

**HOUSE . . . . . No. 900**

---

**The Commonwealth of Massachusetts**

\_\_\_\_\_  
**In the Year Two Thousand Nine**  
\_\_\_\_\_

An Act Relative To Home Owners Insurance..

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. All assets and liabilities of the association established under chapter 175C  
2 of the General Laws are hereby transferred to the Massachusetts property insurance plan  
3 established pursuant to SECTION 2 of this act. Upon the transfer of such assets and liabilities  
4 the association shall have no authority to provide basic property insurance to eligible applicants  
5 and shall cease issuing insurance policies.

6 SECTION 2. The General Laws are hereby amended by inserting after chapter 175J the  
7 following chapter:—

8 CHAPTER 175K

9 MASSACHUSETTS PROPERTY INSURANCE PLAN

10 Section 1. Definitions. As used in this chapter the following words shall, unless the  
11 context clearly requires otherwise, have the following meanings:—

12 “Actuarially sound rate”, an estimate of the expected value of all future costs associated  
13 with the transfer of risk.

14 “Assessable Insured” or “Assessable Insureds”, the purchasers or policyholders under all  
15 personal lines property and casualty insurance policies and under all commercial property  
16 insurance policies issued in the commonwealth, including purchasers or policyholders of policies  
17 issued by the plan and purchasers or policyholders of such insurance policies obtained from  
18 surplus lines insurers.

19 “Association”, the joint underwriting association established by chapter 175C to provide  
20 basic property insurance to eligible applicants.

21 “Basic property insurance”, insurance against direct loss to property as defined and  
22 limited in the standard fire policy and extended coverage endorsement thereon, filed with and  
23 accepted by the commissioner, and insurance against direct loss to such property from the perils  
24 of vandalism and malicious mischief and dwelling coverages and homeowners coverages,  
25 including the scheduled personal property endorsement and such other coverages as the  
26 commissioner after public hearing shall determine or the Secretary of the United States  
27 Department of Housing and Urban Development shall designate by rule made in accordance with  
28 the provisions of the Urban Property Protection and Reinsurance Act of 1968 (Public Law 90-  
29 448) but shall not include insurance on automobile or manufacturing risks except such classes of  
30 manufacturing risks as may, after proper hearing, be designated by the commissioner. Basic  
31 property insurance shall include such related liability coverages as determined to be necessary by  
32 the board.

33 “Board”, the board of the Massachusetts property insurance plan, established by section  
34 2.

35 “Commissioner”, the commissioner of insurance.

36           “Eligible applicant”, any person having an insurable interest in property eligible for basic  
37 property insurance or for windstorm insurance who is unable to obtain such coverage in the  
38 voluntary market.

39           “Insurer”, an insurer licensed or otherwise authorized to transact any form of property  
40 and/or casualty insurance under chapter 175 of the General Laws.

41           “Plan,” the Massachusetts property insurance plan established by section 2.

42           “Special broker,” an insurance broker licensed under the provisions of section 168 of  
43 chapter 175 of the General Laws.

44           “Windstorm insurance,” insurance against direct loss to property from the risk of  
45 windstorm as defined and limited in the windstorm policy and forms approved by the  
46 commissioner.

47           Section 2. Establishment of Plan. (a) There shall be a body politic and corporate and a  
48 public instrumentality to be known as the Massachusetts property insurance plan, which shall be  
49 an independent public entity not subject to the supervision and control of any other executive  
50 office, department, commission, board, bureau, agency or political subdivision of the  
51 commonwealth except as specifically provided in any general or special law. The exercise by  
52 the plan of the powers conferred by this chapter shall be considered to be the performance of an  
53 essential public function. The purpose of the plan is to facilitate the availability of basic property  
54 insurance and windstorm insurance to eligible applicants.

55           (b) There shall be a board, with duties and powers established by this chapter, that shall  
56 govern the plan, subject to the supervision of the commissioner. The board shall consist of

57 eleven members appointed by the commissioner to three-year, staggered terms as determined by  
58 the commissioner from the following categories: (i) one representative of an insurer selected  
59 from a list submitted by the American Insurance Association; (ii) one representative of an insurer  
60 selected from a list submitted by the Massachusetts Insurance Federation; (iii) one representative  
61 of an insurer selected from a list submitted by the National Association of Mutual Insurance  
62 Companies; (iv) one representative of an insurer selected from a list submitted by the Property  
63 Casualty Insurers Association of America; (v) two representatives of insurers selected by the  
64 commissioner to ensure balance and diversity among the insurer representatives; (vi) two  
65 insurance producers selected from a list submitted by the Massachusetts Association of Insurance  
66 Agents; and (vii) three public representatives not affiliated with the insurance industry.

67 (c) Six members of the board shall constitute a quorum, and the affirmative vote of six  
68 members of the board shall be necessary and sufficient for any action taken by the board.  
69 Members shall serve without pay, but shall be reimbursed for actual expenses necessarily  
70 incurred in the performance of their duties. No vacancy in the membership of the board shall  
71 impair the right of a quorum to exercise all the rights and perform all the duties of the plan. The  
72 chairperson of the board shall annually submit a report to the commissioner and to the general  
73 court on the results of its operations and its financial condition..

74 (d) The board shall within sixty days of their appointment submit to the commissioner for  
75 his or her approval a plan of operation setting forth the manner in which the plan will operate and  
76 such other details as may be required by the commissioner. The board shall submit amendments  
77 to the plan when determined necessary by the board or when requested by the commissioner.

78 (e) The plan shall have the power to appoint and employ officers, including an executive  
79 director, and to fix their compensation and conditions of employment.

80 (f) The plan may indemnify any member, officer or employee from personal expenses or  
81 damages incurred, arising out of any claim, suit, demand or judgment which arose out of any act  
82 or omission of such member, officer or employee, including the violation of the civil rights of  
83 any person under any federal law if, at the time of such act or omission such member, officer or  
84 employee was acting within the scope of his official duties or employment.

85 (g) Meetings of the board shall be conducted in accordance with the provisions of  
86 section eleven A1/2 of chapter thirty A.

87 Section 3. Powers of Plan. The plan is hereby authorized and empowered:

88 (a) to adopt by-laws for the regulation of its affairs and the conduct of its business;

89 (b) to adopt an official seal and alter the same at its pleasure;

90 (c) to maintain offices at such places within the commonwealth as it may determine and  
91 to conduct meetings of the plan in accordance with the by-laws of the plan and the provisions of  
92 the second paragraph of section fifty-nine of chapter one hundred and fifty-six B;

93 (d) to sue and be sued in its own name, plead and be impleaded;

94 (e) to issue insurance policies providing coverage for basic property insurance and for  
95 windstorm insurance;

96 (f) to determine and charge premiums to eligible applicants for basic property insurance  
97 and windstorm insurance.

98 (g) to adjust and pay claims arising under basic property insurance policies and under  
99 windstorm insurance policies;

100 (h) to provide incentives for insurers to take business out, and/or to keep business out, of  
101 the plan;

102 (i) to invest in any of the investments authorized under section 63 of chapter 175 of the  
103 General Laws;

104 (j) to procure reinsurance;

105 (k) to issue notes or bonds for any of its corporate purposes related to providing basic  
106 property insurance and windstorm insurance payable from premiums paid on basic property  
107 insurance policies and on windstorm insurance policies and from assessments collected by the  
108 plan as provided in this chapter;

109 (l) to borrow from, or enter into other financing arrangements with, any market sources at  
110 prevailing interest rates;

111 (m) to make and enter into all contracts and agreements necessary, convenient or  
112 desirable in the performance of its duties and the execution of its powers under this chapter (s) to  
113 employ consulting actuaries, attorneys, accountants, insurance and financial experts and such  
114 other employees and agents as may be necessary in its judgment, and to fix their compensation;

115 (n) to take all actions necessary to facilitate and maintain tax-free status for the income  
116 and operations of the plan, and to facilitate tax-free status for bonds or other indebtedness issued  
117 by or on behalf of the plan;

118 (c) to do all acts and things necessary, convenient or desirable to carry out the powers  
119 expressly granted in this chapter.

120 Section 4. Separate Accounts. (a) All revenues, assets, liabilities, losses and expenses of  
121 the plan shall be divided into two separate accounts established by the board, the Massachusetts  
122 Basic Property Insurance Account and the Massachusetts Windstorm Insurance Account.

123 (b) The Massachusetts Basic Property Insurance Account shall receive such proportion of  
124 the transferred assets and liabilities of the association as the board determines will reasonably  
125 reflect the proportion of such assets and liabilities generated from association policies in non-  
126 coastal regions. In addition, the board shall deposit premiums collected on policies of basic  
127 property insurance issued by the plan in, and shall pay losses on policies of basic property  
128 insurance issued by the plan, from this account.

129 (c) The Massachusetts Windstorm Insurance Account shall receive such proportion of the  
130 transferred assets and liabilities of the association as the board determines will reasonably reflect  
131 the proportion of such assets and liabilities generated from association policies in coastal  
132 regions.. In addition, the board shall deposit premiums collected on policies of windstorm  
133 insurance issued by the plan in, and shall and pay losses on policies of windstorm insurance  
134 issued by the plan from, this account. .

135 (d) The board shall cause to be prepared an annual financial report for each account on  
136 such forms as may be prescribed by the commissioner.

137 Section 5. Initial Capitalization. The initial capital necessary for the operations of the  
138 plan, shall be obtained as follows:

139 (a) As provided in SECTION 1 of this act, the assets and liabilities of the association  
140 shall be transferred to the plan. The board shall allocate such assets and liabilities to the separate  
141 accounts established by section 4 in a manner that reflects the expected premiums and losses of  
142 each account.

143 (b) For the purpose of defraying the startup costs of the plan and for the purpose of  
144 providing an initial capital contribution to the plan from the commonwealth, the sum of \$7.5  
145 million is appropriated to the plan for the fiscal year 2009, and the sum of \$7.5 million is  
146 appropriated to the fund for the fiscal year 2010. The board shall allocate the funds received  
147 under this subsection to the separate accounts established by section 4 in a manner that reflects  
148 the expected premiums and losses of each account.

149 Section 6. Provision of Insurance Coverage. (a) The plan shall provide basic property  
150 insurance to eligible applicants anywhere in the commonwealth in accordance with such  
151 underwriting standards as the board shall approve.

152 (b) The plan shall provide windstorm insurance to eligible applicants in the counties of  
153 Barnstable, Bristol, Dukes, Essex, Middlesex, Nantucket, Norfolk, Plymouth and Suffolk in  
154 accordance with such underwriting standards as the board shall approve. The board may expand  
155 the availability of windstorm insurance to other communities or counties of the commonwealth  
156 upon its determination that there is a market need for such expansion of coverage.

157 Section 7. Premiums Charged for Insurance Coverage. The board shall charge premiums  
158 to eligible applicants for basic property insurance and for windstorm insurance that are based on  
159 actuarially sound rates and that are neither excessive, inadequate nor unfairly discriminatory.  
160 For windstorm insurance, the premiums charged shall be based on the actuarially sound rate for

161 the exposure insured, including an allowance for the catastrophe exposure based on modeled  
162 windstorm losses with a return period of not less than 125 years and including applicable  
163 reinsurance transactions. For insured properties that are primary residences with building values  
164 of less than \$250,000, the premiums for such properties for windstorm insurance shall include an  
165 allowance for the catastrophe exposure and applicable reinsurance transactions based on  
166 modeled windstorm losses limited to events with a return period of 100 years or less. The  
167 premiums charged shall be based on the location and value of the insured property, shall provide  
168 for reasonable deductibles and shall take into account loss mitigation efforts by insureds. The  
169 premiums charged shall include additional amounts if needed to pay debt service on revenue  
170 bonds issued under this chapter and to provide required debt service coverage in excess of the  
171 amounts required to pay actual debt service on revenue bonds issued under this chapter.

172           Section 8. Other Charges. In addition to the premiums charged for insurance coverage  
173 provided by the plan, the board shall impose, collect and retain an amount equal to the premium  
174 tax provided for in section 22 of chapter 63 of the General Laws to augment the financial  
175 resources of the plan.

176           Section 9. Commissions. Insurance producers submitting applications to the association  
177 shall be compensated by commissions upon the original issuance of coverage, each installment  
178 payment if any, and each renewal thereof and shall be entitled to no other compensation.  
179 Commissions to licensed insurance producers shall be set by the board from time to time at such  
180 percentage of the average commission rate customarily paid by insurers who customarily  
181 compensate producers by commissions, as the board shall find to be sufficiently attractive to  
182 encourage producers to actively seek out risks and to assist property owners to obtain coverage

183 while at the same time leaving a further incentive to the agent or broker to place such business  
184 through his customary markets when he finds that it is practicable.

185           Section 10. Bonding. (a) Upon a determination by the board that such action would  
186 enable it to better meet the existing or future financial obligations of the plan and that such  
187 financings are reasonably necessary to effectuate the requirements of this act, the board may take  
188 the necessary steps for the issuance of revenue bonds for the benefit of either the Massachusetts  
189 Basic Property Insurance Account or the Massachusetts Windstorm Insurance Account.. The  
190 proceeds of these revenue bonds may be used to pay losses under policies issued by the plan; to  
191 refinance or replace previously existing borrowings or financial arrangements; to pay interest on  
192 bonds; to fund reserves for the bonds; to pay expenses incident to the issuance or sale of any  
193 bond issued under this section, including costs of validating, printing, and delivering the bonds,  
194 costs of printing the official statement, costs of publishing notices of sale of the bonds, and  
195 related administrative expenses; or for such other purposes related to the financial obligations of  
196 the separate accounts established by section 4 as the board may determine. The term of the bonds  
197 may not exceed 30 years. The board may pledge all or a portion of all premiums to secure these  
198 revenue bonds, and the board may execute such agreements between the board and the issuer of  
199 any revenue bonds and providers of other financing arrangements as the board considers  
200 necessary to evidence, secure, preserve, and protect this pledge.

201           (b) The funds, credit, property, or taxing power of the commonwealth or political  
202 subdivisions of the commonwealth shall not be pledged for the payment of these bonds.

203           (c) The issuance of bonds under this section is for the public purpose of paying the claims  
204 of policyholders to assure that policyholders are able to pay the cost of construction,

205 reconstruction, repair, restoration, and other costs associated with damage to property of  
206 policyholders of covered policies.

207 (d) The bonds of the plan are not a debt of the commonwealth or of any political  
208 subdivision other than the plan, and neither the commonwealth nor any political subdivision  
209 other than the plan is liable on these bonds. The plan does not have the power to pledge the  
210 credit, the revenues, or the taxing power of the commonwealth or of any political subdivision  
211 other than the plan. The credit, revenues, or taxing power of the commonwealth or of any  
212 political subdivision other than the plan shall not be considered to be pledged to the payment of  
213 any bonds of the plan.

214 (e) All bonds of the plan shall be and constitute legal investments without limitation for  
215 all public bodies of the commonwealth; for all banks, trust companies, savings banks, savings  
216 associations, savings and loan associations, and investment companies; for all administrators,  
217 executors, trustees, and other fiduciaries; for all insurance companies and associations and other  
218 persons carrying on an insurance business; and for all other persons who are now or may  
219 hereafter be authorized to invest in bonds or other obligations of the commonwealth and shall be  
220 and constitute eligible securities to be deposited as collateral for the security of any  
221 commonwealth, county, municipal, or other public funds. This paragraph shall be considered as  
222 additional and supplemental authority and shall not be limited without specific reference to this  
223 paragraph.

224 Section 11. Assessments. (a) If the board determines that the unencumbered balance of  
225 either the Massachusetts Basic Property Insurance Account or the Massachusetts Windstorm  
226 Insurance Account is insufficient to pay the obligations, costs, and expenses of the account

227 including payment of claims under policies issued by the plan, operating expenses of the plan,  
228 repayment of revenue bonds and that portion of the debt service coverage not met by premiums  
229 received under insurance policies issued by the plan, the board shall levy, by order, an  
230 assessment on assessable insureds, measured by direct written premiums for all property and  
231 casualty lines of business in the commonwealth, including the property and casualty business of  
232 surplus lines insurers. The assessment shall be specified as a percentage of future premium  
233 collections and is subject to annual adjustments by the board to reflect changes in premiums  
234 subject to assessments collected under this paragraph in order to meet debt obligations. Any  
235 such assessment shall be allocated so that assessable insureds under policies issued by the plan  
236 pay, at the policy level, fifty per cent more as an individual assessment than those assessable  
237 insureds under policies not issued by the plan. Except for the allocation between insureds under  
238 policies issued by the plan and other assessable insureds, the same percentage shall apply to all  
239 policies in lines of business subject to the assessment issued or renewed during the 12-month  
240 period beginning on the effective date of the assessment.

241 (b) The assessment on assessable insureds under this section shall be collected by all  
242 insurers, including the plan, at the time the insurer collects the premium for each policy procured  
243 by an assessable insured. With respect to assessments of surplus lines premiums, each special  
244 broker shall collect the assessment from the assessable insured. Each insurer or special brokers  
245 shall collect from each assessable insured the full amount of the assessment payable in respect to  
246 the policyholder's policy. All premium notices or invoices issued after an assessment is levied  
247 shall include a statement of the amount of the assessment, if any, listed separately from the  
248 amount of the premium.

249 (c) An annual assessment under this section shall continue as long as the revenue bonds  
250 issued with respect to which the assessment was imposed are outstanding, including any bonds  
251 the proceeds of which were used to refund the revenue bonds, unless adequate provision has  
252 been made for the payment of the bonds under the documents authorizing issuance of the bonds.

253 (d) Insurer and special brokers shall remit the assessments collected to the plan as  
254 provided in the order issued by board. Each insurer and special broker collecting assessments  
255 shall provide the information with respect to premiums and collections that may be required by  
256 the board for verification of compliance with this section.

257 (e) Any assessment authority not used for a particular year may be used for a subsequent  
258 year, but the combined percentage level of all assessments may not exceed the maximum  
259 specified in subsection (c). After assessments have been levied, if the board determines that the  
260 unencumbered balance of either the Massachusetts Basic Property Insurance Account or the  
261 Massachusetts Windstorm Insurance Account and assessment proceeds are insufficient to pay the  
262 obligations, costs, and expenses of such accounts, including repayment of revenue bonds and that  
263 portion of the debt service coverage not met by premiums, the board shall levy an additional  
264 assessment up to an amount not exceeding the amount of unused assessment authority from a  
265 previous year or years.

266 (f) The assessments authorized by this section are the legal obligation of the assessable  
267 insured. The emergency assessments are not premiums and are not subject to any taxes, fees, or  
268 commissions. The amounts imposed on assessable insureds under this section are not subject to  
269 any retaliatory tax provisions or similar provisions. An insurer may treat the failure of an

270 assessable insured to pay an assessment as a failure to pay the premium. An insurer is not liable  
271 for uncollectible assessments.

272 (g) When an insurer is required to return an unearned premium, it shall also return any  
273 assessment collected from the assessable insured that is attributable to the unearned premium. A  
274 credit adjustment to the collected assessment may be made by the insurer with regard to future  
275 remittances that are payable to the plan, but the insurer is not entitled to a refund.

276 Section 12. Loss Mitigation Programs. The board shall establish loss mitigation  
277 programs which shall include, among other things: (1) providing premium credits for  
278 policyholders who undertake investments in mitigation programs developed or approved by the  
279 board; and (2) providing funding for local governments, public agencies, public and private  
280 educational institutions, and/or or nonprofit organizations to support programs intended to  
281 improve windstorm preparedness, reduce potential losses in the event of a windstorm or other  
282 loss, provide research into means to reduce losses, educate or inform the public as to means to  
283 reduce windstorm and other losses, assist the public in determining the appropriateness of  
284 particular upgrades to structures or in the financing of such upgrades, or protect local  
285 infrastructure from potential damage from a windstorm. In any one year, the board may expend  
286 on loss mitigation programs no more than 1/3 of the amount of the annual investment income  
287 earned by the plan during the previous calendar year.

288 Section 13. Reinsurance. The board shall consider developing and shall annually  
289 reassess the need for a reasonable and prudent reinsurance program to enhance the capability of  
290 the plan to timely and efficiently handle claims and to maximize the capacity of and spread the  
291 insurance risks of the plan.

292 Section 14. Liability of Board and Employees. There shall be no liability on the part of,  
293 and no cause of action shall arise against, any board members, officers or employees of the  
294 association for any actions taken by them in the performance of their duties under this paragraph  
295 if such person was acting in good faith and within the scope of his official functions and duties,  
296 unless such damage or injury was caused by willful or wanton misconduct.

297 Section 15. Tax Status. (a) The property, revenues, and other assets of the plan, the  
298 transactions and operations of the plan and the income from such transactions and operations and  
299 all bonds issued under this subsection and interest on these bonds are exempt from taxation by  
300 the commonwealth.

301 (b) The board shall promptly seek a determination from the Internal Revenue Service  
302 establishing that the plan and the separate accounts established by section 4 are exempt from  
303 federal taxation and that bonds issued by the plan may be issued on a tax-free basis. In the event  
304 of an unfavorable determination, the board shall recommend appropriate amendments to this  
305 chapter.

306 Section 16. The corporate existence of the plan shall continue until terminated by law,  
307 but no such law shall take effect as long as the plan has bonds outstanding unless adequate  
308 provision has been made for the payment of those bonds pursuant to the documents authorizing  
309 the issuance of those bonds. Upon termination of the plan, any remaining funds after settlement  
310 of all outstanding obligations shall revert to the commonwealth.

311 Section 17. Upon the creation of a federal or multi-state catastrophic insurance or  
312 reinsurance program intended to serve purposes similar to the purposes of the fund created by  
313 this chapter, the board may take such action for coordination with or participation in the federal

314 or multi-state program or for such other actions as the board finds appropriate in the  
315 circumstances.

316 SECTION 3. The provisions of this act are hereby declared to be severable and if any  
317 such provisions or the application of such provisions to any person or circumstances shall be  
318 held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not be construed  
319 to affect the validity or constitutionality of any of the remaining provisions of this act or the  
320 application of such provisions to persons or circumstances other than those as to which it is held  
321 invalid.

322 SECTION 4. This act shall take effect on passage.