

**SENATE . . . . . No. 502**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
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An Act Relative to Increasing Access to Homeowners 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. The General Laws are hereby amended by inserting after Chapter 175J the  
2 following chapter:

3           CHAPTER 175K

4           THE MASSACHUSETTS WINDSTORM CATASTROPHE FUND

5           Section 1. The general court finds that:

6           (a) The private sector is not currently able to maintain a stable, orderly market for  
7 property insurance coverage of residential and commercial properties in coastal areas and other  
8 areas subject to damage to property from hurricanes, tornadoes, and other windstorms.

9           (b) As a consequence of the reduction in availability of private sector property insurance  
10 coverage, the number of properties covered by the Massachusetts FAIR Plan has risen  
11 dramatically in recent years, placing all Massachusetts property owners and their insurers at risk.

12 (c) Significant losses from hurricanes, tornadoes, and other windstorms will have a  
13 negative and destabilizing effect on the entire Massachusetts economy.

14 (d) The purpose of this act is to restore a stable, orderly, and competitive property  
15 insurance market and to safeguard the Massachusetts economy by creating a fund to provide a  
16 stable source of reimbursement to both the FAIR Plan and private sector insurers for a portion of  
17 their losses from catastrophic windstorm events.

18 (e) It is essential to the functioning of a governmental program to restore market stability  
19 and increase insurance capacity so that revenues received by the program be exempt from federal  
20 taxation. It is therefore the legislative intent of this chapter that the program be structured as a  
21 trust fund under the direction and control of a board composed of statewide elected officials and  
22 that the program operate exclusively for the purpose of protecting and advancing the  
23 commonwealth's interest in market stability and insurance capacity in the commonwealth.

24 Section 2. As used in this chapter, the following terms shall have the following meanings:

25 (a) "Actuarially indicated", with respect to premiums paid by insurers for reimbursement  
26 provided by the fund, an amount determined according to principles of actuarial science to be  
27 adequate, but not excessive, in the aggregate, to pay current and future obligations and expenses  
28 of the fund, based on the aggregate statewide average annual loss to all insurers from covered  
29 events. In calculating the aggregate statewide average annual loss from covered events, the fund  
30 shall use an average of the results of at least two catastrophic loss models generally accepted  
31 within the actuarial community. The term "actuarially indicated" includes additional amounts if  
32 needed to pay debt service on revenue bonds issued under this chapter and to provide required  
33 debt service coverage in excess of the amounts required to pay actual debt service on revenue

34 bonds issued under this chapter. The “actuarially indicated” premium for each insurer shall be  
35 determined according to principles of actuarial science to reflect each insurer's relative exposure  
36 to hurricane losses.

37 (b) “Board”, the Governing Board of the Massachusetts Windstorm Catastrophe Fund.

38 (c) "Bond", any bond, debenture, note, or other evidence of financial indebtedness issued  
39 under this chapter.

40 (d) “Corporation”, the Massachusetts Windstorm Catastrophe Fund Finance Corporation  
41 created by subsection (c) of section 6.

42 (e) "Covered event", any storm causing losses as defined in subsection (k) to residential  
43 or commercial property.

44 (f) "Covered policy", any insurance policy covering residential or commercial property in  
45 the commonwealth issued by an authorized insurer or the FAIR Plan.

46 (g) "Debt service", the amount required in any fiscal year to pay the principal of,  
47 redemption premium, if any, and interest on revenue bonds and any amounts required by the  
48 terms of documents authorizing, securing, or providing liquidity for revenue bonds necessary to  
49 maintain in effect any such liquidity or security arrangements.

50 (h) "Debt service coverage", the amount, if any, required by the documents under which  
51 revenue bonds are issued, which amount is to be received in any fiscal year in excess of the  
52 amount required to pay debt service for that fiscal year.

53 (i) “Fund”, the Massachusetts Windstorm Catastrophe Fund created by this chapter.

54 (j) "Insurer", any authorized insurer writing residential or commercial property insurance  
55 in the commonwealth, including the Massachusetts FAIR Plan.

56 (k) "Losses", direct incurred losses under covered policies attributable to the peril of  
57 windstorm, including damage from wind, wind-borne debris, or wind-borne water, and including  
58 consequential damages, but excluding damage from flood or rising water, except that the term  
59 "losses" shall not include losses for fair rental value, loss of use, or business interruption losses.  
60 The term "losses" also includes an allowance for loss adjustment expenses, which shall be  
61 calculated at a percentage specified in the reimbursement contract no lower than 5 per cent of  
62 losses and no greater than 8 percent of losses.

63 (l) "Retention", the amount of losses below for which an insurer is not entitled to  
64 reimbursement from the fund. An insurer's retention shall be calculated as follows:

65 (1) The fund shall calculate and report to each insurer the retention multiples for each  
66 contract year. For the contract year beginning January 1, 2008, the retention multiple shall be  
67 equal to \$600 million divided by the total estimated reimbursement premium for the contract  
68 year; for subsequent years, the retention multiple shall be equal to \$600 million, adjusted based  
69 upon the reported exposure from the prior contract year to reflect the percentage growth in  
70 exposure to the fund for covered policies since 2008, divided by the total estimated  
71 reimbursement premium for the contract year.

72 (2) An insurer shall determine its retention by multiplying its reimbursement premium, as  
73 determined under section 5, by the applicable retention multiple.

74 Section 3. (a) There shall be within the treasury of the commonwealth an independent  
75 trust fund to be known as the Massachusetts Windstorm Catastrophe Fund.

76 (b) The fund shall be administered by the Governing Board of the Massachusetts  
77 Windstorm Catastrophe Fund. The board shall consist of the governor, the attorney general, the  
78 state auditor, the state secretary, and the state treasurer and receiver general. The governor shall  
79 chair the board. The affirmative vote of at least 3 members of the board is required for any  
80 official action under this chapter, except for determination of alternative coverage levels under  
81 section 4 and determination of the reimbursement premium formula under section 5, which  
82 require the affirmative vote of all 5 members of the board.

83 (c) Moneys in the fund may not be expended, loaned, or appropriated except (i) to pay  
84 obligations of the fund arising out of reimbursement contracts entered into under section 4, (ii) to  
85 pay debt service on revenue bonds issued under section 6, and (iii) to pay the costs of the  
86 mitigation program under section 7, costs of procuring reinsurance, and the costs of  
87 administration of the fund. The board shall invest the moneys in the fund in the manner provided  
88 by law for other funds of the commonwealth. Except as otherwise provided in this chapter,  
89 earnings from all investments shall be retained in the fund.

90 (d) Managerial and administrative functions shall be performed by public employees  
91 employed by the board. In addition, the board may contract with professionals or service  
92 providers for specialized services upon a determination that the provision of such specialized  
93 services under contract is in the best interest of the commonwealth. The board may adopt rules  
94 that are reasonable and necessary to implement this chapter, including rules specifying the  
95 interest due on any delinquent remittances, which interest may not exceed the fund's rate of  
96 return plus 5 per cent. The board may, by rule, provide for the exemption from sections 4 and 5  
97 of insurers writing covered policies with less than \$5 million in aggregate exposure for covered  
98 policies if the exemption does not affect the actuarial soundness of the fund.

99 Section 4.

100 (a) Beginning January 1, 2008, the fund shall annually enter into a contract with each  
101 insurer to provide to the insurer the reimbursement described in subsections (b) and (d), in  
102 exchange for the reimbursement premium paid into the fund under section 5. As a condition of  
103 doing business in the commonwealth, each insurer shall enter into such a contract. The contract  
104 period shall be the calendar year.

105 (b)(1) The contract shall contain a promise by the fund to reimburse the insurer for 90 per  
106 cent of its losses from each covered event in excess of the insurer's retention, up to the maximum  
107 reimbursement determined under paragraph (3) of subsection (d).

108 (2) The governing board may provide participating insurers other than the Massachusetts  
109 FAIR Plan with the option to select a coverage level lower than the 90 per cent level specified in  
110 paragraph (1), but no lower than 45 per cent, in exchange for a proportionally lower  
111 reimbursement premium. The board shall specify such optional coverage levels at the same time  
112 as it approves the reimbursement premium formula under section 5. The optional coverage levels  
113 must be approved by unanimous vote of the membership of the board.

114 (3) The contract shall provide that reimbursement amounts shall not be reduced by  
115 reinsurance paid or payable to the insurer from other sources.

116 (c)(1) The contract shall also provide that the obligation of the fund with respect to all  
117 contracts covering a particular contract year shall not exceed \$4.86 billion for that contract year,  
118 except that, beginning with the 2009 contract year, the \$4.86 billion annual limit shall be  
119 adjusted based upon the reported exposure from the prior contract year to reflect the percentage  
120 change in exposure to the fund for covered policies since 2008.

121           (2) To facilitate coordination between fund reimbursements and reinsurance, the fund  
122 shall, beginning on December 1, 2006, and annually thereafter, provide each insurer with the  
123 data necessary to enable the insurer to make a reasonable projection of its retention and  
124 maximum projected payout from the fund for Losses for the ensuing contract year. For all  
125 regulatory and reinsurance purposes, an insurer may estimate its projected payout from the fund  
126 for Losses as its share of the total fund premium for the current contract year multiplied by the  
127 maximum aggregate fund payout for Losses as determined under paragraph (1).

128           (d) The contract shall:

129           (1) Require each insurer to report its losses from each covered event on a schedule  
130 specified by the fund.

131           (2) Require the fund to determine and pay, as soon as practicable after receiving initial  
132 reports of reimbursable losses, the initial amount of reimbursement due, and to determine and  
133 pay adjustments to this amount based on later loss information, subject to such review and  
134 verification as the fund considers appropriate. The adjustments to reimbursement amounts shall  
135 require the fund to pay, or the insurer to return, amounts reflecting the most recent calculation of  
136 losses.

137           (3) Specify that the insurer's reimbursement with respect to a contract year may not  
138 exceed the total claims-paying capacity of the fund, as determined under subsection (c),  
139 multiplied by the insurer's share of the total reimbursement premium paid to the fund for the  
140 contract year.

141           (4) Provide that if an insurer demonstrates to the fund that it is likely to qualify for  
142 reimbursement under the contract, and demonstrates to the fund that the immediate receipt of

143 moneys from the fund is likely to prevent the insurer from becoming insolvent or is otherwise in  
144 the public interest, the fund shall advance the insurer, at market interest rates, the amounts  
145 necessary to enable the insurer to timely pay claims; however, an advance under this paragraph  
146 may not exceed 50 per cent of the fund's estimate of the reimbursement due the insurer. The  
147 insurer's reimbursement shall be reduced by an amount equal to the amount of the advance and  
148 interest thereon.

149 (5) Provide that in the event of the insolvency of an insurer, the fund shall pay directly to  
150 the Receiver as defined in Section 180 A of Chapter 175 ("Receiver") for the benefit of  
151 Massachusetts policyholders of the insurer the net amount of all reimbursement moneys owed to  
152 the insurer. As used in this paragraph, the term "net amount of all reimbursement moneys"  
153 means that amount which remains after reimbursement for:

154 (i) Preliminary or duplicate payments owed to private reinsurers or other inuring  
155 reinsurance payments to private reinsurers that satisfy statutory or contractual obligations of the  
156 insolvent insurer attributable to covered events to such reinsurers; or (ii) Funds owed to a bank  
157 or other financial institution to cover obligations of the insolvent insurer under a credit  
158 agreement that assists the insolvent insurer in paying claims attributable to covered events.

159 The private reinsurers, banks, or other financial institutions shall be reimbursed or  
160 otherwise paid before payment to the Receiver, notwithstanding any law to the contrary. The  
161 Receiver shall pay all claims up to the maximum amount permitted by law; thereafter, the  
162 Receiver shall use any remaining reimbursement moneys paid to it under this chapter for pro rata  
163 payments of claims in excess of such maximum amount. This paragraph does not apply to the  
164 Massachusetts FAIR Plan.



165 (e) In order to ensure that insurers have properly reported the insured values on which  
166 the reimbursement premium is based and to ensure that insurers have properly reported the losses  
167 for which reimbursements have been made, the fund shall inspect, examine, and verify the  
168 records of each insurer's covered policies at such times as the fund considers appropriate and  
169 according to standards established by rule for the specific purpose of validating the accuracy of  
170 exposures and losses required to be reported under the terms and conditions of the  
171 reimbursement contract. The costs of the examinations shall be borne by the fund. However, in  
172 order to remove any incentive for an insurer to delay preparations for an examination, the fund  
173 shall be reimbursed by the insurer for any examination expenses incurred in addition to the usual  
174 and customary costs of the examination, which additional expenses were incurred as a result of  
175 an insurer's failure, despite proper notice, to be prepared for the examination or as a result of an  
176 insurer's failure to provide requested information while the examination is in progress. If the  
177 fund finds any insurer's records or other necessary information to be inadequate or inadequately  
178 posted, recorded, or maintained, the fund may employ experts to reconstruct, rewrite, record,  
179 post, or maintain such records or information, at the expense of the insurer being examined, if  
180 that insurer has failed to maintain, complete, or correct the records or deficiencies after the fund  
181 has given the insurer notice and a reasonable opportunity to do so.

182 Section 5.

183 (a) Each reimbursement contract shall require the insurer to annually pay to the fund an  
184 actuarially indicated premium for the reimbursement.

185 (b) The board shall select an independent consultant to develop a formula for  
186 determining the actuarially indicated premium to be paid to the fund. The formula shall specify,

187 for each zip code or other limited geographical area, the amount of premium to be paid by an  
188 insurer for each \$1,000 of insured value under covered policies in that zip code or other area. In  
189 establishing premiums, the board shall consider any factors that tend to enhance the actuarial  
190 sophistication of ratemaking for the fund, including deductibles, type of construction, type of  
191 coverage provided, relative concentration of risks, a factor providing for more rapid cash buildup  
192 in the fund until the fund capacity for a single year is fully funded, and other factors considered  
193 by the board to be appropriate. The formula may provide for a procedure to determine the  
194 premiums to be paid by new insurers that begin writing covered policies after the beginning of a  
195 contract year, taking into consideration when the insurer starts writing covered policies, the  
196 potential exposure of the insurer, the potential exposure of the fund, the administrative costs to  
197 the insurer and to the fund, and any other factors deemed appropriate by the board. The formula  
198 must be approved by unanimous vote of the membership of the board. The board may, at any  
199 time, revise the formula pursuant to the procedure provided in this subsection. If the board fails  
200 to approve the formula before the first day of the contract year, the formula used in the previous  
201 year shall apply.

202 (c) No later than November 1 of each year, each insurer shall notify the fund of its  
203 insured values under covered policies by zip code, as of September 1 of that year. On the basis of  
204 these reports, the fund shall calculate the premium due from each insurer for the ensuing contract  
205 year, based on the formula adopted under subsection (b). Each insurer shall pay the required  
206 annual premium pursuant to a periodic payment plan specified in the contract. The fund shall  
207 collect interest on late reimbursement premium payments consistent with the assumptions made  
208 in developing the premium formula in accordance with subsection (b).

209 (d) All premiums paid to the fund under reimbursement contracts shall be treated as  
210 premium for approved reinsurance for all accounting, regulatory, premium tax, and retaliatory  
211 tax purposes. An insurer's rates may reflect reimbursement premiums paid to the fund, and may,  
212 as to any particular geographic area or construction type, be structured to reflect the actual  
213 reimbursement premium attributable to that geographic area and construction type.

214 Section 6.

215 (a) (1) Upon the occurrence of a covered event and a determination that the  
216 unencumbered balance of the fund is or will be insufficient to pay reimbursement at the levels  
217 promised in the reimbursement contracts, the board may take the necessary steps under  
218 subsection (c) for the issuance of revenue bonds for the benefit of the fund. The proceeds of  
219 these revenue bonds may be used to make reimbursement payments under reimbursement  
220 contracts; to refinance or replace previously existing borrowings or financial arrangements; to  
221 pay interest on bonds; to fund reserves for the bonds; to pay expenses incident to the issuance or  
222 sale of any bond issued under this section, including costs of validating, printing, and delivering  
223 the bonds, costs of printing the official statement, costs of publishing notices of sale of the  
224 bonds, and related administrative expenses; or for such other purposes related to the financial  
225 obligations of the fund as the board may determine. The term of the bonds may not exceed 30  
226 years. The board may pledge or authorize the corporation to pledge all or a portion of all  
227 revenues under section 5 and under subsection (b) to secure these revenue bonds, and the board  
228 may execute such agreements between the board and the issuer of any revenue bonds and  
229 providers of other financing arrangements under subsection (b) of section 7 as the board  
230 considers necessary to evidence, secure, preserve, and protect this pledge. If reimbursement  
231 premiums received under section 5 or earnings on these premiums are used to pay debt service

232 on revenue bonds, the premiums and earnings shall be used only after the use of the moneys  
233 derived from assessments under subsection (b). The funds, credit, property, or taxing power of  
234 the commonwealth or political subdivisions of the commonwealth shall not be pledged for the  
235 payment of these bonds. The board may also enter into agreements under subsection (c) for the  
236 purpose of issuing revenue bonds in the absence of a covered event upon a determination that  
237 this action would maximize the ability of the fund to meet future obligations.

238 (2) The issuance of bonds under this section is for the public purpose of paying the  
239 proceeds of the bonds to insurers, thereby enabling insurers to pay the claims of policyholders to  
240 assure that policyholders are able to pay the cost of construction, reconstruction, repair,  
241 restoration, and other costs associated with damage to property of policyholders of covered  
242 policies after the occurrence of a covered event.

243 (b) (1) If the board determines that the unencumbered balance of the fund is insufficient  
244 to pay the obligations, costs, and expenses of the fund and the corporation, including repayment  
245 of revenue bonds and that portion of the debt service coverage not met by reimbursement  
246 premiums, the board shall direct the insurance commissioner to levy, by order, an emergency  
247 assessment on policyholders, measured by direct written premiums for all property and casualty  
248 lines of business in the commonwealth, including the property and casualty business of surplus  
249 lines insurers. For purposes of emergency assessments under this section, the term "property and  
250 casualty business" includes all lines of business identified on Form 2, Exhibit of Premiums and  
251 Losses, in the annual statement required of authorized insurers and any rule adopted under this  
252 section, except for those lines identified as accident and health insurance and except for policies  
253 written under the National Flood Insurance Program. The assessment shall be specified as a  
254 percentage of future premium collections and is subject to annual adjustments by the board to

255 reflect changes in premiums subject to assessments collected under this paragraph in order to  
256 meet debt obligations. The same percentage shall apply to all policies in lines of business subject  
257 to the assessment issued or renewed during the 12-month period beginning on the effective date  
258 of the assessment.

259 (2) The assessment on policyholders under this subsection shall be paid by the  
260 policyholder to the insurer that issued the policy. Each insurer shall collect from each  
261 policyholder the full amount of the assessment payable in respect to the policyholder's policy.  
262 All premium notices or invoices issued after the effective date of this act shall include a  
263 statement of the amount of the assessment, if any, listed separately from the amount of the  
264 premium.

265 (3) The aggregate annual assessment on policyholders under this subsection shall not  
266 exceed 6 per cent of premium. An annual assessment under this subsection shall continue as long  
267 as the revenue bonds issued with respect to which the assessment was imposed are outstanding,  
268 including any bonds the proceeds of which were used to refund the revenue bonds, unless  
269 adequate provision has been made for the payment of the bonds under the documents authorizing  
270 issuance of the bonds.

271 (4) The insurer shall collect the assessment from the policyholder at the same time as it  
272 collects the premium payment for each policy and shall remit the assessment collected to the  
273 fund or corporation as provided in the order issued by the insurance commissioner. The  
274 insurance commissioner shall verify the accurate and timely collection and remittance of  
275 emergency assessments and shall report the information to the board in a form and at a time  
276 specified by the board. Each insurer collecting assessments shall provide the information with

277 respect to premiums and collections that may be required by the insurance commissioner for  
278 verification of compliance with this subsection.

279 (5) With respect to assessments of surplus lines premiums, each surplus lines agent shall  
280 collect the assessment from the policyholder and remit the assessment as specified by order of  
281 the insurance commissioner.

282 (6) Any assessment authority not used for a particular contract year may be used for a  
283 subsequent contract year, but the combined percentage level of all assessments may not exceed  
284 the maximum specified in paragraph (2). After assessments have been levied, if the board  
285 determines that the unencumbered balance of the fund and assessment proceeds are insufficient  
286 to pay the obligations, costs, and expenses of the fund and the corporation, including repayment  
287 of revenue bonds and that portion of the debt service coverage not met by reimbursement  
288 premiums, the board shall direct the insurance commissioner to levy an additional emergency  
289 assessment up to an amount not exceeding the amount of unused assessment authority from a  
290 previous contract year or years.

291 (7) The emergency assessments authorized by this section are the legal obligation of the  
292 policyholder. The emergency assessments are not premiums and are not subject to any taxes,  
293 fees, or commissions. The amounts imposed on policyholders under this section are not subject  
294 to any retaliatory tax provisions or similar provisions. An insurer may treat the failure of an  
295 insured to pay an assessment as a failure to pay the premium. An insurer is not liable for  
296 uncollectible assessments.

297 (8) When an insurer is required to return an unearned premium, it shall also return any  
298 assessment collected from the policyholder that is attributable to the unearned premium. A credit

299 adjustment to the collected assessment may be made by the insurer with regard to future  
300 remittances that are payable to the fund or corporation, but the insurer is not entitled to a refund.

301 (c) (1) The general court further finds that:

302 (i) The public benefits corporation created under this subsection will provide a  
303 mechanism necessary for the cost-effective and efficient issuance of bonds. This mechanism will  
304 eliminate unnecessary costs in the bond issuance process, thereby increasing the amounts  
305 available to pay reimbursement for losses to property sustained as a result of hurricane damage.

306 (ii) The purpose of these bonds is to fund reimbursements through the Massachusetts  
307 Windstorm Catastrophe Fund to pay for the costs of construction, reconstruction, repair,  
308 restoration, and other costs associated with damage to properties of policyholders of covered  
309 policies due to the occurrence of a covered event.

310 (iii) The efficacy of the financing mechanism will be enhanced by the corporation's  
311 ownership of the assessments, by the insulation of the assessments from possible bankruptcy  
312 proceedings, and by covenants of the state with the corporation's bondholders.

313 (2)(i) There shall be a public benefits corporation, which is an instrumentality of the  
314 commonwealth, to be known as the Massachusetts Windstorm Catastrophe Fund Finance  
315 Corporation.

316 (ii) The corporation shall operate under the Governing Board of the Massachusetts  
317 Windstorm Catastrophe Fund.

318 (iii) The corporation shall have all of the powers of corporations organized under chapter  
319 156D, subject to this subsection.

320 (iv) The corporation may issue bonds and engage in other financial transactions that are  
321 necessary to provide sufficient funds to achieve the purposes of this chapter.

322 (v) The corporation may invest funds as provided by law for other funds of the  
323 commonwealth.

324 (vi) There shall be no liability on the part of, and no cause of action shall arise against,  
325 any board members or employees of the corporation for any actions taken by them in the  
326 performance of their duties under this subsection.

327 (vii) The commonwealth hereby covenants with holders of bonds of the corporation that  
328 the commonwealth will not repeal or abrogate the power of the board to direct the insurance  
329 commissioner to levy the assessments and to collect the proceeds of the revenues pledged to the  
330 payment of these bonds as long as any such bonds remain outstanding unless adequate provision  
331 has been made for the payment of these bonds pursuant to the documents authorizing the  
332 issuance of the bonds.

333 (4) The bonds of the corporation are not a debt of the commonwealth or of any political  
334 subdivision, and neither the commonwealth nor any political subdivision is liable on these bonds.  
335 The corporation does not have the power to pledge the credit, the revenues, or the taxing power  
336 of the commonwealth or of any political subdivision. The credit, revenues, or taxing power of the  
337 commonwealth or of any political subdivision shall not be considered to be pledged to the  
338 payment of any bonds of the corporation.

339 (5)(i) The property, revenues, and other assets of the corporation; the transactions and  
340 operations of the corporation and the income from such transactions and operations; and all



341 bonds issued under this subsection and interest on these bonds are exempt from taxation by the  
342 commonwealth.

343 (ii) All bonds of the corporation shall be and constitute legal investments without  
344 limitation for all public bodies of the commonwealth; for all banks, trust companies, savings  
345 banks, savings associations, savings and loan associations, and investment companies; for all  
346 administrators, executors, trustees, and other fiduciaries; for all insurance companies and  
347 associations and other persons carrying on an insurance business; and for all other persons who  
348 are now or may hereafter be authorized to invest in bonds or other obligations of the  
349 commonwealth and shall be and constitute eligible securities to be deposited as collateral for the  
350 security of any commonwealth, county, municipal, or other public funds. This paragraph shall be  
351 considered as additional and supplemental authority and shall not be limited without specific  
352 reference to this paragraph.

353 (6) The corporation and its corporate existence shall continue until terminated by law,  
354 but no such law shall take effect as long as the corporation has bonds outstanding unless  
355 adequate provision has been made for the payment of those bonds pursuant to the documents  
356 authorizing the issuance of those bonds. Upon termination of the existence of the corporation, all  
357 of its rights and properties in excess of its obligations shall pass to and be vested in the  
358 commonwealth.

359 (d) (1) As long as the corporation has any bonds outstanding, neither the fund nor the  
360 corporation shall have the authority to file a voluntary petition under chapter 9 of the federal  
361 Bankruptcy Code or the corresponding chapter or sections that may be in effect, from time to  
362 time, and neither any public officer nor any organization, entity, or other person shall authorize

363 the fund or the corporation to be or become a debtor under chapter 9 of the federal Bankruptcy  
364 Code or such corresponding chapter or sections as may be in effect, from time to time, during  
365 any such period.

366 (2) The commonwealth hereby covenants with holders of bonds of the corporation that  
367 the commonwealth will not limit or alter the denial of authority under this subsection or the  
368 rights under this chapter vested in the fund or the corporation to fulfill the terms of any  
369 agreements made with such bondholders or in any way impair the rights and remedies of those  
370 bondholders as long as any bonds remain outstanding unless adequate provision has been made  
371 for the payment of those bonds pursuant to the documents authorizing the issuance of the bonds.

372 (3) Notwithstanding any other law, any pledge of or other security interest in revenue,  
373 money, accounts, contract rights, general intangibles, or other personal property made or created  
374 by the fund or the corporation shall be valid, binding, and perfected from the time the pledge is  
375 made or other security interest attaches without any physical delivery of the collateral or further  
376 act and the lien of the pledge or other security interest shall be valid, binding, and perfected  
377 against all parties having claims of any kind in tort, contract, or otherwise against the fund or the  
378 corporation irrespective of whether or not the parties have notice of the claims. No instrument by  
379 which such a pledge or security interest is created nor any financing statement need be recorded  
380 or filed.

381 (e) When the board makes a determination that emergency assessments are to be levied,  
382 the board shall also adopt a plan for the refund of assessment proceeds, which plan will be  
383 activated only after all bonds of the corporation have been retired and the unencumbered balance  
384 of the fund exceeds the maximum payout of the fund as specified in paragraph (1) of subsection

385 (c)of section 4. The plan shall provide for rebates to then-current policyholders of assessable  
386 policies in proportion to premiums paid by the policyholder in the year preceding the year in  
387 which rebates are paid out.

388 Section 7. (a) The fund may procure reinsurance for the purpose of maximizing the  
389 capacity of the fund.

390 (b) In addition to borrowing under section 6, the fund may also borrow from, or enter  
391 into other financing arrangements with, any market sources at prevailing interest rates.

392 (c) Each fiscal year, the sum of \$5 million shall be appropriated from the investment  
393 income of the fund for the purpose of providing funding for local governments, public agencies,  
394 public and private educational institutions, and nonprofit organizations to support programs  
395 intended to improve windstorm preparedness, reduce potential losses in the event of a  
396 windstorm, provide research into means to reduce such losses, educate or inform the public as to  
397 means to reduce windstorm losses, assist the public in determining the appropriateness of  
398 particular upgrades to structures or in the financing of such upgrades, or protect local  
399 infrastructure from potential damage from a windstorm. If the investment income of the fund  
400 from the year preceding the appropriation exceeds \$20 million, the amount available for  
401 appropriation under this subsection shall be no less than \$5 million and no more than 25 per cent  
402 of the investment income of the fund from the prior year. Moneys shall first be available for  
403 appropriation under this subsection for fiscal year 2009-2010.

404 (d) The fund may allow insurers to comply with reporting requirements and reporting  
405 format requirements by using alternative methods of reporting if the proper administration of the

406 fund is not thereby impaired and if the alternative methods produce data which is consistent with  
407 the purposes of this chapter.

408 (e) In order to assure the equitable operation of the fund, the fund may impose a  
409 reasonable fee on an insurer to recover costs involved in reprocessing inaccurate, incomplete, or  
410 untimely exposure data submitted by the insurer.

411 Section 8. (a) The Massachusetts Windstorm Catastrophe Fund Advisory Council is  
412 created for the purpose of providing advice and information to the board. The advisory council  
413 shall consist of 14 members appointed as provided in this section.

414 (b) The board shall appoint the following 8 members: a property/casualty actuary, a  
415 structural engineer, a meteorologist, a representative of personal lines insurers, a representative  
416 of commercial lines insurers, a representative of insurance agents, a representative of reinsurers,  
417 and a representative of mortgage lenders, all of whom shall serve at the pleasure of the board.

418 (c) Each member of the board shall appoint 1 person as a consumer representative, who  
419 shall serve at the pleasure of the board member responsible for the appointment.

420 (d) The insurance commissioner shall serve as an ex-officio member and shall chair the  
421 advisory council.

422 Section 9. Any violation of this chapter or of rules adopted under this chapter shall  
423 constitute a violation of the insurance code.

424 Section 10. The board may take any action necessary to enforce the rules, and the  
425 provisions and requirements of the reimbursement contract, required by and adopted pursuant to  
426 this chapter.

427 Section 11. Upon the creation of a federal or multi-state catastrophic insurance or  
428 reinsurance program intended to serve purposes similar to the purposes of the fund created by  
429 this chapter, the board may recommend legislative action for coordination with the federal or  
430 multi-state program, for termination of the fund, or for such other actions as the board finds  
431 appropriate in the circumstances.

432 Section 12. The fund and the duties of the board under this chapter may be terminated  
433 only by law. Upon termination of the fund, all assets of the fund shall revert to the  
434 commonwealth.

435 Section 13. The board shall promptly seek a determination from the Internal Revenue  
436 Service establishing that the fund is exempt from federal taxation and that bonds issued on behalf  
437 of the fund may be issued on a tax-free basis. In the event of an unfavorable determination, the  
438 board shall recommend appropriate amendments to this chapter.

439 SECTION 2. Chapter 175 of the General Laws, as appearing in the 2006 Official Edition,  
440 is hereby amended by inserting after section 4C the following section:- Section 4D. The  
441 commissioner shall adopt regulations to require all insurers licensed to write and engaged in the  
442 writing of homeowners insurance the commonwealth and the joint underwriting association,  
443 established in chapter 175C, shall produce a standard outline of coverage written in language  
444 prescribed or approved by the commissioner that describe the features of the coverage. Each  
445 insurer, including the joint underwriting association, shall be required to provide this information  
446 to each policyholder upon the issuance or renewal of a policy. SECTION 3. Said chapter 175, as  
447 so appearing, is hereby amended by inserting after section 99C the following 2 sections: -  
448 Section 99D. (a) In all instances where an insurance company licensed to write property

449 insurance in the commonwealth offers or includes any deductible for wind related damages and  
450 mitigation measures related to such deductible, the insurance company shall provide prominent  
451 and clear notice to the insured that shall be included with the policy issuance or renewal package,  
452 and shall fully disclose all details pertaining to any such deductible and mitigation measure in a  
453 format approved by the commissioner of insurance. (b) An insurer may only apply a  
454 deductible for wind related damages in personal lines of insurance, where: (1) the  
455 deductible is specifically approved by the commissioner and shall not exceed 3 per cent of the  
456 insured value of the dwelling; (2) the deductible shall be applicable to losses due to a  
457 hurricane during the period commencing with the issuance of a hurricane warning or hurricane  
458 wind speed warning for any part of the state by the National Hurricane Center and concluding 24  
459 hours after the termination of the last hurricane warning or hurricane wind speed warning for any  
460 part of the state;(3) the deductible, whether a flat dollar amount or a percentage of insured value,  
461 shall be presented in at least 2 examples that illustrate the application of the deductible to the  
462 insured. Nothing herein shall prohibit the insurer from providing any additional information to  
463 the insured to assist in the insured's understanding of the deductible to be applied to the insured's  
464 policy. (c) The commissioner, in consultation with the board of building and regulations  
465 and standards, shall investigate mitigation measures designed to reduce losses from wind related  
466 damages. Based so far as reasonably feasible on national standards for such measures and  
467 practices in other comparable states, the commissioner shall adopt regulations describing  
468 approved mitigation measures and the minimum corresponding benefits, such as credits, lower  
469 deductibles, and reduced premiums that policyholders will receive from insurers upon  
470 completion of said measures and either inspection of the property by the insurer or submission of  
471 satisfactory proof of installation of the approved mitigation measures by the insured. (d)

472 The commissioner shall adopt regulations to implement this section. Section 99E. (a)  
473 There shall be a Center for Hurricane Research, hereinafter referred to as the center, at the  
474 University of Massachusetts at Lowell. The center shall employ such expert, clerical, or other  
475 assistants as the work of the center may require. For the purpose of carrying out its duties as set  
476 forth in this section the center may expend such funds as may be appropriated to the University  
477 of Massachusetts at Lowell. (b) The center shall develop criteria for hurricane loss projection  
478 models and methodologies that are specific to Massachusetts and may from time to time adopt  
479 revisions to these criteria. In establishing the criteria, the center shall consider any models, model  
480 software, methods, principles, standards, data, inputs, manuals, validation studies and output  
481 ranges that have the potential for improving the accuracy of or reliability of the hurricane loss  
482 projections used in homeowners' insurance rate filings. The criteria developed under this  
483 subsection shall be based on actual data on Massachusetts construction practices, codes, and  
484 buildings. Criteria developed by the center for this purpose shall be a public record. (c) Insurers  
485 filing rates for approval by the commissioner shall submit to the center all hurricane models,  
486 model software, methods, principles, standards, data, inputs, manuals, validation studies and  
487 output ranges relevant to the insurer's hurricane loss projection model or methodology that is  
488 intended to be used during a rate proceeding on an insurer's rate filing in advance of the rate  
489 proceeding. The center shall review the accuracy or reliability of particular models, model  
490 software, methods, principles, standards, data, inputs, manuals, validation studies and output  
491 ranges submitted to the center by insurers and shall make recommendations relative to the  
492 accuracy and reliability of the particular models, model software, methods, principles, standards,  
493 data, inputs, manuals, validation studies and output ranges submitted to the center by insurers  
494 using the criteria developed by the center under subsection (b). The center shall have discretion

495 to review findings made by similar centers, commissions, or regulatory bodies and to focus on  
496 those aspects of the hurricane loss projection methodologies submitted to the center by insurers  
497 that are specific to Massachusetts. All models, model software, methods, principles, standards,  
498 data, inputs, manuals, validation studies and output ranges shall be submitted to the center for  
499 review within a reasonable period of time, as determined by the center, prior to being admitted as  
500 evidence during a rate proceeding before the commissioner of insurance. If any insurer fails to  
501 submit any item or items required by the center under this subsection, the commissioner shall  
502 direct the insurer to remove the hurricane loss projection from its filing.(d) There shall be a  
503 rebuttable presumption that the recommendations made by the center relative to the accuracy or  
504 reliability of particular models, model software, methods, principles, standards, data, inputs,  
505 manuals, validation studies and output ranges submitted to the center by insurers shall be  
506 considered by the commissioner to be relevant evidence in a rate proceeding on an insurer's rate  
507 filing, provided, however that an exemption from the disclosure of trade secrets to the public  
508 may apply as set forth in subsection (e). (e) A trade secret used in designing and constructing a  
509 hurricane loss model or methodology, provided by an insurer to the center under subsection (c),  
510 is confidential and shall not be deemed a public record, as defined in clause Twenty-sixth of  
511 section 7 of chapter 4. The center shall maintain custody of any records made confidential by  
512 this paragraph using a secure location or website. That portion of a rate proceeding on an  
513 insurer's rate filing at which a trade secret is discussed shall be deemed confidential and not open  
514 to disclosure under the open meetings law, but may be discussed at a closed meeting as provided  
515 for in section 11A ½ of chapter 30A. Employees, volunteers, and students of the center will be  
516 bound not to disclose information made confidential.(f) The center may form a multi-state center  
517 with the states of Rhode Island, Connecticut and any other interested state in furtherance of the



518 goals of this section. SECTION 4. Clause (1) of subsection (A) of section 177O of said chapter  
519 175, as so appearing, is hereby amended by striking out, in line 7, the word “producer” and  
520 inserting in place there of the words “reinsurance intermediary broker” SECTION 5. Clause (1)  
521 of subsection D of said section 177O of said chapter 175, as so appearing, is hereby amended by  
522 striking out the second sentence. SECTION 6. Section 1 of chapter 175C of the general laws,  
523 as so appearing, is hereby amended by striking out definition of “Basic property insurance” and  
524 inserting in place thereof the following definition:- “Basic property insurance”, insurance  
525 against direct loss to property as defined and limited in the standard fire policy and extended  
526 coverage endorsement thereon, filed with and accepted by the commissioner, and insurance  
527 against direct loss to such property from the perils of vandalism and malicious mischief and  
528 dwelling coverages, including liability coverages for one (1) to four (4) family owner and non-  
529 owner occupied dwellings either by endorsement or as a stand-alone policy and homeowners  
530 coverages, excluding the unlimited guaranteed replacement cost endorsement, but including the  
531 scheduled personal property endorsement and such other coverages as the commissioner after  
532 public hearing shall determine or the secretary of the United States department of housing and  
533 urban development shall designate by rule made in accordance with the provisions of the Urban  
534 Property Protection and Reinsurance Act of 1968 (Public Law 90-448) but shall not include  
535 insurance on automobile or manufacturing risks except such classes of manufacturing risks as  
536 may, after proper hearing, be designated by the commissioner. SECTION 7. Chapter 175C of  
537 the General Laws, as so appearing, is hereby amended by striking out section 4 and inserting in  
538 place thereof the following section:- Section 4. (a) All insurers licensed to write and  
539 engaged in writing in this commonwealth, on a direct basis, basic property insurance or any  
540 component thereof in multi-peril policies, shall cooperate in organizing a joint underwriting

541 association which shall provide basic property insurance to eligible applicants who are otherwise  
542 unable to obtain such coverage in the voluntary market. Every such insurer shall be a member of  
543 the association and remain a member as a condition of its authority to transact such insurance  
544 within the commonwealth. (b) Such association shall be authorized to inspect properties,  
545 issue policies, collect premiums and accept payment in installments under plans approved by the  
546 commissioner consistent with plans offered by voluntary market insurers and reflecting options  
547 for at least 6 payments annually, adjust claims and pay losses on behalf of its members, employ  
548 officers, agents and other employees, enter into contracts, sue and be sued in its own name and  
549 take all other actions necessary or appropriate to carry out its functions. (c) The  
550 association shall submit to the commissioner a proposed plan of operation, consistent with the  
551 purposes of this chapter, to provide for the prompt and efficient provision of basic property  
552 insurance to eligible applicants who meet reasonable underwriting standards and are otherwise  
553 unable to obtain coverage from insurers in the voluntary market. Such plan of operation shall  
554 provide for economical, fair and nondiscriminatory administration including, but not limited to,  
555 provisions for preliminary assessment of all members for initial expenses necessary to  
556 commence operations, establishment of necessary facilities, management of the association,  
557 assessment of members to defray losses and expenses, commissions, reasonable underwriting  
558 standards and limits of liability, purchase of reinsurance and procedures for determining amounts  
559 of insurance to be provided. (d) The plan of operation shall be subject to approval by the  
560 commissioner and shall take effect 10 days after the commissioner approves it. If the  
561 commissioner disapproves the proposed plan of operation, the association shall, within 30days,  
562 submit for review an appropriately revised plan of operation and, if the association fails to  
563 submit such a plan or if the revised plan is also disapproved by the commissioner, the

564 commissioner shall adopt a plan of operation consistent with this section. The association may,  
565 on its own initiative or at the request of the commissioner, amend the plan of operation, subject  
566 to approval by the commissioner. (e) (1) All members of the association shall participate  
567 in its writing, expenses, profits and losses in the proportion that the premiums written by each  
568 such member for basic property insurance, as defined in section one, except premiums for  
569 insurance on automobile and manufacturing risks excluded from the plan and that portion of the  
570 premiums attributable to the operation of the association during the preceding calendar year, bear  
571 to the aggregate premiums for such insurance written in the commonwealth by all members of  
572 the association. Such participation by each insurer in the association shall be determined  
573 annually on the basis of such premiums written during the preceding calendar years as disclosed  
574 in the annual statements and other reports filed by the insurer with the commissioner. (2)  
575 The participation of each member of the association writing personal lines coverage shall be  
576 adjusted based on the homeowners premiums written by such a member in any credit-eligible zip  
577 code, defined as all zip codes in Massachusetts where the Fair Plan market share exceeds 1.5  
578 times the Fair Plan statewide market share, never less than 15%, averaged over the latest three  
579 calendar years, in accordance with the following clauses: (i) The participation ratio of  
580 each member writing personal lines insurance shall be recalculated, in accordance with the  
581 procedures set forth in subparagraph (1) but subtracting the premium written by members of the  
582 association writing only commercial lines insurance from the aggregate premiums written in the  
583 commonwealth by all members of the association. (ii) The participation ratio of each  
584 member writing personal lines insurance as recalculated in clause (i) shall be multiplied by the  
585 sum of the total premium written by the association in the commonwealth and 150% of the total  
586 industry homeowners credit eligible premium written in credit-eligible zip codes, as defined in

587 this chapter. (iii) The product of the multiplication described in clause (ii) of this  
588 subsection shall be (A) reduced by subtracting therefrom 150% of the homeowners premium  
589 written by each member in any credit-eligible zip code in the year of an MPIUA loss or (B) shall  
590 be increased by adding therefrom 150% of the homeowners premium written by each member in  
591 any credit-eligible zip code in the year of an MPIUA profit. (iv) The result of the  
592 calculation described in clause (iii) for a carrier, never less than zero, shall be divided by sum of  
593 this calculation across all carriers. The resulting ratio shall be the adjusted participation ratio for  
594 the member. (v) The adjusted participation ratio of those members whose participation  
595 ratio is calculated as provided in this subparagraph shall apply to that portion of the writings,  
596 expenses, profits and losses of the association not recovered by applying the participation ratios  
597 of the remaining members of the association as calculated, as provided in subparagraph (1).

598 (3) The participation of any member of the association writing personal lines insurance  
599 shall be further adjusted if such member has written homeowners insurance during the preceding  
600 calendar year, hereafter called the base year, on property that was insured by the association in  
601 the year immediately preceding such base year and which is located in any credit eligible zip  
602 code, defined as all zip codes in Massachusetts where the Fair Plan market share exceeds 1.5  
603 times the Fair Plan statewide market share, never less than 15%, averaged over the latest three  
604 calendar years. The participation of such a member shall be adjusted by (i) reducing the amount  
605 of premium written by such member in subparagraph (1) by one hundred percent of the total  
606 homeowners insurance premiums written by the member on property described in this clause in  
607 the year of an MPIUA loss or by (ii) increasing the amount of premium written by such member  
608 in subparagraph (1) by one hundred percent of the total homeowners insurance premiums written  
609 by the member on property described in this clause in the year of an MPIUA profit. Such

610 adjustment shall not apply to any insurance written on property that was insured by the member  
611 or any affiliate or subsidiary member in either of the two years preceding the base year.

612 (f) The association shall be governed by a board of 18 directors, who shall serve without  
613 compensation. Ten directors shall be elected annually by the members of the association by  
614 cumulative voting; 2 directors of associations of insurance agents and brokers doing business in  
615 the commonwealth appointed by the commissioner; 4 directors from the general public appointed  
616 by the commissioner; and 2 directors from the general public appointed by the attorney general.  
617 The 6 directors appointed from the general public by the commissioner of insurance and the  
618 attorney general shall serve 3 year terms, staggered in a manner to ensure the annual expiration  
619 of the terms of 2 directors, and shall not serve as director for more than 3 consecutive terms. The  
620 6 directors appointed from the general public may not have affiliations with the insurance  
621 industry. Cumulative voting by members shall be permitted at all such elections.

SECTION 8.  
622 Subsection (c) of section 5 of said chapter 175C, as so appearing, is hereby amended by  
623 inserting after the third sentence, the following sentence: “Nothing in this subsection shall be  
624 construed as to prevent the commissioner from considering the following premium adjustments  
625 on owner’s policy forms for homeowners in all territories: adjustments to key factors to keep  
626 costs reasonable for applicants with Coverage A amounts less than the median Coverage A  
627 amount within that territory, coastal area rating factors that are based upon predicted hurricane  
628 losses associated with distance from the coast, approving rating adjustments to keep costs  
629 reasonable for primary residents, and approving rating adjustments to keep costs reasonable for  
630 insureds over the age of 64.”

SECTION 9. Said section 5 of said chapter 175C, as so appearing,  
631 is hereby further amended by inserting the following subsection:-(d) The commissioner shall  
632 develop a disclosure form to inform individuals seeking to purchase basic property insurance

633 about the risks associated with choosing solely a stand alone liability policy. This form shall be  
634 written in plain language, explained to an individual seeking to purchase stand along liability  
635 coverage as their sole basic property insurance, and signed by that individual. SECTION 10.  
636 Said chapter 175C is hereby further amended by adding the following section:—Section 10. The  
637 association shall pay a dividend on homeowners insurance premiums for coastal properties  
638 occupied as primary residences having a Coverage A limit not greater than the median Coverage  
639 A for the territory in which the property is located. This dividend shall be paid in a year which is  
640 the third consecutive year in which there have been no hurricane-related losses in the territory  
641 and this dividend shall be a third of all hurricane loss premiums, less the cost of reinsurance  
642 purchased by the association. This dividend shall not be paid in a year when such payment shall  
643 cause the association to realize a net loss for that year, and shall only be made in a year in which  
644 the association has purchased adequate reinsurance for hurricane losses, as determined by the  
645 commissioner. The possibility of a dividend shall not be considered by the commissioner in  
646 approving rates proposed by the association.

647 Said chapter 175C is hereby further amended by adding the following section:—Section  
648 10. The association shall pay a dividend on homeowners insurance premiums for coastal  
649 properties occupied as primary residences having a Coverage A limit not greater than the median  
650 Coverage A for the territory in which the property is located. This dividend shall be paid in a  
651 year which is the third consecutive year in which there have been no hurricane-related losses in  
652 the territory and this dividend shall be a third of all hurricane loss premiums, less the cost of  
653 reinsurance purchased by the association. This dividend shall not be paid in a year when such  
654 payment shall cause the association to realize a net loss for that year, and shall only be made in a  
655 year in which the association has purchased adequate reinsurance for hurricane losses, as

656 determined by the commissioner. The possibility of a dividend shall not be considered by the  
657 commissioner in approving rates proposed by the association.

658 SECTION 11. Notwithstanding the provisions of section 7, the appointment of the 4  
659 directors from the general public appointed by the commissioner of insurance shall be as follows:  
660 2 directors shall be appointed for a term of 3 years, 1 director shall be appointed for a term of 2  
661 years, and 1 director shall be appointed for a term of 1 year. The appointment of the 2 directors  
662 from the general public appointed by the attorney general shall be as follows: 1 director shall be  
663 appointed for a term of 2 years and 1 director shall be appointed for a term of 1 year. Upon  
664 expiration of these appointments, all subsequent appointments of directors from the general  
665 public shall be appointed for 3 year termsSECTION 12. The department of revenue, in  
666 consultation with the division of insurance, shall make an investigation and study relative to the  
667 benefits and viability of a low interest loan program to assist homeowners in the commonwealth  
668 with both the costs associated with the purchase and installation of approved mitigation measures  
669 as described in section 2 and homeowners insurance deductibles on damage associated with wind  
670 storms. The department shall also study the potential utilization by homeowners as well as the  
671 funding required to support such a loan program. The department of revenue shall file a  
672 report of the results of its investigation, along with any legislative and regulatory  
673 recommendations, with the joint committee on financial services and the clerks of the senate and  
674 house of on or before January 15, 2009.SECTION 13. Section 99D of chapter 175 of the  
675 General Laws shall apply to all policies issued or renewed on or after June 30, 2009