

NORTH CAROLINA GENERAL ASSEMBLY



JOINT SELECT STUDY COMMITTEE ON THE POTENTIAL IMPACT OF MAJOR HURRICANES ON THE NORTH CAROLINA INSURANCE INDUSTRY

REPORT TO THE
2009 SESSION
of the
GENERAL ASSEMBLY

TRANSMITTAL LETTER

The CoChairs of the Joint Select Study Committee On the Potential Impact of Major Hurricanes on the North Carolina Insurance Industry, respectfully submit the following report.

Representative Hugh Holliman
Co-Chair

Senator Tony Rand
Co-Chair

COMMITTEE PROCEEDINGS

The Joint Select Study Committee on the Potential Impact of Major Hurricanes on the North Carolina Insurance industry met seven times from September 30, 2008 through January 21, 2009. The Joint Select Study Committee heard from the persons listed below during the specified meeting dates.

September 30, 2008

- Rose Vaughn Williams, Legislative Counsel for the North Carolina Department of Insurance, gave the Committee a brief history of the development of the Beach Plan. She also provided background information on the numbers of insured residential properties statewide, property insurance territories, rate increases and hurricane losses in North Carolina since 1990.
- Lee Dunn, Assistant General Manager for the North Carolina Insurance Underwriting Association (NCIUA) also known as the Beach Plan and the North Carolina Joint Underwriting Association (NCJUA) also known as the Fair Plan, provided the Committee with an in depth review of the Beach and Fair Plans including coverage limits and deductibles, exposure growth, probable maximum loss scenarios, and the Beach and Fair Plan reinsurance structure.
- Ray Evans, General Manager of the North Carolina Rate Bureau, addressed the role of the Rate Bureau in determining adequate insurance rates and presenting rate change proposals to the NC Department of Insurance

October 16, 2008

- Alvin Ashworth, Accounting Manager for NCIUA and NCJUA, provided the Committee with additional information on the operation of the Beach Plan, the current amount of the surplus available to cover losses, and plans to grow the surplus and increase reinsurance to cover losses in the event of a major storm.
- Ray Evans, General Manager of the North Carolina Rate Bureau, spoke briefly to the committee on the definition of various "perils" including, fire, theft, windstorm and hail, and wind driven rain, and exclusions from homeowner policies.
- Steve Weisbart of the Insurance Information Institute gave a presentation on the Institute's view of future challenges in insuring coastal property. Hurricanes are the number one cause of catastrophic losses in the United States. Rapid coastal development and property value increases only exacerbate the problem. Rates need to rise to properly reflect the risk insured.

- Nancy Watkins, a principal in the actuarial and consulting firm Milliman, Inc., presented a report on the NC Beach Plan commissioned by the Property Casualty Insurers Association. According to Ms. Watkins' research, the Beach Plan is unequipped to handle losses resulting from a major hurricane. Insurance rates in North Carolina have been kept artificially low to the detriment of property insurers in the State. The current financial position of the Beach Plan is a threat to insurers, taxpayers, and the State's economy. The report suggested several strategies to strengthen the financial solvency of the Beach Plan.

October 29, 2008

- David Marlett, PhD, Chair of the Department of Finance, Banking, and Insurance at Appalachian State University and member of the Committee, presented his analysis of the financial condition of the Beach Plan. His recommendations included making the Beach Plan a true market of last resort, purchasing reinsurance sufficient to cover a one in one hundred year loss, decreasing dependency on assessments to cover losses, and amending the structure of the Board of Directors of the Beach Plan to include non coastal residents.
- Jerry Payne, Southern Zone Executive Director for Farmers Insurance Group discussed the role of potential assessments under the Beach Plan in Farmer's decision to stop writing homeowners coverage in North Carolina.
- Steve Carroll, General Manager of North Carolina Farm Bureau Insurance and a member of the Committee, provided the perspective of a mutual insurance company operating solely in North Carolina.
- Bradley Lemons, Vice President for Property Product Pricing at Nationwide Insurance, provided a national perspective on beach and coastal insurance. He noted that, in North Carolina, 10 carriers provide 82% of homeowners coverage. The homeowners market is very volatile due to the unpredictability of claims activity. This is exacerbated by the increasing frequency of storms and coastal development. Decisions need to be made on what the Beach Plan should be. From there decisions can be made regarding rates, assessments, and reinsurance.
- Bob White, President, CEO, and Chairman of the Board of Alliance Mutual Insurance Company, presented the viewpoint of a small niche market auto and property insurance company. 32% of Alliance's homeowner policies are in the beach and coastal areas, but the company does not provide wind coverage. The company's assessment exposure under the Beach Plan is 674% higher than its written risk. Although the company purchases reinsurance to help cover the risk of an assessment, a second major storm and assessment could force Alliance out of business.

November 18, 2008

- Bill Moore, with the Rutherford Insurance Company, addressed the Committee regarding his company's concern about State bidding rules requiring "all perils coverage". According to Mr. Moore, all perils coverage is not adequately defined and does not include wind and flood coverage. He would like to see the bid language changed to read "special form coverage including wind and flood".
- Wanda Edwards, Director of Building Code Issues for the Institute for Business and Home Safety, outlined measures for mitigation with building codes and discussed mitigation steps for existing homes ranging from repairs and renovations to retrofitting. She also noted that North Carolina does not meet the International Building Code's standards for windborne debris.
- Donald Hornstein, Professor of Law at the University of North Carolina School of Law and member of the Committee, provided some cost benefit analyses of various mitigation approaches a homeowner could undertake. Creating mitigation incentives would help overcome homeowner reluctance to take protective measures. Incentives for mitigation also would reduce insurance loss, and reduce reinsurance costs. South Carolina and Florida both offer mitigation incentives.
- Dan Tingen, Chairman of the North Carolina Building Code Council, explained the bases for the Council's decision not to adopt the International Code Council's model code in toto. There were several areas in which the Council has not chosen to adopt the provisions of the model code. With respect to the wind borne debris standards, the Council's position is that the ICC model provision would result in increasing the cost of housing without a concomitant increase in the storm worthiness of housing.

December 2, 2008

- Robert Privott, Director of Codes and Enforcement for the North Carolina Home Builders Association, spoke to the Committee about building code issues. In particular, the Home Builders would like to see the wind borne debris provisions of the State Building Code remain unchanged. They also would like insurers to be required to provide premium discounts for homeowners who provide wind borne debris protection above the code requirements and tax credits available to homeowners who take such measures.
- Ray Evans, General Manager of the North Carolina Rate Bureau, told the Committee that the Rate Bureau would be filing a proposed homeowners rate increase that would be 19.5% overall. Beach territory increases would range from 32% to 50%, coastal territories from 43% to 69% and the remainder of the State from 1% to 22%. The proposed changes would also include a change in the territories set by the Rate Bureau.

- Donald Evans, member of the Board of Directors for the NCIUA and committee member, noted that the Beach Plan's exposure had increased from \$17.3 billion in 2003 to \$72 billion in 2008. Mr. Evans said that the Beach Plan had increased wind deductibles by 2%, increased the surplus reserve cap from \$750 million to \$1.1 billion, and increased premium rates for wind coverage in an effort to lower the Plan's exposure risk.
- Lynn Knauf of the Property Casualty Insurers of America presented a five point plan of reform for the Beach Plan. Among the suggestions were requiring the Beach Plan to file its rates directly with the Commissioner of Insurance, purchasing reinsurance to cover the one in one hundred fifty year storm, and providing for post loss surcharges.
- Joe Stewart, Executive Director of the Insurance Federation of North Carolina, provided the Committee with three recommendations to improve the Beach Plan's financial picture. These recommendations included making the Beach Plan the insurer of last resort by statutorily setting a 25% differential above voluntary rates for the plan, requiring the Plan to be able to pay claims expected through the one in one hundred fifty year storm, and capping assessments from insurers.

December 18, 2008

- Rose Vaughn Williams, Legislative Counsel for the Department of Insurance, presented the recommendations of the Department on the Beach Plan to the Committee. She noted that the Commissioner had recently approved rate increases across the State. Also, the Beach Plan Board has increased deductibles and has voted to increase the surplus to \$1.1 billion dollars. The Department of Insurance does not favor any sort of surcharge to fund the Beach Plan at this time.
- John Bode, lobbyist for the Independent Insurance Agents, presented recommendations for the Beach Plan from the insurance agents. These recommendations include insuring that the Beach Plan meets the criteria of the Internal Revenue Service for non taxable reserve accumulation of funds (the surplus). Other recommendations included a temporary surcharge on Beach Plan policies and developing a method whereby insurance companies could recoup assessments.
- The balance of the December 18 meeting was devoted to Committee discussion of potential recommendations to the 2009 General Assembly. As a part of that discussion the Committee agreed to have a subcommittee composed of representatives from the Beach Plan, Department of Insurance, and the Insurance Federation of North Carolina, develop a proposal for post-event surcharges and any cap on such surcharges. The proposal would also address assessments, recoupable and non-recoupable, and the amount of a cap on non-recoupable assessments.

January 21, 2009

The Committee met on January 21, 2009 to review and discuss the draft report. During the course of the discussion, the Committee voted to include an additional recommendation endorsing, in principle, the development of programs that would provide incentives for property owners to undertake cost-effective mitigation measures against wind damage.

An amendment was offered by Representative Goforth that would have limited residential coverage under the beach plan to primary residences only. The amendment did not pass.

The Committee also did not reach a consensus on the amount of caps on non-recoupable assessments and on the statewide surcharge on policyholders to reimburse insurers for recoupable assessments. As such, the amount of those caps was omitted from the proposed legislation. The Committee did agree to recommend that the 2009 General Assembly consider the amount of these caps in its deliberations on the proposed legislation.

The Committee then voted to adopt the report, with the above changes, and forward it to the 2009 General Assembly.

For those wishing further detail on the proceedings of the Joint Select Study Committee On the Potential Impact of Major Hurricanes On the North Carolina Insurance Industry, a copy of the minutes, power point presentations, and other handouts may be found in the Legislative Library.

FINDINGS AND RECOMMENDATIONS

OVERVIEW OF THE NORTH CAROLINA BEACH PLAN

During the course of its eight meetings, the Joint Legislative Committee on the Potential Impact of Major Hurricanes on the North Carolina Insurance Industry heard presentations from various experts, groups, State agencies, and interested parties. At the Committee's initial meetings, Committee members received information on the mechanisms of the North Carolina Insurance Underwriting Association (NCIUA), more commonly referred to as the Beach Plan.

The purpose of the Beach Plan, as explained by Mr. Lee Dunn, Assistant General Manager, NCIUA, and Mr. Alvin Ashworth, Accounting Manager, NCIUA, is to serve as a market of last resort to make property insurance available to people who are unable to buy insurance through the standard or voluntary market. The Beach Plan functions as an insurance company by acting as an agent for insurers. All property and casualty insurers in the State are members of the Plan. By statute, the Plan covers two areas: (1) the barrier islands, referred to under the Plan as the beach area; and (2) 18 coastal counties, referred to as the coastal area. The Plan offers homeowners, dwelling, and wind only coverage in the beach area and homeowners and wind only coverage in the coastal area. Commercial coverage is also available under the Plan.

The Plan's members include all insurers authorized to write property insurance in North Carolina. All member companies share in the expenses, profits, and losses of the Plan. Each year that the Plan generates revenues in excess of claims paid, the Plan may elect to return the excess funds to the member companies or hold those funds as "surplus." The surplus is used to cover Plan losses where claims filed are greater than the premium received. Should claims exceed the revenues from premiums, the amount of surplus, and any applicable reinsurance, member companies are assessed by the Plan to pay the claims. Assessments are calculated based on a member's market share and are reduced by credits given for writing coverage in the beach and coastal areas. Providing credits against assessments for coverage written in the beach and coastal area was intended to encourage insurers to write such policies and limit the growth of exposure to risk in the Beach Plan.

The NCIUA's Plan of Operation is adopted by its Board of Directors and submitted to the Commissioner of Insurance for approval. The Plan of Operation sets forth the administration of the Plan including the membership and manner of election of members to the Board of Directors.

The Plan also files with the Commissioner for his or her approval rates for separate policies of windstorm and hail, policy deductible plans to be paid by property owners, and the percentage differential or surcharge for coverage offered by the Plan. The differential is a

percentage amount above the voluntary market rate approved by the Commissioner which all beach and coastal property owners must pay to purchase coverage through the Plan.

BACKGROUND AND FINDINGS

Since 1995, exposure to losses for properties covered by the Plan has grown exponentially. As noted by Dr. David Marlett, Chair, Department of Finance, Banking and Insurance, Appalachian State University and in presentations by the NCIUA, total exposure under the Plan was \$3.6B in 1995. By 2008, exposure had grown to \$72B. As expressed by several insurers in presentations to the Committee, this growth in exposure has raised concern over the amount of potential assessments on insurers under the Plan. Mr. Joe Stewart, Executive Director, Insurance Federation of North Carolina, noted that the unpredictability of assessments is a threat to insurer solvency and makes it difficult for insurers to prepare for an assessment by reserving funds and purchasing reinsurance.

Estimates as to the size of potential assessments varied. Ms. Nancy Watkins, Milliman, Inc., estimated in their financial analysis of the Plan prepared at the request of the Property Casualty Insurers Association of America that surplus funds and reinsurance currently available to the Plan total \$1.5B. Milliman estimates potential losses to the Plan after reinsurance to range from \$879M for a 1 in 10 year storm to \$6.8B for a 1 in 250 year storm. By comparison, Ms. Rose Vaughn Williams, Legislative Counsel, Department of Insurance, estimated at the Sept 30 meeting that Hurricane Hazel in 1954 caused almost \$6.9B in losses statewide. Dr. Marlett noted in his presentation that a 1 in 10 year storm of \$879M would use the entire accumulated surplus and that subsequent storms would require larger assessments since no surplus would be available.

Recommendations for action were received from a number of insurers. At the Committee's meeting on October 29, 2008, Mr. Steve Carroll, General Manager for NC Farm Bureau Insurance Group, stated that the "reality of the Beach Plan being a market of last resort has long since left us" and "will not change until the industry sees voluntary rates as adequate." The Property Casualty Insurers Association of America agreed and indicated that the Beach Plan has become "the market of first choice." Mr. Bradley Lemons, Vice-President, Property Product Pricing, Nationwide Insurance, echoed the concerns of many insurers when he noted the following: (1) storm activity generally is increasing across the nation's coastline and NC's coast is one of the most vulnerable state coastlines to storm loss; (2) rates are inadequate when compared to the level of risk; (3) an assessment layer should continue to exist but companies should not be expected to assume all risk of loss when Beach Plan resources are exhausted; and (4) the current system does not allow for any predictability in the amount of assessments and the inability to plan for a maximum assessment makes it difficult and expensive for insurers to purchase their own reinsurance in the private market. Mr. Lemons and other insurers commented that both coastal and inland areas are subject to loss. But an insurer's financial risk should not be concentrated primarily in one area.

Contemporaneous with the conduct of this Study, NCIUA has been moving forward with its own efforts to improve the Beach Plan's financial position. On December 2, 2008, Mr. Don Evans, NCIUA Board Member, Insurance Agent and Study Committee Member, presented three changes to the NCIUA's Plan of Operation which were requested by the NCIUA and recently approved by the Commissioner effective February 1, 2009: (1) deductibles on all properties were increased to 2% on residential and commercial properties (5% on residential properties on Bald Head Island) with a minimum of \$1000; (2) the ceiling on retained surplus was increased from \$750M to \$1.1B and will be reviewed annually; and (3) the differential, as explained in the opening paragraphs, was increased from 1.15 (15%) to 1.25 (25%) for homeowners policies and from 1.05(5%) to 1.15 (15%) for wind only homeowners policies. As explained by Mr. Evans, the deductible changes will increase deductibles from \$518M to \$861M. This difference will result in savings to the Plan. The Plan's reinsurance costs will also be reduced by \$5M annually. The deductible change may also result in more voluntary coverage being written on the coast since the increased deductible will bring the Plan in line with the voluntary market. Finally Mr. Evans noted that the Plan is committed to using surplus to purchase reinsurance for at least a 1 in 100 year storm or approximately \$4B in reinsurance at a cost of \$198M annually, with a \$14.5 million reinstatement fee following a loss.

The Department of Insurance has also taken steps that it hopes will encourage the voluntary market in the beach and coastal areas. In the meeting on December 18, 2008, Ms. Rose Vaughn Williams, Legislative Counsel, N.C. Department of Insurance, reminded the Committee that the Beach Plan was designed to include assessments on private insurers as a means to encourage companies to write on the coast because the amount of assessment is lowered by the amount a company writes in beach and coastal coverage. Ms. Williams also reiterated that those insured by the Beach Plan receive a "double-whammy" when voluntary rates are increased because the Beach Plan differential is added to the approved voluntary rate. However, in light of concerns over the Plan's ability to withstand losses incurred from a major hurricane, the Commissioner approved the changes summarized by Mr. Evans.

Ms. Williams continued her presentation by announcing a settlement agreement between the N.C. Rate Bureau and the Commissioner for an overall statewide increase in rates in the voluntary market of 4.05%. (In his presentation of December 2, 2008, Mr. Ray Evans, General Manager, N.C. Rate Bureau, indicated to the Committee that the Rate Bureau was seeking a 19.5% overall increase in rates from the Commissioner.) As explained by Ms. Williams, while the Commissioner's order included rate decreases in certain rating territories, the majority of territories will see an increase in rates. Counties in the beach and coastal areas will see the largest increases including three territories (6, 42 and 43E) with increases between 17% and 30%. Ms. Williams noted that the increase in rates coupled with the other changes to the NCIUA's Plan of Operation should result in growth in the voluntary market in the beach and coastal areas and decreased exposure to losses by the Plan. The Department estimates that the amount of assessment on insurers from a 1 in 100 year storm will be reduced by more than half by these changes. Ms. Williams added that the Department does not support a surcharge on policy holders in the beach and coastal areas or across the State.

Citing the changes already approved by the Beach Plan and the Commissioner of Insurance, Committee members expressed concern over the impact of these increased insurance costs on the State's residents, particularly low and middle income residents along the coast. This concern was heightened for members by the current economic conditions in the State. Several members expressed support for consideration of measures designed to lessen the impact of these increases on homeowners.

In light of these concerns, members also raised the need for further consideration of premium credits for actions taken by homeowners to mitigate damages to their homes resulting from storms. Several presenters on mitigation issues pointed to both decreased financial losses to the Plan and a reduction in losses for property owners resulting from the retrofitting of existing homes and construction of new homes with storm resistant materials. In presentations to the Committee, insurers spoke of the need to create grants and tax incentives for homeowners to build stronger new homes and improve existing homes. Ms. Wanda Edwards, Director, Building Code development, Institute for Building and Home Safety, identified roof replacement, door and window protection, gable wall bracing, and other measures to strengthen buildings which could be accomplished through financial incentives for homeowners and through building code changes. Prof. Donald Hornstein, Aubrey L. Brooks Professor, UNC School of Law spoke of similar changes and emphasized the need to link insurance to mitigation through premium discounts. Prof. Hornstein also gave examples of similar credits in other states. Committee members expressed support for further consideration of proposals assisting homeowners to implement these types of mitigation measures.

RECOMMENDATIONS

Recommendation I. In light of substantial increases in the total value of properties insured through the Beach Plan, the Committee recommends the following measures to make clear the General Assembly's original intentions that the Beach Plan serve as a market of last resort and to insure proper oversight of the Plan to further this goal:

- Make clear that the rates, forms, endorsements, rules, underwriting standards, operations, procedures, and other factors shall be no more favorable than corresponding factors in the voluntary market.
- Authorize the Plan to impose a differential above manual rates for dwelling and commercial coverage and separate wind and hail coverage for each, as is currently charged by the Plan for homeowners and homeowners wind and hail coverage.
- Require a report by the Plan on the differential for review every two years by the Commissioner of Insurance and require the report to be filed with the Joint Legislative Commission on Governmental Operations and the chairs of the House Insurance Committee and the Senate Commerce Committee.
- Require consideration of reinsurance and modeling with the determination of the differential.

- Provide that all Beach Plan filings for changes to the Plan of Operation shall be subject to appeal to superior court.

(For all of the above, see legislation attached as Appendix B.)

Recommendation II. The Committee recommends the following to improve the financial status of the Plan and reduce exposure to loss for properties insured by the Plan:

- Place assessments against insurers into two categories: (1) recoupable assessments which may be recouped from policyholders through a statewide surcharge; and (2) nonrecoupable assessments which may not be recouped.
- Place a cap on nonrecoupable assessments levied against insurers. For recoupable assessments, impose a statewide surcharge on policyholders in the event of a catastrophic loss to reimburse insurers for these assessments and place a cap on the amount of these surcharges.

(The Committee was unable to reach a consensus on the amount of the caps on both nonrecoupable assessments and on the statewide surcharge on policyholders to reimburse insurers for recoupable assessments as recommended above. The amount of both caps was omitted from the attached legislation in Appendix B. The Committee recommends that the 2009 General Assembly consider the amount of these caps in its deliberations of the recommended legislation.)

- Eliminate the return of surplus to insurers and require the surplus to be used by the Plan only to pay for losses, expenses and the purchase of reinsurance. (The Plan is expected to have \$750M in surplus by the end of March 2009.)
- Reduce maximum habitational policy coverage limits under the Plan from \$1.5 million to \$750,000, including coverage for separate policies of windstorm and hail.
- Require the Plan to reach and maintain the ability to pay losses and expenses at probable maximum loss levels of a 1:100 year storm on and after May 1, 2010 and a 1:150 year storm by mandated dates on and after May 1, 2022.

(For all of the above, see legislation attached as Appendix B.)

Recommendation III. To alleviate the impact of rate increases on residents of the State and to insure that rates accurately reflect the risks associated with individual properties, the Committee recommends the following:

- Require the Association to file a schedule of credits for policyholders based on the presence of mitigation and construction features in properties that it insures. **(See legislation attached as Appendix B.)**
- Create a legislative study committee to study building code changes, premium credits, tax credits and state funding priorities and other ways to encourage property owners, including low and middle income homeowners, to make property improvements to mitigate property loss and damages resulting from hurricanes. The Committee recommends that membership on the Committee include representatives from the Department of Insurance, the NCIUA, the N.C. Rate Bureau and private insurers. The Study Committee should make an interim report to the 2010 Session of the 2009 General Assembly.

- The development as soon as feasible by the 2009 General Assembly well-designed programs to provide incentives for property owners to take cost-effective mitigation measures against wind damage.

Recommendation IV. The Committee recommends the following changes to enhance the accountability of the Beach Plan to its members:

- Require the Plan to make available upon request by any member company or board member information concerning the Association's activities unless the information identifies policyholders or is a trade secret.
(See legislation attached as Appendix B.)

APPENDICES

APPENDIX A

Marc Basnight
President Pro
Tempore,
North Carolina Senate



Joe Hackney
Speaker,
North Carolina
House of
Representatives

Rev. 12/05/08

Raleigh, North Carolina 27601-1096

Joint Select Study Committee on the Potential Impact of Major Hurricanes on the North Carolina Insurance Industry

Section 1. The *Joint Select Study Committee on the Potential Impact of Major Hurricanes on the North Carolina Insurance Industry* is established by the President Pro Tempore of the Senate and the Speaker of the House of Representatives pursuant to G.S. 120-19.6(a1), Rule 31 of the Rules of the Senate of the 2007 General Assembly, and Rule 26(a) of the Rules of the House of Representatives of the 2007 General Assembly.

Section 2. The Committee consists of 24 members. The President Pro Tempore of the Senate shall appoint 14 members and the Speaker of the House of Representatives shall appoint 14 members. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each appoint a Co-chair from among their respective appointees. The Committee and the terms of the members shall expire when the Committee submits a final report to the General Assembly. Members serve at the pleasure of the appointing officer.

President Pro Tempore Appointments

Senator Tony Rand, Co-Chair
Senator Doug Berger
Senator Peter Brunstetter
Senator Fletcher Hartsell
Senator Ed Jones
Senator Jean Preston
Senator John Snow
Senator R.C. Soles
Public member representing the Department of Insurance: Commissioner Jim Long, Wake County

Public member representing the North Carolina Insurance Underwriting Association: Don Evans, Brunswick County

Speaker Appointments

Representative Hugh Holliman, Co-Chair
Representative Harold J. Brubaker
Representative Angela R. Bryant
Representative Bruce Goforth
Representative Carolyn H. Justice
Representative Grier Martin
Representative Timothy L. Spear
Representative Bonner L. Stiller
Public member representing the North Carolina Joint Underwriting Association: Glenn P. Hahn, Charlottesville, Virginia

Public member representing a regional insurer: Honorable John W. (Bill) Hurley, Cumberland County

Public member representing the North Carolina Rate Bureau: Randy Krauss, Mecklenburg County

Public member representing a national insurer: Lee Morton, Wake County

Public member knowledgeable in insurance: Dean Hardison, New Hanover County

Public member knowledgeable in insurance: Norma Mills, Dare County

Public member representing a domestic insurer: Steve Carroll, Wake County

Public member knowledgeable in insurance: Dr. David C. Marlett, Watauga County

Public member knowledgeable in insurance: Honorable Charles D. Evans, Dare County

Public member knowledgeable in insurance: Mr. Donald Thomas Hornstein, Wake County

Section 3. The study shall consider the potential impact of Category 3, 4 and 5 hurricanes on the North Carolina insurance market including: the ability of the North Carolina Insurance Underwriting Association and the North Carolina Joint Underwriting Association to pay claims, reinsurance purchases by the North Carolina Insurance Underwriting Association and the North Carolina Joint Underwriting Association, other potential financing options, assessments on the private market, and options for recoupment of assessments by the private market. The study shall also consider residual market experience and assessment structures in other states as a basis for comparison, land use issues and mitigation issues, and may consider any other factors deemed relevant by the appointed Committee representatives.

Section 4. The Committee shall meet upon the call of its co-chairs. A quorum of the Committee is a majority of its members. No action may be taken except by a majority vote at a meeting at which a quorum is present.

Section 5. The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and Article 5A of Chapter 120 of the General Statutes. The Committee may contract for professional, clerical, or consultant services, as provided by G.S. 120-32.02.

Section 6. Members of the Committee shall receive per diem, subsistence, and travel allowance as provided in G.S. 120-3.1, 138-5 and 138-6, as appropriate.

Section 7. The expenses of the Committee shall be considered expenses incurred for the joint operation of the General Assembly. An initial allocation of \$35,000 shall be provided to the Committee from funds appropriated to the General Assembly.

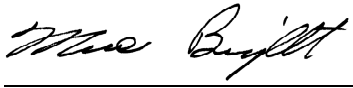
Section 8. The Legislative Services Officer shall assign professional and clerical staff to assist the Committee in its work. The Director of Legislative Assistants of the House of Representatives and the Director of Legislative Assistants of the Senate shall assign clerical support staff to the Committee.

Section 9. The Committee may meet at various locations around the State in order to promote greater public participation in its deliberations. The Legislative Services Commission shall grant adequate meeting space to the Committee in the State Legislative Building or the Legislative Office Building.

Section 10. The Committee shall report the results of its study, including any proposed legislation, to the members of the Senate and the House of Representatives by filing a copy of the

report with the Office of the President Pro Tempore of the Senate, the Office of the Speaker of the House of Representatives, and the Legislative Library. The Committee shall terminate on **January 27, 2009** or upon the filing of its final report, whichever occurs first.

Effective this 5th day of September, 2008



Marc Basnight
President Pro Tempore of the Senate



Joe Hackney
Speaker of the House of Representatives

Rev. 9/12/08 to add four public members

Rev. 12/05/08 to extend the termination date of the Committee.

APPENDIX B

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

The General Assembly of North Carolina enacts:

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

"Article 45.

"Essential Property Insurance for Beach Area Property.

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

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

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

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

"§ 58-45-5. Definition of terms.

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

- (1) ~~"Association" means~~ Association. ~~the~~ The North Carolina Insurance Underwriting Association established under this Article;
- (2) ~~"Beach area" means~~ Beach area. ~~all~~ All of that area of the State of North Carolina south and east of the inland waterway from the South Carolina line to Fort Macon (Beaufort Inlet); thence south and east of Core, Pamlico, Roanoke and Currituck sounds to the Virginia line, being those portions of land generally known as the Outer Banks;
- (2a) ~~"Coastal area" means~~ Coastal area. ~~all~~ All of that area of the State of North Carolina comprising the following counties: Beaufort, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Hyde, Jones, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington. "Coastal area" does not include the portions of these counties that lie within the beach area.
- (3) Repealed by Session Laws 1991, c. 720, s. 6.
- (3a) ~~"Crime insurance" means~~ Crime insurance. ~~insurance~~ Insurance against losses resulting from robbery, burglary, larceny, and similar crimes, as more specifically defined and limited in the various crime insurance policies, or their successor forms of coverage, approved by the Commissioner and issued by the Association. Such policies shall not be more restrictive than those issued under the Federal Crime Insurance Program authorized by Public Law 91-609.
- (3b) ~~"Directors" means~~ Directors. ~~the~~ The Board of Directors of the Association.
- (4) ~~"Essential property insurance" means~~ Essential property insurance. ~~insurance~~ Insurance against direct loss to property as defined in the standard statutory fire policy and extended coverage, vandalism and malicious mischief endorsements thereon, or their successor forms of coverage, as approved by the Commissioner;
- (5) ~~"Insurable property" means~~ Insurable property. ~~real~~ Real property at fixed locations in the beach and coastal area, including travel trailers when tied down at a fixed location, or the tangible personal property located therein, but shall not include insurance on motor vehicles; which property is determined by the Association, after inspection and under the criteria specified in the plan of operation, to be in an insurable condition. However, any one and two family dwellings built in substantial accordance

with the Federal Manufactured Home Construction and Safety Standards, any predecessor or successor federal or State construction or safety standards, and any further construction or safety standards promulgated by the association and approved by the Commissioner, or the North Carolina Uniform Residential Building Code and any structure or building built in substantial compliance with the North Carolina State Building Code, including the design-wind requirements, which is not otherwise rendered uninsurable by reason of use or occupancy, shall be an insurable risk within the meaning of this Article. However, none of the following factors shall be considered in determining insurable condition: neighborhood, area, location, environmental hazards beyond the control of the applicant or owner of the property. Also, any structure begun on or after January 1, 1970, not built in substantial compliance with the Federal Manufactured Home Construction and Safety Standards, any predecessor or successor federal or State construction or safety standards, and any further construction or safety standards promulgated by the association and approved by the Commissioner, or the North Carolina Uniform Residential Building Code or the North Carolina State Building Code, including the design-wind requirements therein, shall not be an insurable risk. The owner or applicant shall furnish with the application proof in the form of a certificate from a local building inspector, contractor, engineer or architect that the structure is built in substantial accordance with the Federal Manufactured Home Construction and Safety Standards, any predecessor or successor federal or State construction or safety standards, and any further construction or safety standards promulgated by the association and approved by the Commissioner, or the North Carolina Uniform Residential Building Code or the North Carolina State Building Code; however, an individual certificate shall not be necessary where the structure is located within a political subdivision which has certified to the Association on an annual basis that it 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, farmowners 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) Market of last resort.—The Association's rates, forms, endorsements, rules, underwriting standards, operations, procedures, and other factors shall not be more favorable than corresponding factors in the voluntary market.
- (6c) Nonrecoupable assessment.—Any assessment levied on and payable by members of the Association that is not directly recoverable from policyholders, but which shall be included as an appropriate factor in the making of rates.
- (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) Probable maximum loss.—The amount equal to 100% of all property losses projected by commonly accepted modeling forecasts to be incurred in a single storm year at a specified return interval assuming various degrees of severity of hurricanes and other weather related storms.
- (9) Property Insurance.—For purposes of this article coverage on residential and commercial real estate risks on any applicable lines regulated by Chapter 40.
- (10) Recoupable assessment.—Any assessment collected by member insurers from policy holders statewide upon issuance or renewal of property insurance policies other than National Flood Insurance policies. The amount of the recoupable assessment collected in a particular year shall be a uniform percentage of that year's direct written premium for property insurance for all member insurers excluding National Flood Insurance policy premiums, as annually determined by the Association and verified by the Department of Insurance.
- (11) Voluntary market.—Insurance written voluntarily by companies other than through this Article or Article 46 of this Chapter.

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

"§ 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;
- (2) To assume reinsurance from its members;
- (3) To cede reinsurance to its members and to purchase reinsurance in behalf of its ~~members~~members; and
- (4) To require insureds of the Association to purchase federal flood insurance where applicable and available in order to obtain replacement cost or other preferential forms, endorsements or coverages.

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

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

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

(a) Subject to the limitations contained in G.S. 58-45-47, each member of the Association shall participate in the ~~expenses, profits, expenses~~ and losses of the Association in the proportion that its net direct premium written in this State

during the preceding calendar year for residential and commercial properties outside of the beach and coastal areas bears to the aggregate net direct premiums written in this State during the preceding calendar year for residential and commercial properties outside of the beach and coastal areas by all members of the Association, as certified to the Association by the Commissioner. The Commissioner shall certify each member's participation after review of annual statements and any other reports and data necessary to determine participation and may obtain any necessary information or data from any member of the Association for this purpose. Any insurer that is authorized to write and that is engaged in writing any insurance, the writing of which requires the insurer to be a member of the Association under G.S. 58-45-10, shall become a member of the Association on the first day of January after authorization. The determination of the insurer's participation in the Association shall be made as of the date of membership of the insurer in the same manner as for all other members of the Association.

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

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

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

"§ 58-45-30. Directors to submit plan of operation to Commissioner; review and approval; amendments. Appeal from Commissioner to Superior Court.

(a) The Directors shall submit to the Commissioner for his review and approval, a proposed plan of operation. The plan shall set forth the number, qualifications, terms of office, and manner of election of the members of the board of directors, and shall grant proper credit annually to each member of the Association for essential property insurance, farmowners, homeowners insurance,

and the property portion of commercial multiple peril policies voluntarily written in the beach and coastal areas and shall provide for the efficient, economical, fair and nondiscriminatory administration of the Association and for the prompt and efficient provision of essential property insurance in the beach and coastal areas of North Carolina to promote orderly community development in those areas and to provide means for the adequate maintenance and improvement of the property in those areas. The plan may include the establishment of necessary facilities; management of the Association; the assessment of members to defray losses and expenses; underwriting standards; procedures for the acceptance and cession of reinsurance; procedures for determining the amounts of insurance to be provided to specific risks; time limits and procedures for processing applications for insurance; and any other provisions that are considered necessary by the Commissioner to carry out the purposes of this Article.

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

(c) The directors of the Association may, subject to the approval of the Commissioner, amend the plan of operation at any time. The Commissioner may review the plan of operation at any time the Commissioner deems expedient or prudent, but not less than once in each calendar year. After review of the plan the Commissioner may amend the plan after consultation with the directors and upon

certification to the directors of the amendment. Any order of the Commissioner with respect to the proposed plan of operation or any amendments thereto shall be subject to review as provided by G.S. 58-2-75.

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

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

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

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

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

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

(b) If the Association determines that the property is insurable and that there is no unpaid premium due from the applicant for prior insurance on the property, the Association, upon receipt of the premium, or part of the premium, as is prescribed in the plan of operation, shall cause to be issued a policy of essential property insurance and shall offer additional extended coverage, optional perils endorsements, business income and extra expense coverage, crime insurance,

separate policies of windstorm and hail insurance, or their successor forms of coverage, for a term of one year or three years. Short term policies may also be issued. Any policy issued under this section shall be renewed, upon application, as long as the property is insurable property.

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

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

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

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

(e) Policies of windstorm and hail insurance provided for in subsection (b) of this section are available only for risks in the beach and coastal areas for which essential property insurance has been written by licensed insurers. Whenever such other essential property insurance written by licensed insurers includes replacement cost coverage, the Association shall also offer replacement cost coverage. In order to be eligible for a policy of windstorm and hail insurance, the applicant shall provide the Association, along with the premium payment for the windstorm and hail insurance, a certificate that the essential property insurance is

in force. The policy forms for windstorm and hail insurance shall be filed by the Association with the Commissioner for the Commissioner's approval before they may be used. Catastrophic losses, as determined by the Association and approved by the Commissioner, that are covered under the windstorm and hail coverage in the beach and coastal areas shall be adjusted by the licensed insurer that issued the essential property insurance and not by the Association. The Association shall reimburse the insurer for reasonable expenses incurred by the insurer in adjusting windstorm and hail losses.

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

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

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

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

"§ 58-45-41. Coverage limits.

(a) The Association shall cause to be issued insurance up to the reasonable value of the insurable property, subject to a maximum of seven hundred fifty thousand dollars (\$750,000) on Habitational property and three million dollars (\$3,000,000) on Commercial property on any free standing structure or any building unit within multiple firewall divisions, provided the aggregate insurance on structures with multiple firewall divisions shall not exceed six million dollars (\$6,000,000) on all interest at one risk. The separate policies of windstorm and hail for habitational property shall be subject to a maximum of seven hundred fifty thousand dollars (\$750,000). The separate Homeowners Insurance policies shall be subject to a maximum of seven hundred fifty thousand dollars (\$750,000) Coverage A- Dwelling and a maximum of \$100,000 approved Floater Coverage.

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

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

(a) Rates shall not be excessive, inadequate or unfairly discriminatory. Except as provided in subsection (b) of this section, the rates, rating plans, rating rules, and forms applicable to the insurance written by the Association shall be in accordance with the most recent manual rates or adjusted loss costs and forms that

are legally in effect in the State. Except as provided in ~~subsection (e)~~ subsections (c) and (c1) of this section, no special surcharge, other than those presently in effect, may be applied to the property insurance rates of properties located in the beach and coastal areas.

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

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

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

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

(d) When the Association files rates, classification plans, rating plans, rating systems or surcharges, the procedures of G.S. 58-40-25 through G.S. 58-40-

45 shall apply, and the appeal procedures of G.S. 58-2-80 and G.S. 58-2-85 shall apply, except as otherwise herein provided.

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

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

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

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

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

"§ 58-45-47. Post-Catastrophe Deficit Event.

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

(b) When the post-catastrophe deficit incurred in a particular calendar year is **(amount undetermined)** percent or less of the aggregate statewide direct written premium for property insurance for the prior calendar year for all member insurers, the Association shall levy a nonrecoupable assessment on member insurers in an amount equal to the deficit. Member companies shall be entitled to all applicable credits they have earned under G.S. 58-45-25. The General Assembly finds that the potential for unlimited deficit assessments under this subparagraph may induce insurers to attempt to reduce their writings in the

voluntary market, and that such actions would worsen the availability problems that the Association was created to remedy. It is the intent of the General Assembly that insurers remain fully responsible for paying nonrecoupable assessments and collecting recoupable assessments for any deficits of the Association.

(c) Upon a determination by the Association that a deficit exceeds the amount that will be recovered through nonrecoupable assessments on member insurers pursuant to subparagraph (b), the Association shall levy, after verification by the Department of Insurance, recoupable assessments in the year or years following levy of the assessments, provided that the amount of such recoupable assessments collected in any calendar year shall not exceed (**amount undetermined**) percent of the annual premiums on any one policy of insurance. The Department shall verify the arithmetic calculations involved in the Association's determination within 30 days after receipt of the information on which the determination was based. Notwithstanding any other provision of law, each member insurer and the Association shall collect recoupable assessments for its policyholders without such obligation being affected by any credit, limitation, exemption, or deferment. The recoupable assessments so collected by member insurers shall be transferred directly to the Association on a periodic basis as determined by the Association. The aggregate amount of recoupable assessments levied under this subparagraph may not exceed (**amount undetermined**) percent of the aggregate statewide direct written premium for property insurance written by member insurers for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit. The recoupable assessments shall be clearly identified to policyholders on the premium statement, declarations page or by other appropriate electronic or written method. The identification shall be in a form approved by the Commissioner and shall refer to the post-catastrophe loss for which the assessment was imposed. Failure to pay the recoupable assessment shall be treated as failure to pay premium.

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

"§ 58-45-48. Review and Approval of Recoupable Assessments by the Commissioner.

Upon application by the Association or on his own initiative, the Commissioner has the duty and power to adjust the percentage of any recoupable assessment previously established as necessary to achieve the objectives of G.S. 58-45-1 and G.S. 58-45-47, taking into consideration any relevant factors, including, any indebtedness of insurers resulting from the excess deficit event, the

rate of recovery, the anticipated length of total recovery, the impact of other losses from weather related events and other relevant factors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"§ 58-45-90. Open meetings.

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

"§ 58-45-95 Information Availability.

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

"§ 58-45-96 Succession and Dissolution.

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

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

