. Association and Commissioner immune from liability.**

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

22 **"§ 58-45-65. Association to file annual report with Commissioner.**

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

31 **"§ 58-45-65.1. Association to be audited.**

32 The Association shall be audited on an annual basis by an auditor selected by the
33 Commissioner.

34 **"§ 58-45-70. Commissioner may examine affairs of Association.**

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

43 **"§ 58-45-71. Report of member companies to Commissioner.**

44 Each member company of the Association shall report by February 1 of each year to the
45 Commissioner the amount of homeowners' coverage, including separate coverage for
46 homeowners' wind and hail, written in the preceding calendar year by that member company in
47 the beach area and the coastal area. The report shall include the number and type of
48 homeowners' policies written by the member company in each area, the total amount of
49 homeowners' coverage for each area, any increases and decreases in homeowners' coverage
50 written in each area from the prior year, and other information as prescribed by the
51 Commissioner and in such form as approved by him.

1 **"§ 58-45-75. Commissioner authorized to promulgate reasonable rules and regulations.**

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

6 **"§ 58-45-80. Premium taxes to be paid through Association.**

7 All premium taxes due on insurance written under this Article shall be remitted by each
8 insurer to the Association; and the Association, as collecting agent for its member companies,
9 shall forward all such taxes to the Secretary of Revenue as provided in Article 8B of Chapter
10 105 of the General Statutes.

11 **"§ 58-45-85. Assessment; inability to pay.**

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

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

31 **"§ 58-45-90. Open meetings.**

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

34 **"§ 58-45-95. Information availability.**

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

44 **"§ 58-45-96. Succession and dissolution.**

45 In the event that a successor organization is created to perform the Association's general
46 functions, the surplus, assets, and liabilities then held by the Association shall be transferred to
47 such successor organization. The pledge or sale of, the lien upon, and the security interest in
48 any rights, revenues, or other assets of the Association created pursuant to any financing
49 arrangements entered into by the Association shall be and remain valid and enforceable on the
50 successor organization, notwithstanding the commencement of any rehabilitation, insolvency,
51 liquidation, bankruptcy, conservatorship, reorganization, or similar proceeding against the

1 Association. No such proceeding shall relieve the Association of its obligation to continue to
2 collect assessments or other revenues pledged pursuant to any financing arrangements. In the
3 event of dissolution, surplus then held shall not be distributed to member insurers."

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

5 **"§ 58-36-10. Method of rate making; factors considered.**

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

- 7 (1) Rates or loss costs shall not be excessive, inadequate or unfairly
8 discriminatory.
- 9 (2) Due consideration shall be given to actual loss and expense experience
10 within this State for the most recent three-year period for which that
11 information is available; to prospective loss and expense experience within
12 this State; to the hazards of conflagration and catastrophe; to a reasonable
13 margin for underwriting profit and to contingencies; to dividends, savings, or
14 unabsorbed premium deposits allowed or returned by insurers to their
15 policyholders, members, or subscribers; to investment income earned or
16 realized by insurers from their unearned premium, loss, and loss expense
17 reserve funds generated from business within this State; to past and
18 prospective expenses specially applicable to this State; and to all other
19 relevant factors within this State: Provided, however, that countrywide
20 expense and loss experience and other countrywide data may be considered
21 only where credible North Carolina experience or data is not available.
- 22 (3) In the case of property insurance rates under this Article, consideration may
23 be given to the experience of property insurance business during the most
24 recent five-year period for which that experience is available. In the case of
25 property insurance rates under this Article, consideration shall be given to
26 the insurance public protection classifications of fire districts established by
27 the Commissioner. The Commissioner shall establish and modify from time
28 to time insurance public protection districts for all rural areas of the State
29 and for cities with populations of 100,000 or fewer, according to the most
30 recent annual population estimates certified by the State Budget Officer. In
31 establishing and modifying these districts, the Commissioner shall use
32 standards at least equivalent to those used by the Insurance Services Office,
33 Inc., or any successor organization. The standards developed by the
34 Commissioner are subject to Article 2A of Chapter 150B of the General
35 Statutes. The insurance public protection classifications established by the
36 Commissioner issued pursuant to the provisions of this Article shall be
37 subject to appeal as provided in G.S. 58-2-75, et seq. The exceptions stated
38 in G.S. 58-2-75(a) do not apply.
- 39 (4) Risks may be grouped by classifications and lines of insurance for
40 establishment of rates, loss costs, and base premiums. Classification rates
41 may be modified to produce rates for individual risks in accordance with
42 rating plans that establish standards for measuring variations in hazards or
43 expense provisions or both. Those standards may measure any differences
44 among risks that can be demonstrated to have a probable effect upon losses
45 or expenses. The Bureau shall establish and implement a comprehensive
46 classification rating plan for motor vehicle insurance under its jurisdiction.
47 No such classification plans shall base any standard or rating plan for private
48 passenger (nonfleet) motor vehicles, in whole or in part, directly or
49 indirectly, upon the age or gender of the persons insured. The Bureau shall at
50 least once every three years make a complete review of the filed
51 classification rates to determine whether they are proper and supported by

1 statistical evidence, and shall at least once every 10 years make a complete
2 review of the territories for nonfleet private passenger motor vehicle
3 insurance to determine whether they are proper and reasonable.

4 (5) In the case of workers' compensation insurance and employers' liability
5 insurance written in connection therewith, due consideration shall be given
6 to the past and prospective effects of changes in compensation benefits and
7 in legal and medical fees that are provided for in General Statutes Chapter
8 97.

9 (6) To ensure that policyholders in the beach and coastal areas of the North
10 Carolina Insurance Underwriting Association whose risks are of the same
11 class and essentially the same hazard are charged premiums that are
12 commensurate with the risk of loss and premiums that are actuarially correct,
13 the North Carolina Rate Bureau shall revise, monitor, and review the
14 existing territorial boundaries used by the Bureau when appropriate to
15 establish geographic territories in the beach and coastal areas of the
16 Association for rating purposes. In revising these territories, the Bureau shall
17 use statistical data sources available to define such territories to represent
18 relative risk factors that are actuarially sound and not unfairly
19 discriminatory. The new territories and any subsequent amendments
20 proposed by the North Carolina Rate Bureau or Association shall be subject
21 to the Commissioner's approval and shall appear on the Bureau's Web site,
22 the Association's Web site, and the Department's Web site once approved."

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

24 "(d1) With respect to property insurance rates, the Bureau shall file no later than May 1,
25 2010, a schedule of credits for policyholders based on the presence of mitigation and
26 construction features and on the condition of buildings that it insures in the beach and coastal
27 areas of the State. The Bureau shall develop rules applicable to the operation of the schedule
28 and the mitigation program with approval by the Commissioner. The schedule shall not be
29 unfairly discriminatory and shall be reviewed by the Bureau annually, with the results reported
30 annually to the Commissioner."

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

32 "(a) At any time within 50 days after the date of any filing, the Commissioner may give
33 written notice to the Bureau specifying in what respect and to what extent the Commissioner
34 contends the filing fails to comply with the requirements of this Article and fixing a date for
35 hearing not less than 30 days from the date of mailing of such notice. Once begun, hearings
36 must proceed without undue delay. At the hearing the burden of proving that the proposed rates
37 are not excessive, inadequate, or unfairly discriminatory is on the Bureau. At the hearing the
38 factors specified in G.S. 58-36-10 shall be considered. If the Commissioner after hearing finds
39 that the filing does not comply with the provisions of this Article, he may issue his order
40 determining wherein and to what extent such filing is deemed to be improper and fixing a date
41 thereafter, within a reasonable time, after which the filing shall no longer be effective. Any
42 order issued after a hearing shall be issued within 45 days after the completion of the hearing. If
43 no order is issued within 45 days after the completion of the hearing, the filing shall be deemed
44 to be approved. Any order of disapproval under this section must be entered within 210 days
45 after the date the filing is received by the Commissioner."

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

48 **§ 58-36-120. Public notice of certain filings.**

49 Whenever the North Carolina Rate Bureau files for an increase in insurance rates for
50 residential property insurance, the Bureau shall give public notice in at least two newspapers
51 with statewide distribution and in the North Carolina Register, within 10 business days after the

1 filing, which notice shall state that the Commissioner may or may not schedule and conduct a
2 hearing with respect to the filing. The same information shall be posted on the Web site for the
3 North Carolina Rate Bureau and the North Carolina Department of Insurance Web site within
4 three days after the filing. The requirements of this section shall not apply to filings proposing
5 changes as to forms, relativities, and classifications that are filed at no increase in the overall
6 rate level."

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

8 "**§ 58-46-55. Rates, rating plans, rating rules, and forms applicable.**

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

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

18 **SECTION 8.** The Legislative Research Commission may study the need for
19 changes in the composition of the Board of Directors of the North Carolina Insurance
20 Association and the method of selection of Board members. The Commission also may study
21 the adequacy of public participation in the filing of rates for property insurance by the North
22 Carolina Rate Bureau, the North Carolina Insurance Underwriting Association, and the North
23 Carolina Joint Underwriting Association and the approval of those rates by the Commissioner,
24 including the time limits for approval or disapproval by the Commissioner of rate filings. In its
25 study, the Commission may examine the feasibility of establishing a permanent public
26 advocacy staff to participate and advocate in rate-making proceedings under Articles 36, 45,
27 and 46 of Chapter 58 of the General Statutes.

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

31 **SECTION 9.** The Legislative Services Officer shall allocate funds appropriated to
32 the General Assembly for the expenditures of the Legislative Research Commission in
33 conducting the study under Section 8 of this act.

34 **SECTION 10.** The provisions of this act are severable and, if any phrase, clause,
35 sentence, or provision is declared to be unconstitutional, is preempted by federal law or
36 regulation, or is otherwise invalid, the validity of the remainder of this act shall not be affected
37 thereby.

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