

SENATE No. 1856

The Commonwealth of Massachusetts

PRESENTED BY:

Daniel A. Wolf

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to increasing access to homeowners insurance..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Daniel A. Wolf</i>	
<i>Demetrius J. Atsalis</i>	<i>2nd Barnstable</i>
<i>Timothy R. Madden</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>Randy Hunt</i>	<i>5th Barnstable</i>

SENATE No. 1856

By Mr. Wolf, petition (accompanied by bill, Senate, No. 1856) of Hunt, Peake, Madden and other members of the General Court for legislation relative to increasing access to homeowners insurance [Joint Committee on Financial Services].

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 502 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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 - THE MASSACHUSETTS WINDSTORM
4 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
25 meanings:

26 (a) "Actuarially indicated", with respect to premiums paid by insurers for reimbursement
27 provided by the fund, an amount determined according to principles of actuarial science to be
28 adequate, but not excessive, in the aggregate, to pay current and future obligations and expenses
29 of the fund, based on the aggregate statewide average annual loss to all insurers from covered
30 events. In calculating the aggregate statewide average annual loss from covered events, the fund

shall use an average of the results of at least two catastrophic loss models generally accepted within the actuarial community. The term “actuarially indicated” includes additional amounts if needed to pay debt service on revenue bonds issued under this chapter and to provide required debt service coverage in excess of the amounts required to pay actual debt service on revenue bonds issued under this chapter. The “actuarially indicated” premium for each insurer shall be determined according to principles of actuarial science to reflect each insurer's relative exposure to hurricane losses.

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

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

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

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

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

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

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

(i) "Fund", the Massachusetts Windstorm Catastrophe Fund created by this chapter.

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

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

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

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

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

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

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

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

(d) Managerial and administrative functions shall be performed by public employees employed by the board. In addition, the board may contract with professionals or service providers for specialized services upon a determination that the provision of such specialized services under contract is in the best interest of the commonwealth. The board may adopt rules

that are reasonable and necessary to implement this chapter, including rules specifying the interest due on any delinquent remittances, which interest may not exceed the fund's rate of return plus 5 per cent. The board may, by rule, provide for the exemption from sections 4 and 5 of insurers writing covered policies with less than \$5 million in aggregate exposure for covered policies if the exemption does not affect the actuarial soundness of the fund.

Section 4. (a) Beginning January 1, 2008, the fund shall annually enter into a contract with each insurer to provide to the insurer the reimbursement described in subsections (b) and (d), in exchange for the reimbursement premium paid into the fund under section 5. As a condition of doing business in the commonwealth, each insurer shall enter into such a contract. The contract period shall be the calendar year.

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

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

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

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

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

(d) The contract shall:

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

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

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

(4) Provide that if an insurer demonstrates to the fund that it is likely to qualify for reimbursement under the contract, and demonstrates to the fund that the immediate receipt of moneys from the fund is likely to prevent the insurer from becoming insolvent or is otherwise in the public interest, the fund shall advance the insurer, at market interest rates, the amounts necessary to enable the insurer to timely pay claims; however, an advance under this paragraph may not exceed 50 per cent of the fund's estimate of the reimbursement due the insurer. The insurer's reimbursement shall be reduced by an amount equal to the amount of the advance and interest thereon.

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

(i) Preliminary or duplicate payments owed to private reinsurers or other inuring reinsurance payments to private reinsurers that satisfy statutory or contractual obligations of the insolvent insurer attributable to covered events to such reinsurers; or (ii) Funds owed to a bank or other financial institution to cover obligations of the insolvent insurer under a credit 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.

Section 5. (a) Each reimbursement contract shall require the insurer to annually pay to the fund an actuarially indicated premium for the reimbursement.

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

(c) No later than November 1 of each year, each insurer shall notify the fund of its insured values under covered policies by zip code, as of September 1 of that year. On the basis of these reports, the fund shall calculate the premium due from each insurer for the ensuing contract year, based on the formula adopted under subsection (b). Each insurer shall pay the required

annual premium pursuant to a periodic payment plan specified in the contract. The fund shall collect interest on late reimbursement premium payments consistent with the assumptions made in developing the premium formula in accordance with subsection (b).

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

Section 6. (a) (1) Upon the occurrence of a covered event and a determination that the unencumbered balance of the fund is or will be insufficient to pay reimbursement at the levels promised in the reimbursement contracts, the board may take the necessary steps under subsection (c) for the issuance of revenue bonds for the benefit of the fund. The proceeds of these revenue bonds may be used to make reimbursement payments under reimbursement contracts; to refinance or replace previously existing borrowings or financial arrangements; to pay interest on bonds; to fund reserves for the bonds; to pay expenses incident to the issuance or sale of any bond issued under this section, including costs of validating, printing, and delivering the bonds, costs of printing the official statement, costs of publishing notices of sale of the bonds, and related administrative expenses; or for such other purposes related to the financial obligations of the fund as the board may determine. The term of the bonds may not exceed 30 years. The board may pledge or authorize the corporation to pledge all or a portion of all revenues under section 5 and under subsection (b) to secure these revenue bonds, and the board may execute such agreements between the board and the issuer of any revenue bonds and providers of other financing arrangements under subsection (b) of section 7 as the board

considers necessary to evidence, secure, preserve, and protect this pledge. If reimbursement premiums received under section 5 or earnings on these premiums are used to pay debt service on revenue bonds, the premiums and earnings shall be used only after the use of the moneys derived from assessments under subsection (b). The funds, credit, property, or taxing power of the commonwealth or political subdivisions of the commonwealth shall not be pledged for the payment of these bonds. The board may also enter into agreements under subsection (c) for the purpose of issuing revenue bonds in the absence of a covered event upon a determination that this action would maximize the ability of the fund to meet future obligations.

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

(b) (1) If the board determines that the unencumbered balance of the fund is insufficient to pay the obligations, costs, and expenses of the fund and the corporation, including repayment of revenue bonds and that portion of the debt service coverage not met by reimbursement premiums, the board shall direct the insurance commissioner to levy, by order, an emergency assessment on policyholders, measured by direct written premiums for all property and casualty lines of business in the commonwealth, including the property and casualty business of surplus lines insurers. For purposes of emergency assessments under this section, the term "property and casualty business" includes all lines of business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required of authorized insurers and any rule adopted under this section, except for those lines identified as accident and health insurance and except for policies

written under the National Flood Insurance Program. The assessment shall be specified as a percentage of future premium collections and is subject to annual adjustments by the board to reflect changes in premiums subject to assessments collected under this paragraph in order to meet debt obligations. The same percentage shall apply to all policies in lines of business subject to the assessment issued or renewed during the 12-month period beginning on the effective date of the assessment.

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

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

(4) The insurer shall collect the assessment from the policyholder at the same time as it collects the premium payment for each policy and shall remit the assessment collected to the fund or corporation as provided in the order issued by the insurance commissioner. The insurance commissioner shall verify the accurate and timely collection and remittance of

emergency assessments and shall report the information to the board in a form and at a time specified by the board. Each insurer collecting assessments shall provide the information with respect to premiums and collections that may be required by the insurance commissioner for verification of compliance with this subsection.

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

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

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

(8) When an insurer is required to return an unearned premium, it shall also return any assessment collected from the policyholder that is attributable to the unearned premium. A credit adjustment to the collected assessment may be made by the insurer with regard to future remittances that are payable to the fund or corporation, but the insurer is not entitled to a refund.

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

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

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

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

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

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

316 (iii) The corporation shall have all of the powers of corporations organized under chapter
317 156D, subject to this subsection.

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

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

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

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

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

(5)(i) The property, revenues, and other assets of the corporation; the transactions and operations of the corporation and the income from such transactions and operations; and all bonds issued under this subsection and interest on these bonds are exempt from taxation by the commonwealth.

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

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

(d) (1) As long as the corporation has any bonds outstanding, neither the fund nor the corporation shall have the authority to file a voluntary petition under chapter 9 of the federal

359 Bankruptcy Code or the corresponding chapter or sections that may be in effect, from time to
360 time, and neither any public officer nor any organization, entity, or other person shall authorize
361 the fund or the corporation to be or become a debtor under chapter 9 of the federal Bankruptcy
362 Code or such corresponding chapter or sections as may be in effect, from time to time, during
363 any such period.

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

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

379 (e) When the board makes a determination that emergency assessments are to be levied,
380 the board shall also adopt a plan for the refund of assessment proceeds, which plan will be

activated only after all bonds of the corporation have been retired and the unencumbered balance of the fund exceeds the maximum payout of the fund as specified in paragraph (1) of subsection (c) of section 4. The plan shall provide for rebates to then-current policyholders of assessable policies in proportion to premiums paid by the policyholder in the year preceding the year in which rebates are paid out.

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

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

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

(d) The fund may allow insurers to comply with reporting requirements and reporting format requirements by using alternative methods of reporting if the proper administration of the fund is not thereby impaired and if the alternative methods produce data which is consistent with the purposes of this chapter.

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

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

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

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

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

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

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

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

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

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

SECTION 2. Chapter 175 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after section 4C the following section:-

Section 4D. The commissioner shall adopt regulations to require all insurers licensed to write and engaged in the writing of homeowners insurance the commonwealth and the joint underwriting association, established in chapter 175C, shall produce a standard outline of coverage written in language prescribed or approved by the commissioner that describe the features of the coverage. Each insurer, including the joint underwriting association, shall be

required to provide this information to each policyholder upon the issuance or renewal of a policy.

SECTION 3. Said chapter 175, as so appearing, is hereby amended by inserting after section 99C the following 2 sections: -

Section 99D. (a) In all instances where an insurance company licensed to write property insurance in the commonwealth offers or includes any deductible for wind related damages and mitigation measures related to such deductible, the insurance company shall provide prominent and clear notice to the insured that shall be included with the policy issuance or renewal package, and shall fully disclose all details pertaining to any such deductible and mitigation measure in a format approved by the commissioner of insurance.

(b) An insurer may only apply a deductible for wind related damages in personal lines of insurance, where:

(1) the deductible is specifically approved by the commissioner and shall not exceed 3 per cent of the insured value of the dwelling;

(2) the deductible shall be applicable to losses due to a hurricane during the period commencing with the issuance of a hurricane warning or hurricane wind speed warning for any part of the state by the National Hurricane Center and concluding 24 hours after the termination of the last hurricane warning or hurricane wind speed warning for any part of the state;

(3) the deductible, whether a flat dollar amount or a percentage of insured value, shall be presented in at least 2 examples that illustrate the application of the deductible to the insured.

Nothing herein shall prohibit the insurer from providing any additional information to the

insured to assist in the insured's understanding of the deductible to be applied to the insured's policy.

(c) The commissioner, in consultation with the board of building and regulations and standards, shall investigate mitigation measures designed to reduce losses from wind related damages. Based so far as reasonably feasible on national standards for such measures and practices in other comparable states, the commissioner shall adopt regulations describing approved mitigation measures and the minimum corresponding benefits, such as credits, lower deductibles, and reduced premiums that policyholders will receive from insurers upon completion of said measures and either inspection of the property by the insurer or submission of satisfactory proof of installation of the approved mitigation measures by the insured.

(d) The commissioner shall adopt regulations to implement this section.

Section 99E. (a) There shall be a Center for Hurricane Research, hereinafter referred to as the center, at the University of Massachusetts at Lowell. The center shall employ such expert, clerical, or other assistants as the work of the center may require. For the purpose of carrying out its duties as set forth in this section the center may expend such funds as may be appropriated to the University of Massachusetts at Lowell.

(b) The center shall develop criteria for hurricane loss projection models and methodologies that are specific to Massachusetts and may from time to time adopt revisions to these criteria. In establishing the criteria, the center shall consider any models, model software, methods, principles, standards, data, inputs, manuals, validation studies and output ranges that have the potential for improving the accuracy of or reliability of the hurricane loss projections used in homeowners' insurance rate filings. The criteria developed under this subsection shall be

based on actual data on Massachusetts construction practices, codes, and buildings. Criteria developed by the center for this purpose shall be a public record.

(c) Insurers filing rates for approval by the commissioner shall submit to the center all hurricane models, model software, methods, principles, standards, data, inputs, manuals, validation studies and output ranges relevant to the insurer's hurricane loss projection model or methodology that is intended to be used during a rate proceeding on an insurer's rate filing in advance of the rate proceeding. The center shall review the accuracy or reliability of particular models, model software, methods, principles, standards, data, inputs, manuals, validation studies and output ranges submitted to the center by insurers and shall make recommendations relative to the accuracy and reliability of the particular models, model software, methods, principles, standards, data, inputs, manuals, validation studies and output ranges submitted to the center by insurers using the criteria developed by the center under subsection (b). The center shall have discretion to review findings made by similar centers, commissions, or regulatory bodies and to focus on those aspects of the hurricane loss projection methodologies submitted to the center by insurers that are specific to Massachusetts. All models, model software, methods, principles, standards, data, inputs, manuals, validation studies and output ranges shall be submitted to the center for review within a reasonable period of time, as determined by the center, prior to being admitted as evidence during a rate proceeding before the commissioner of insurance. If any insurer fails to submit any item or items required by the center under this subsection, the commissioner shall direct the insurer to remove the hurricane loss projection from its filing.

(d) There shall be a rebuttable presumption that the recommendations made by the center relative to the accuracy or reliability of particular models, model software, methods, principles, standards, data, inputs, manuals, validation studies and output ranges submitted to the center by

510 insurers shall be considered by the commissioner to be relevant evidence in a rate proceeding on
511 an insurer's rate filing, provided, however that an exemption from the disclosure of trade secrets
512 to the public may apply as set forth in subsection (e).

513 (e) A trade secret used in designing and constructing a hurricane loss model or
514 methodology, provided by an insurer to the center under subsection (c), is confidential and shall
515 not be deemed a public record, as defined in clause Twenty-sixth of section 7 of chapter 4. The
516 center shall maintain custody of any records made confidential by this paragraph using a secure
517 location or website. That portion of a rate proceeding on an insurer's rate filing at which a trade
518 secret is discussed shall be deemed confidential and not open to disclosure under the open
519 meetings law, but may be discussed at a closed meeting as provided for in section 11A ½ of
520 chapter 30A. Employees, volunteers, and students of the center will be bound not to disclose
521 information made confidential.

522 (f) The center may form a multi-state center with the states of Rhode Island, Connecticut
523 and any other interested state in furtherance of the goals of this section.

524 SECTION 4. Clause (1) of subsection (A) of section 177O of said chapter 175, as so
525 appearing, is hereby amended by striking out, in line 7, the word "producer" and inserting in
526 place there of the words "reinsurance intermediary broker"

527 SECTION 5. Clause (1) of subsection D of said section 177O of said chapter 175, as so
528 appearing, is hereby amended by striking out the second sentence.

529 SECTION 6. Section 1 of chapter 175C of the general laws, as so appearing, is hereby
530 amended by striking out definition of "Basic property insurance" and inserting in place thereof
531 the following definition:-

“Basic property insurance”, insurance against direct loss to property as defined and limited in the standard fire policy and extended coverage endorsement thereon, filed with and accepted by the commissioner, and insurance against direct loss to such property from the perils of vandalism and malicious mischief and dwelling coverages, including liability coverages for one (1) to four (4) family owner and non-owner occupied dwellings either by endorsement or as a stand-alone policy and homeowners coverages, excluding the unlimited guaranteed replacement cost endorsement, but including the scheduled personal property endorsement and such other coverages as the commissioner after public hearing shall determine or the secretary of the United States department of housing and urban development shall designate by rule made in accordance with the provisions of the Urban Property Protection and Reinsurance Act of 1968 (Public Law 90-448) but shall not include insurance on automobile or manufacturing risks except such classes of manufacturing risks as may, after proper hearing, be designated by the commissioner.

SECTION 7. Chapter 175C of the General Laws, as so appearing, is hereby amended by striking out section 4 and inserting in place thereof the following section:-

Section 4. (a) All insurers licensed to write and engaged in writing in this commonwealth, on a direct basis, basic property insurance or any component thereof in multi-peril policies, shall cooperate in organizing a joint underwriting association which shall provide basic property insurance to eligible applicants who are otherwise unable to obtain such coverage in the voluntary market. Every such insurer shall be a member of the association and remain a member as a condition of its authority to transact such insurance within the commonwealth.

(b) Such association shall be authorized to inspect properties, issue policies, collect premiums and accept payment in installments under plans approved by the commissioner consistent with plans offered by voluntary market insurers and reflecting options for at least 6 payments annually, adjust claims and pay losses on behalf of its members, employ officers, agents and other employees, enter into contracts, sue and be sued in its own name and take all other actions necessary or appropriate to carry out its functions.

(c) The association shall submit to the commissioner a proposed plan of operation, consistent with the purposes of this chapter, to provide for the prompt and efficient provision of basic property insurance to eligible applicants who meet reasonable underwriting standards and are otherwise unable to obtain coverage from insurers in the voluntary market. Such plan of operation shall provide for economical, fair and nondiscriminatory administration including, but not limited to, provisions for preliminary assessment of all members for initial expenses necessary to commence operations, establishment of necessary facilities, management of the association, assessment of members to defray losses and expenses, commissions, reasonable underwriting standards and limits of liability, purchase of reinsurance and procedures for determining amounts of insurance to be provided.

(d) The plan of operation shall be subject to approval by the commissioner and shall take effect 10 days after the commissioner approves it. If the commissioner disapproves the proposed plan of operation, the association shall, within 30 days, submit for review an appropriately revised plan of operation and, if the association fails to submit such a plan or if the revised plan is also disapproved by the commissioner, the commissioner shall adopt a plan of operation consistent with this section. The association may, on its own initiative or at the request of the commissioner, amend the plan of operation, subject to approval by the commissioner.

(e) (1) All members of the association shall participate in its writing, expenses, profits and losses in the proportion that the premiums written by each such member for basic property insurance, as defined in section one, except premiums for insurance on automobile and manufacturing risks excluded from the plan and that portion of the premiums attributable to the operation of the association during the preceding calendar year, bear to the aggregate premiums for such insurance written in the commonwealth by all members of the association. Such participation by each insurer in the association shall be determined annually on the basis of such premiums written during the preceding calendar years as disclosed in the annual statements and other reports filed by the insurer with the commissioner.

(2) The participation of each member of the association writing personal lines coverage shall be adjusted based on the homeowners premiums written by such a member in any credit-eligible zip code, defined as all zip codes in Massachusetts where the Fair Plan market share exceeds 1.5 times the Fair Plan statewide market share, never less than 15%, averaged over the latest three calendar years, in accordance with the following clauses:

(i) The participation ratio of each member writing personal lines insurance shall be recalculated, in accordance with the procedures set forth in subparagraph (1) but subtracting the premium written by members of the association writing only commercial lines insurance from the aggregate premiums written in the commonwealth by all members of the association.

(ii) The participation ratio of each member writing personal lines insurance as recalculated in clause (i) shall be multiplied by the sum of the total premium written by the association in the commonwealth and 150% of the total industry homeowners credit eligible premium written in credit-eligible zip codes, as defined in this chapter.

(iii) The product of the multiplication described in clause (ii) of this subsection shall be (A) reduced by subtracting there from 150% of the homeowners premium written by each member in any credit-eligible zip code in the year of an MPIUA loss or (B) shall be increased by adding therefrom 150% of the homeowners premium written by each member in any credit-eligible zip code in the year of an MPIUA profit.

(iv) The result of the calculation described in clause (iii) for a carrier, never less than zero, shall be divided by sum of this calculation across all carriers. The resulting ratio shall be the adjusted participation ratio for the member.

(v) The adjusted participation ratio of those members whose participation ratio is calculated as provided in this subparagraph shall apply to that portion of the writings, expenses, profits and losses of the association not recovered by applying the participation ratios of the remaining members of the association as calculated, as provided in subparagraph (1).

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

member in subparagraph (1) by one hundred percent of the total homeowners insurance premiums written by the member on property described in this clause in the year of an MPIUA profit. Such adjustment shall not apply to any insurance written on property that was insured by the member or any affiliate or subsidiary member in either of the two years preceding the base year.

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

SECTION 8 Subsection (c) of section 5 of said chapter 175C, as so appearing, is hereby amended by inserting after the third sentence, the following sentence: "Nothing in this subsection shall be construed as to prevent the commissioner from considering the following premium adjustments on owner's policy forms for homeowners in all territories: adjustments to key factors to keep costs reasonable for applicants with Coverage A amounts less than the median Coverage A amount within that territory, coastal area rating factors that are based upon predicted hurricane losses associated with distance from the coast, approving rating adjustments

643 to keep costs reasonable for primary residents, and approving rating adjustments to keep costs
644 reasonable for insureds over the age of 64.”

645 SECTION 9 Said section 5 of said chapter 175C, as so appearing, is hereby further
646 amended by inserting the following subsection:-(d) The commissioner shall develop a disclosure
647 form to inform individuals seeking to purchase basic property insurance about the risks
648 associated with choosing solely a stand alone liability policy. This form shall be written in plain
649 language, explained to an individual seeking to purchase stand along liability coverage as their
650 sole basic property insurance, and signed by that individual.

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

662 Said chapter 175C is hereby further amended by adding the following section:—Section
663 10. The association shall pay a dividend on homeowners insurance premiums for coastal
664 properties occupied as primary residences having a Coverage A limit not greater than the median

665 Coverage A for the territory in which the property is located. This dividend shall be paid in a
666 year which is the third consecutive year in which there have been no hurricane-related losses in
667 the territory and this dividend shall be a third of all hurricane loss premiums, less the cost of
668 reinsurance purchased by the association. This dividend shall not be paid in a year when such
669 payment shall cause the association to realize a net loss for that year, and shall only be made in a
670 year in which the association has purchased adequate reinsurance for hurricane losses, as
671 determined by the commissioner. The possibility of a dividend shall not be considered by the
672 commissioner in approving rates proposed by the association.

673 SECTION 11 Notwithstanding the provisions of section 7, the appointment of the 4
674 directors from the general public appointed by the commissioner of insurance shall be as follows:
675 2 directors shall be appointed for a term of 3 years, 1 director shall be appointed for a term of 2
676 years, and 1 director shall be appointed for a term of 1 year. The appointment of the 2 directors
677 from the general public appointed by the attorney general shall be as follows: 1 director shall be
678 appointed for a term of 2 years and 1 director shall be appointed for a term of 1 year. Upon
679 expiration of these appointments, all subsequent appointments of directors from the general
680 public shall be appointed for 3 year terms

681 SECTION 12 The department of revenue, in consultation with the division of insurance,
682 shall make an investigation and study relative to the benefits and viability of a low interest loan
683 program to assist homeowners in the commonwealth with both the costs associated with the
684 purchase and installation of approved mitigation measures as described in section 2 and
685 homeowners insurance deductibles on damage associated with wind storms. The department
686 shall also study the potential utilization by homeowners as well as the funding required to
687 support such a loan program.

688 The department of revenue shall file a report of the results of its investigation, along with
689 any legislative and regulatory recommendations, with the joint committee on financial services
690 and the clerks of the senate and house of on or before January 15, 2009.

691 SECTION 13 Section 99D of chapter 175 of the General Laws shall apply to all policies
692 issued or renewed on or after June 30, 2009