SENATE DOCKET, NO. 1811 FILED ON: 1/21/2011

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:
Daniel A. Wolf	
Demetrius J. Atsalis	*2nd Barnstable*
Timothy R. Madden	*Barnstable, Dukes and Nantucket*
Sarah K. Peake	*4th Barnstable*
Randy Hunt	*5th Barnstable*

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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:

SECTION 1. The General Laws are hereby amended by inserting after Chapter 175J the following chapter:

CHAPTER 175K - THE MASSACHUSETTS WINDSTORM CATASTROPHE FUND

Section 1 The general court finds that:

(a) The private sector is not currently able to maintain a stable, orderly market for property insurance coverage of residential and commercial properties in coastal areas and other 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

100 Section 4. (a) Beginning January 1, 2008, the fund shall annually enter into a contract
101 with each insurer to provide to the insurer the reimbursement described in subsections (b) and
102 (d), in exchange for the reimbursement premium paid into the fund under section 5. As a
103 condition of doing business in the commonwealth, each insurer shall enter into such a contract.
104 The contract 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. (a) Each reimbursement contract shall require the insurer to annually pay to
183 the fund an actuarially indicated premium for the reimbursement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

314 (ii) The corporation shall operate under the Governing Board of the Massachusetts
315 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.

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

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

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

357 (d) (1) As long as the corporation has any bonds outstanding, neither the fund nor the
358 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

446 SECTION 3. Said chapter 175, as so appearing, is hereby amended by inserting after
447 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.

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

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

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

462 (3) the deductible, whether a flat dollar amount or a percentage of insured value, shall be
463 presented in at least 2 examples that illustrate the application of the deductible to the insured.
464 Nothing herein shall prohibit the insurer from providing any additional information to the

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

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

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

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

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

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

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

507 (d) There shall be a rebuttable presumption that the recommendations made by the center
508 relative to the accuracy or reliability of particular models, model software, methods, principles,
509 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:-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

636 SECTION 8 Subsection (c) of section 5 of said chapter 175C, as so appearing, is hereby
637 amended by inserting after the third sentence, the following sentence: "Nothing in this
638 subsection shall be construed as to prevent the commissioner from considering the following
639 premium adjustments on owner's policy forms for homeowners in all territories: adjustments to
640 key factors to keep costs reasonable for applicants with Coverage A amounts less than the
641 median Coverage A amount within that territory, coastal area rating factors that are based upon
642 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