

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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SENATE BILL 208\*

Short Title: Property Insurance Fairness. (Public)

Sponsors: Senators Cook, Brown, Hartsell (Primary Sponsors); Clark, B. Jackson, Pate, Rabin, Sanderson, Smith, Smith-Ingram, and Waddell.

Referred to: Rules and Operations of the Senate.

March 11, 2015

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE FAIRNESS AND EQUITY OF PROPERTY INSURANCE RATE MAKING IN NORTH CAROLINA BY REQUIRING THAT CERTAIN PROPERTY INSURANCE DATA BE MADE AVAILABLE TO THE PUBLIC; BY PROVIDING THE COMMISSIONER WITH THE AUTHORITY TO ORDER A DECREASE IN RATES IN A PROPERTY INSURANCE RATE-MAKING PROCEEDING; BY PROVIDING THE NORTH CAROLINA INSURANCE UNDERWRITING ASSOCIATION THE AUTHORITY TO HAVE ISSUED TAX-EXEMPT BONDS TO COVER LOSS-RELATED LIABILITIES; BY REFORMING CONSENT TO RATE PRACTICES; BY REQUIRING THAT CATASTROPHE MODELING USED FOR PROPERTY RATE-MAKING PURPOSES MORE ACCURATELY REFLECT POTENTIAL IMPACTS IN NORTH CAROLINA; AND BY CREATING THE JOINT LEGISLATIVE STUDY COMMITTEE ON PROPERTY INSURANCE RATE MAKING.

The General Assembly of North Carolina enacts:

**PART I. PROPERTY INSURANCE CLARITY**

**SECTION 1.** Article 10 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 10. Property Insurance Rate Clarity.

**"§ 58-10-700. Title.**

This Part is known and may be cited as the "Property Insurance Clarity Act."

**"§ 58-10-705. Information submission and compilation: current year.**

(a) Each insurer authorized to transact property insurance business in the State of North Carolina, the North Carolina Insurance Underwriting Association, and the North Carolina Joint Underwriting Association shall annually submit to the Department of Insurance, no later than April 1, computations of the total amount of direct incurred losses, the number of policies in force, and the direct earned premiums for the prior calendar year for all property insurance policies written by the insurer, including policies written or serviced under the provisions of Articles 45 and 46 of this Chapter. The insurance company shall report the computations to the Department by rate territory and by type of property insurance policy. For purposes of this Part, property insurance shall also include condominium insurance, dwelling fire policies, renter's or tenant's insurance, and mobile home and manufactured housing property insurance. Condominium association insurance and commercial insurance are excluded from this Part.



1        (b) Each insurance company authorized to transact homeowner's insurance business in  
2 the State shall annually submit to the Department, no later than April 1, computations of the  
3 direct incurred losses and the number of policies in force, by rate territory, for the prior  
4 calendar year for each of the following perils:

- 5            (1) Fire.  
6            (2) All wind and hail.  
7            (3) All other perils.

8        (c) Each insurance company authorized to transact homeowner's insurance business in  
9 the State shall submit to the Department catastrophe wind and hail information pursuant to a  
10 data call by the Department based on a specific catastrophic event.

11        (d) The information received by the Department under the submission requirements of  
12 this section shall be aggregated across all insurance companies collectively, arranged by rate  
13 territory, and posted to the Department's Web site no later than June 1 for the prior calendar  
14 year.

15 **"§ 58-10-710. Submission of historical information.**

16        No later than October 1, 2015, each insurer authorized to transact property insurance  
17 business in this State shall provide the information required pursuant to G.S. 58-10-705(a) for  
18 calendar years 2009 through 2014. Based upon the submitted information, the Department shall  
19 compile and post those aggregate totals, arranged by rate territory, on the Department Web site  
20 no later than December 1, 2015.

21 **"§ 58-10-715. Waiver; sanctions.**

22        (a) Upon written request of an insurer, the Commissioner may waive, modify, or extend  
23 for an additional time period, for good cause shown, the reporting requirements imposed by this  
24 act. The request shall demonstrate good cause for waiving, modifying, or extending the  
25 reporting requirements. Good cause may include, but is not limited to, the insurer's limited  
26 percentage of the total property insurance market in this State, or the undue burden of  
27 compiling and reporting the computations, data, and other information required by this act due  
28 to the manner, format, or method in which the insurer has stored the computations, data, or  
29 other information required.

30        (b) Any insurer that fails to timely comply with the reporting requirements imposed by  
31 this act shall be given notice by the Department of such failure and provided 90 days within  
32 which to comply. Any insurer that fails to comply on or before the 90th day shall pay, after  
33 notice and hearing, a civil penalty of two thousand five hundred dollars (\$2,500) per month to  
34 the Commissioner until the date of compliance. The clear proceeds of civil penalties provided  
35 for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with  
36 G.S. 115C-457.2.

37 **"§ 58-10-720. Confidentiality of information.**

38        Any information reported to the Department by an insurer pursuant to this act is considered  
39 a trade secret as defined in G.S. 66-152 and shall be treated as confidential information by the  
40 Department. However, once the information from all property insurers is aggregated, then the  
41 Department may provide such information in accordance with this Part. Notice of at least 10  
42 business days shall be given to the insurer if confidential information pertaining to that insurer  
43 is ordered by a court of competent jurisdiction to be released by the Department."

44  
45 **PART II. AUTHORITY TO LOWER RATES**

46        **SECTION 2.** G.S. 58-36.20 reads as rewritten:

47 **"§ 58-36-20. Disapproval; hearing, order; adjustment of premium, review of filing.**

48        (a) At any time within 50 days after the date of any filing, the Commissioner may give  
49 written notice to the Bureau specifying in what respect and to what extent the Commissioner  
50 contends the filing fails to comply with the requirements of this Article and fixing a date for  
51 hearing not less than 30 days from the date of mailing of such notice. Once begun, hearings

1 must proceed without undue delay. At the hearing the burden of proving that the proposed rates  
2 are not excessive, inadequate, or unfairly discriminatory is on the Bureau. At the hearing the  
3 factors specified in G.S. 58-36-10 shall be considered. If the Commissioner after hearing finds  
4 that the filing does not comply with the provisions of this Article, he may issue his order  
5 determining wherein and to what extent such filing is deemed to be improper and fixing a date  
6 thereafter, within a reasonable time, after which the filing shall no longer be effective. In the  
7 event the Commissioner finds that the proposed rates are excessive, the Commissioner shall  
8 ~~specify the overall rates, between the existing rates and the rates proposed by the Bureau filing,~~  
9 ~~that may be used by the members of the Bureau instead of the rates proposed by the Bureau~~  
10 ~~filing,~~ issue an order disapproving the filing and specifying the appropriate rate level or levels  
11 that may be used by the members of the Bureau instead of the rate level or levels proposed by  
12 the Bureau filing. In any such order, the Commissioner shall make findings of fact based on the  
13 evidence presented in the filing and at the hearing. Any order issued after a hearing shall be  
14 issued within 45 days after the completion of the hearing. If no order is issued within 45 days  
15 after the completion of the hearing, the filing shall be deemed to be approved.

16 ...."

### 17 18 **PART III. BONDING AUTHORITY**

19 **SECTION 3.1.** Chapter 58 of the General Statutes is amended by adding a new  
20 Article to read:

21 "Article 45A.

22 "Recovery Finance Authority.

#### 23 **"§ 58-45A-1. Name.**

24 This Article shall be known as the "North Carolina Recovery Finance Authority Act."

#### 25 **"§ 58-45A-5. Legislative Findings.**

26 The General Assembly finds that the likelihood of one or more hurricanes or other  
27 catastrophic events causing sufficient damage and destruction for the Association to incur  
28 losses and loss expenses that exceed the combination of available surplus, reinsurance, and  
29 other sources of funding, including assessments on its member companies, is significant. The  
30 General Assembly finds that in any such event it will be beneficial to the residents and property  
31 owners in this State and will increase the insurance capacity and the overall functioning of the  
32 State's insurance industry that all or a portion of the obligations to pay claims under policies  
33 issued by the Association and related to the hurricane or other catastrophic event resulting in  
34 such excess losses and loss expenses could be financed by a State entity through bonded  
35 indebtedness paid from amounts including catastrophe recovery charges imposed on residential  
36 and commercial property insurance policyholders Statewide with their annual policy premiums.  
37 The General Assembly therefore finds that, as an additional or alternative method to borrowing  
38 by the Association for the purpose of paying such excess losses and loss expenses, the creation  
39 of a State authority to acquire the obligation to pay such claims under such policies and provide  
40 for the issuance of bonded indebtedness is necessary and desirable to provide the most efficient  
41 mechanisms for addressing excess losses and loss expenses that may arise from hurricanes or  
42 other catastrophic events in the State.

#### 43 **"§ 58-45A-10. Definitions.**

44 The following definitions apply to this Article:

- 45 (1) Assessment. – A nonrecoupable fee or charge levied on members in the  
46 Association pursuant to G.S. 58-45-47(a).
- 47 (2) Association. – The North Carolina Insurance Underwriting Association,  
48 established under Article 45 of this Chapter.
- 49 (3) Authority Board. – The governing body of the Recovery Finance Authority.
- 50 (4) Bonds. – Bonds, notes, debentures, loan agreements or other types of  
51 obligations of the Recovery Finance Authority.

- 1           (5) Catastrophe Recovery Charge. – A charge calculated as a uniform  
2           percentage of written premiums to be paid with annual premiums on all  
3           residential and commercial property insurance policies Statewide.  
4           (6) Deficit. – The amount of losses and loss expenses of the Association relating  
5           to a particular Event that will exceed the combination of available surplus,  
6           reinsurance, and other sources of funding, including assessments, for the  
7           Association to fund losses and loss expenses resulting from Events in that  
8           calendar year.  
9           (7) Event. – A hurricane or other catastrophic event causing loss or loss  
10          expenses to the Association for property in the State.  
11          (8) Recovery Finance Authority. – The North Carolina Recovery Finance  
12          Authority, a public agency created by this Article.

13 **"§ 58-45A-15. North Carolina Recovery Finance Authority.**

14          (a) Creation. – There is created a body politic and corporate to be known as the "North  
15 Carolina Recovery Finance Authority." The Recovery Finance Authority is constituted as a  
16 public agency, and the exercise by the Authority of the powers conferred by this Article in the  
17 financing of deficits of the Association related to catastrophic events shall be deemed and held  
18 to be the performance of an essential governmental function.

19          (b) Administrative Placement. – The Authority shall be located with the Department for  
20 administrative purposes, but shall exercise all of its powers independently of the Association  
21 and the Department except as otherwise specified in this Article.

22          (c) Authority Board. – The Authority shall be governed by a nine-member Authority  
23 Board consisting of two members appointed by the General Assembly upon the  
24 recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121,  
25 two members appointed by the General Assembly upon the recommendation of the Speaker of  
26 the House of Representatives in accordance with G.S. 120-121, two members appointed by the  
27 Governor, two members appointed by the Association, and the Commissioner of Insurance or  
28 the Commissioner's designee. Each appointing authority shall appoint members who reside in  
29 diverse regions of the State. The Chair of the Authority shall be selected by the Authority  
30 Board.

31          (d) Staggered Terms. – The initial appointments to the Authority Board by the General  
32 Assembly upon the recommendation of the President Pro Tempore of the Senate and by the  
33 Governor shall be for terms ending April 1, 2017. The initial appointments to the Authority  
34 Board by the General Assembly upon the recommendation of the Speaker of the House of  
35 Representatives and by the Association shall be appointed to terms ending April 1, 2019. The  
36 Commissioner of Insurance or the Commissioner's designee shall serve at all times as ex officio  
37 voting member of the Board. Thereafter, at the expiration of each stipulated term of office, all  
38 appointments shall be to a term of four years from the date of the expiration of the term;  
39 provided all members of the Authority Board shall remain in office until their successors are  
40 appointed and qualified. The original appointing authority may appoint a member to serve out  
41 the unexpired term of any member appointed by such authority.

42          (e) Removal of Board Members. – Each member of the Authority Board,  
43 notwithstanding subsection (d) of this section, shall serve at the pleasure of the original  
44 appointing authority. The chair of the Authority serves at the pleasure of the Authority Board.

45          (f) Conflicts of Interest, Ethics. – Members of the Authority Board shall be subject to  
46 the provisions of Chapter 138A of the General Statutes as well as any ethics or conflicts  
47 policies promulgated by the Governor for boards of State agencies in addition to the  
48 requirements of this subsection. If any member of the Authority shall be: (1) interested either  
49 directly or indirectly; or (2) an officer or employee of or have an ownership interest in, any firm  
50 or corporation, not including units of local government or the Association, interested directly or  
51 indirectly, in any contract with the Authority, the interest shall be disclosed to the Authority

1 and shall be set forth in the minutes of the Authority. The member having an interest shall not  
2 participate on behalf of the Authority in the authorization of such contract. Other provisions of  
3 law notwithstanding, failure to take any or all actions necessary to carry out the purposes of this  
4 subsection do not affect the validity of any bonds issued under this Article. Members, officers,  
5 and employees of the Authority shall be subject to the provisions of G.S. 14-234.

6 (g) Compensation. – The appointed members of the Authority Board shall receive no  
7 salary for their services but shall be entitled to receive per diem and travel allowances in  
8 accordance with the provisions of G.S. 138-5 and G.S. 138-6 as appropriate.

9 (h) Initial Meeting. – The initial meeting of the Authority may be called by the  
10 Commissioner of Insurance or any other four members.

11 (i) Bylaws. – The Authority Board shall adopt, change, or amend bylaws with respect  
12 to the calling of meetings, quorums, voting procedures, the keeping of records, and other  
13 organizational, staffing, and administrative matters as the Authority Board may determine. Any  
14 amendments to the bylaws after their initial adoption shall be submitted to the Commissioner of  
15 Insurance for review and comment at least 45 days prior to adoption by the Authority Board.

16 **"§ 58-45A-20. Powers of the Recovery Finance Authority.**

17 (a) The Recovery Finance Authority shall have all of the powers necessary to execute  
18 the provisions of this Article, including the following:

19 (1) The powers of a corporate body, including the power to sue and be sued, to  
20 make contracts, to adopt and use a common seal, and to alter the adopted  
21 seal as needed.

22 (2) To issue bonds of the Authority as provided in this Article and use the  
23 proceeds of such bonds to finance obligations to pay claims with respect to  
24 policies assigned to it in connection with Events with the debt service on  
25 such bonds payable from catastrophe recovery charges under G.S. 58-45-47,  
26 other revenues of the Authority or other payments by the Association or its  
27 members. Proceeds of such bonds may be used to pay issuance expenses,  
28 interest on the bonds for a period of up to one year, and to create a reserve  
29 fund for the bonds.

30 (3) To invest the proceeds of bonds of the Authority that are pending  
31 disbursement or other idle funds of the Authority in any investment  
32 authorized by G.S. 159-30.

33 (4) To pay all necessary costs and expenses in the formation, organization,  
34 administration, and operation of the Authority.

35 (5) To apply for, accept, and administer loans and grants of money or real or  
36 personal property from the United States of America or any federal agency,  
37 the State or its political subdivisions, local governments, or any other public  
38 or private sources available.

39 (6) To adopt, alter, or repeal its own bylaws or rules implementing the  
40 provisions of this Article.

41 (7) To contract for the services of consulting attorneys and other consultants; to  
42 employ administrative staff as may be required in the judgment of the  
43 Authority; and to fix and pay fees or compensation to the contractors, and  
44 administrative employees from funds available to the Authority.

45 (8) To receive and use appropriations from the State and federal government.

46 (9) To adopt procedures to govern its procurement of services.

47 (10) To perform or procure any portion of services required by the Authority.

48 (11) To use officers, employees, agents, and facilities of the Department or the  
49 Association for the purposes and upon the terms as may be mutually  
50 agreeable.

- 1           (12) To enter into partnership agreements with the Department or the  
2           Association, agreements with political subdivisions of the State, and  
3           agreements with private entities, and to expend such funds as it deems  
4           necessary, pursuant to such agreements, for its purposes.
- 5           (13) To enter into swap agreements pursuant to Article 13 of Chapter 159 of the  
6           General Statutes.
- 7           (14) To receive, administer, and comply with the conditions and requirements  
8           respecting any gift, grant, or donation of any property or money.
- 9           (15) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the  
10          acquisition of, any real or personal property or interest therein.
- 11          (16) To sell, lease, exchange, transfer, or otherwise dispose of, or to grant options  
12          for any of these purposes with respect to, any real or personal property or  
13          interest therein.
- 14          (17) Subject to the provisions of this Article, to pledge, assign, mortgage, or  
15          otherwise grant a security interest in any real or personal property or interest  
16          therein, including a leasehold interest, including the right and power to  
17          pledge, assign, or otherwise grant a security interest in any money, rents,  
18          charges, or other revenues and any proceeds derived by the Authority from  
19          any and all sources.
- 20          (18) To do all acts and terms necessary, convenient, or desirable to carry out the  
21          purpose and exercise the specific powers granted to it herein.

22 **"§ 58-45A-25. Taxation of property of Recovery Finance Authority.**

23 Property owned by the Recovery Finance Authority is exempt from taxation in accordance  
24 with Section 2 of Article V of the North Carolina Constitution.

25 **"§ 58-45A-30. Audit.**

26 The operations of the Recovery Finance Authority shall be subject to the oversight of the  
27 State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

28 **"§ 58-45A-35. Recovery Finance Authority bonds.**

29 (a) The Recovery Finance Authority shall be a municipality for purposes of Article 5 of  
30 Chapter 159 of the General Statutes, the State and Local Government Revenue Bond Act, and  
31 may issue revenue bonds pursuant to that Act to pay all or a portion of the cost of a deficit or to  
32 refund any previously issued bonds. In connection with the issuance of revenue bonds, the  
33 Authority shall have all powers of a municipality under the State and Local Government  
34 Revenue Bond Act, and revenue bonds issued by the Authority shall be entitled to the  
35 protection of all provisions of the State and Local Government Revenue Bond Act.

36 (b) In addition to swap agreements permitted by Article 13 of Chapter 159 of the  
37 General Statutes, in connection with or incidental to the acquisition or carrying of any  
38 investment relating to bonds, program of investment relating to bonds, or carrying of bonds, the  
39 Authority may, with the approval of the Local Government Commission, enter into a contract  
40 to place the investment or obligation of the Authority, as represented by the bonds, investment,  
41 or program of investment and the contract or contracts, in whole or in part, on an interest rate,  
42 currency, cash flow, or other basis, including the following:

- 43           (1) Interest rate swap agreements, currency swap agreements, insurance  
44           agreements, forward payment conversion agreements, and futures.
- 45           (2) Contracts providing for payments based on levels of, or changes in, interest  
46           rates, currency exchange rates, event-related indices, or stock or other  
47           indices.
- 48           (3) Contracts to exchange cash flows or a series of payments.
- 49           (4) Contracts to hedge payment, currency, rate, spread, or similar exposure,  
50           including interest rate floors or caps, options, puts, and calls.

1        The Authority may enter a contract of this type in connection with, or incidental to, entering  
2 into or maintaining any agreement that secures bonds. A contract shall contain the payment,  
3 security, term, default, remedy, and other terms and conditions the Authority Board considers  
4 appropriate. The Authority may enter a contract of this type with any person after giving due  
5 consideration, where applicable, to the person's creditworthiness as determined by a rating by a  
6 nationally recognized rating agency or any other criteria the Authority Board considers  
7 appropriate. In connection with, or incidental to, the issuance or carrying of bonds, or the  
8 entering into any contract described in this subsection, the Authority may enter into credit  
9 enhancement or liquidity agreements, with payment, interest rate, termination date, currency,  
10 security, default, remedy, and other terms and conditions as the Authority determines. Proceeds  
11 of bonds and any moneys set aside and pledged to secure payment of bonds or any of the  
12 contracts entered into under this subsection may be pledged to and used to service any of the  
13 contracts entered into under this section.

14        (c) If requested by the Association to issue bonds pursuant to G.S. 58-45-47(c)(2), the  
15 Authority shall do all of the following:

16            (1) Take assignment, without recourse, of the Association's obligation to pay  
17 claims with respect to insurance policies issued by the Association in an  
18 amount estimated to be in excess of the Association's losses and expenses  
19 resulting from events in any calendar year that exceed available surplus,  
20 reinsurance, and other sources of funding of Association losses, including  
21 permissible assessments on Association members, as a result of a hurricane  
22 or other catastrophic event.

23            (2) Issue bonds to finance such obligations.

24            (3) Utilize catastrophe recovery charges imposed pursuant to G.S. 58-45-47 to  
25 provide amounts to pay such bonds.

26            (4) Contract with the Association to act as agent for the Authority to collect  
27 such catastrophe recovery charges imposed pursuant to G.S. 58-45-47 and to  
28 take all such other actions as may be necessary in connection with the bond  
29 issuance, the catastrophe recovery charges, and related activities.

30            (5) Assign such amounts as required as security for the Authority's bonds.

31        (d) Except as provided in this Section, the provisions of Chapter 159 of the General  
32 Statutes, the Local Government Finance Act, apply to revenue bonds issued by the Authority.

33 **"§ 58-45A-40. Sale of Recovery Finance Authority revenue bonds.**

34        Revenue bonds of the Recovery Finance Authority issued pursuant to this Article and the  
35 State and Local Government Revenue Bond Act shall be sold in accordance with and pursuant  
36 to Article 7 of Chapter 159 of the General Statutes.

37 **"§ 58-45A-45. Faith and credit of State and units of local government not pledged.**

38        Bonds issued under this Article shall not constitute a debt secured by a pledge of the faith  
39 and credit of the State or a political subdivision of the State and shall be payable solely from  
40 the revenues, property, and other funds pledged for their payment. The bonds issued by the  
41 Recovery Finance Authority shall contain a statement that the Authority is obligated to pay the  
42 bond or the interest on the bond only from the revenues, property, or other funds pledged for  
43 their payment and that neither the faith and credit nor the taxing power of the State or any  
44 political subdivision of the State is pledged as security for the payment of the principal of or the  
45 interest or premium on the bonds.

46 **"§ 58-45A-50. Bonds eligible for investment.**

47        Bonds issued under this Article are hereby made securities in which all public officers,  
48 agencies, and public bodies of the State and its political subdivisions, all insurance companies,  
49 trust companies, investment companies, banks, savings banks, building and loan associations,  
50 credit unions, pension or retirement funds, other financial institutions engaged in business in  
51 the State, executors, administrators, trustees, and other fiduciaries may properly and legally

1 invest funds, including capital in their control or belonging to them. These bonds are hereby  
2 made securities that may properly and legally be deposited with and received by any officer or  
3 agency of the State or political subdivision of the State for any purpose for which the deposit of  
4 bonds, notes, or obligations of the State or any political subdivision of the State is authorized  
5 by law. This section does not apply to any State pension or retirement fund or a pension or  
6 retirement fund of a political subdivision of the State.

7 **"§ 58-45A-55. Taxation of revenue bonds.**

8 Any bonds issued by the Recovery Finance Authority under the provisions of this Article  
9 shall be exempt from all State, county, and municipal taxation or assessment, direct or indirect,  
10 general or special, whether imposed for the purpose of general revenue or otherwise, excluding  
11 inheritance and gift taxes, income taxes on the gain from the transfer of bonds, and franchise  
12 taxes. The interest on bonds issued by the Authority under the provisions of this Article shall  
13 not be subject to taxation as to income.

14 **"§ 58-45A-60. Members not liable.**

15 No member of the Authority Board shall be subject to any personal liability or  
16 accountability by reason of the execution of any bonds or the issuance of any bonds.

17 **SECTION 3.2.** G.S. 58-45-47 reads as rewritten:

18 **"§ 58-45-47. Deficit event.**

19 (a) Nonrecoupable Assessment. – In the event ~~of the Association~~ expects to incur losses  
20 and expenses ~~to the Association~~ exceeding available surplus, reinsurance, and other sources of  
21 funding of Association losses, with such availability determined taking into account sources  
22 committed with respect to losses and expenses expected from prior events, the Association is  
23 authorized to issue a nonrecoupable assessment upon its members in accordance with its Plan  
24 of Operation. Member assessments shall not exceed one billion dollars (\$1,000,000,000) for  
25 losses incurred from any event or series of events that occur in a given calendar year, regardless  
26 of when such assessments are actually levied on or collected from member companies.

27 (b) Deficit Event. – When the Association ~~knows that it has incurred~~ determines that it  
28 expects it will incur losses and loss expenses in a particular calendar year that will exceed the  
29 combination of available surplus, reinsurance, and other sources of funding, including  
30 permissible member company assessments, then the Association shall immediately give notice  
31 to the Commissioner and the North Carolina Recovery Finance Authority that a deficit event  
32 has occurred. With such notice the Association shall provide evidence with respect to its  
33 estimates of the total losses and loss expenses the Association expects to incur within the  
34 calendar year and the amounts available to it from surplus, reinsurance, and other sources of  
35 funding, including member assessments, with such availability determined taking into account  
36 sources committed with respect to losses and expenses expected from prior events. The  
37 Association shall make such evidence and related material available to the Commissioner for  
38 review and verification.

39 (c) Imposition of Catastrophe Recovery Charge. – Upon agreement by the  
40 Commissioner with a determination by the Association that a deficit event has occurred, the  
41 Association shall determine, in its discretion, the appropriate means of financing the  
42 ~~deficit,~~ deficit in whole or in part, which may include, but is not limited to, the purchase of  
43 reinsurance, arranging lines of credit, ~~or~~ other forms of borrowing or ~~financing,~~ financing,  
44 including a North Carolina Recovery Finance Authority financing as described in subdivision  
45 (2) of this subsection, or any combination of these means. If the Association determines that the  
46 member companies have paid one billion dollars (\$1,000,000,000) in nonrecoupable  
47 assessments for losses and expenses incurred in any given year pursuant to subsection (a) of  
48 this section, the Association may, subject to the verification by the Commissioner that the  
49 dollar value of losses and expenses has reached the level necessary for a catastrophe recovery  
50 charge, take either of the following actions:



1           (1) ~~authorize~~ Authorize member companies to impose a catastrophe recovery  
2 charge on their residential and commercial property insurance policyholders  
3 statewide. ~~Catastrophe recovery charges shall be charged as a uniform~~  
4 ~~percentage of written premiums as prescribed by the Commissioner and shall~~  
5 ~~not exceed an aggregate amount of ten percent (10%) of the annual policy~~  
6 ~~premium on any one policy of insurance.~~ Catastrophe recovery charges  
7 collected under this section shall be transferred on a periodic  
8 basis, as determined by the Association and ordered by the Commissioner,  
9 directly to the Association ~~Association~~, or, at the Association's direction, to a  
10 trustee for the Association's creditors in a financing. ~~on a periodic basis as~~  
11 ~~determined by the Association and ordered by the Commissioner.~~ The  
12 Association and the FAIR Plan also shall charge their policyholders a  
13 catastrophe recovery charge as provided in this section.

14           (2) Inform the North Carolina Recovery Finance Authority and the  
15 Commissioner that it will assign without recourse to the North Carolina  
16 Recovery Finance Authority the Association's obligation to pay claims with  
17 respect to policies issued by the Association in an amount estimated to be in  
18 excess of its losses and expenses that exceed available surplus, reinsurance,  
19 and other sources of funding of Association losses, including permissible  
20 assessments on its members, and act as agent for the North Carolina  
21 Recovery Finance Authority to collect catastrophe recovery charges imposed  
22 pursuant to G.S. 58-45-47 and direct amounts so collected to the North  
23 Carolina Recovery Finance Authority or at its direction.

24           (d) Requirements for Catastrophe Recovery Charge. – Catastrophe recovery charges  
25 imposed under this section shall be charged as a uniform percentage of written premiums as  
26 prescribed by the Commissioner, shall not exceed an aggregate amount of ten percent (10%) of  
27 the annual policy premium on any one policy of insurance, and shall also be imposed upon  
28 policyholders with insurance from the Association and the FAIR Plan established under Article  
29 46 of this Chapter. The catastrophe recovery charge shall be clearly identified to policyholders  
30 on the premium statement, declarations page, or by other appropriate electronic or written  
31 method. The identification shall refer to the post-catastrophe loss for which the charge was  
32 imposed. Any such catastrophe recovery charge shall not be considered premium for any  
33 purpose, including premium taxes or commissions, except that failure to pay the catastrophe  
34 recovery charge shall be treated as failure to pay premium and shall be grounds for termination  
35 of insurance. The identified catastrophe recovery charge shall be accompanied by an  
36 explanation of the charge and shall appear on the medium by which the charge is conveyed to  
37 the policyholder. The explanatory language shall be prescribed by the Commissioner.

38           (e) Report. – The Association shall report quarterly to the Commissioner and the North  
39 Carolina Recovery Finance Authority providing all financial information for each catastrophe  
40 recovery charge authorized by this section, including total catastrophe recovery charge funds  
41 recovered to date and any information reasonably requested by the  
42 Commissioner. ~~Commissioner or the North Carolina Recovery Finance Authority.~~

43           (f) Periodic Revision of Catastrophe Recovery Charge. – The Association shall  
44 recalculate the catastrophe recovery charge amount annually for any such charge imposed  
45 pursuant to subdivision (c)(1) of this section and, subject to procedure approved by the  
46 Commissioner, adjust the charge percentage as needed. The North Carolina Recovery Finance  
47 Authority shall recalculate the catastrophe recovery charge amount annually for any such  
48 charge imposed pursuant to subdivision (c)(2) of this section and adjust the charge percentage  
49 as needed.

50           (g) Cessation; Treatment of Excess Charges. – The catastrophe recovery charge amount  
51 shall continue until financing or refinancing of the deficit event has been paid in full. The State

1 of North Carolina does pledge to and agree with any creditors of the Association under  
2 financings pursuant to subdivision (c)(1) of this section that so long as any such financing is  
3 outstanding and unpaid the State will not limit the rights to catastrophe recovery charges vested  
4 in the Association at the time of incurrence its obligations under such financings. Upon order of  
5 cessation, any catastrophe recovery charge amounts imposed pursuant to subdivision (c)(1) of  
6 this section collected by member companies, the Association or the FAIR Plan that exceed  
7 amounts necessary for payment of the debt shall be remitted to the Association and added to the  
8 surplus for the purposes of offsetting future Association losses or expenses. Any catastrophe  
9 recovery charge amounts imposed pursuant to subdivision (c)(2) of this section collected by  
10 member companies, the Association or the FAIR Plan that exceed amounts necessary for  
11 payment of the debt shall first be remitted to the North Carolina Recovery Finance Authority  
12 for payment of reasonable outstanding expenses associated with the issuance and repayment of  
13 the debt and other necessary related activities of the North Carolina Recovery Finance  
14 Authority. Charge amounts remaining after expenses shall be refunded to policyholders in a  
15 manner approved by the Commissioner.

16 (h) Limitations. – Nothing contained in this section prohibits the Association from  
17 entering into any financing arrangements for the purpose of financing a deficit, provided that  
18 the pledge of catastrophe recovery charge amounts under such financing agreements shall not  
19 result in the actual levying of any catastrophe recovery charge until after the Association has  
20 incurred a deficit and until after the Commissioner has approved implementation of the  
21 Association's catastrophe recovery charge plan. Nothing in this section prevents the Association  
22 from utilizing financings under both subdivisions (c)(1) and (c)(2) of this section or either of  
23 them in the same calendar year or there being in existence more than one catastrophe recovery  
24 charge under either subsection or both subsections at the same time; provided all catastrophe  
25 recovery charges, whether imposed by the Association or the North Carolina Recovery Finance  
26 Authority, may not in the aggregate exceed ten percent (10%) of the annual policy premium on  
27 any one policy of insurance."

28 **SECTION 3.3.** G.S. 120-123 is amended by adding a new subdivision to read:

29 "(81) The North Carolina Recovery Finance Authority."

30 **SECTION 3.4.** G.S. 159-81(1) reads as rewritten:

31 "(1) "Municipality" means a county, city, town, incorporated village, sanitary  
32 district, metropolitan sewerage district, metropolitan water district,  
33 metropolitan water and sewerage district, county water and sewer district,  
34 water and sewer authority, hospital authority, hospital district, parking  
35 authority, special airport district, special district created under Article 43 of  
36 Chapter 105 of the General Statutes, regional public transportation authority,  
37 regional transportation authority, regional natural gas district, regional sports  
38 authority, airport authority, joint agency created pursuant to Part 1 of Article  
39 20 of Chapter 160A of the General Statutes, a joint agency authorized by  
40 agreement between two cities to operate an airport pursuant to G.S. 63-56,  
41 the North Carolina Recovery Finance Authority described in Article 45A of  
42 Chapter 58 of the General Statutes, and the North Carolina Turnpike  
43 Authority described in Article 6H of Chapter 136 of the General Statutes and  
44 transferred to the Department of Transportation pursuant to  
45 G.S. 136-89.182(b), but not any other forms of State or local government."

46 **SECTION 3.5.** G.S. 159-81(3) reads as rewritten:

47 "(3) "Revenue bond project" means any undertaking for the acquisition,  
48 construction, reconstruction, improvement, enlargement, betterment, or  
49 extension of any one or combination of the revenue-producing utility or  
50 public service enterprise facilities or systems listed in this subdivision, to be  
51 financed through the issuance of revenue bonds, thereby providing funds to

1 pay the costs of the undertaking or to reimburse funds loaned or advanced by  
2 or on the behalf of either the State or a municipality to pay the costs of the  
3 undertaking.

4 A revenue bond project shall be (i) owned or leased as lessee by the  
5 issuing unit or (ii) owned by one or more of the municipalities participating  
6 in an undertaking established pursuant to Part 1 of Article 20 of Chapter  
7 160A of the General Statutes. If the revenue bond project is owned by one or  
8 more municipalities as provided in (ii) of this subdivision, any one or more  
9 of the participating municipalities may each be an issuing unit consistent  
10 with their agreement to establish a joint undertaking. In addition, any joint  
11 agency established by participating municipalities pursuant to Part 1 of  
12 Article 20 of Chapter 160A of the General Statutes may be an issuing unit  
13 without owning the revenue bond project or leasing it as lessee.

14 The cost of an undertaking may include all property, both real and  
15 personal and improved and unimproved, plants, works, appurtenances,  
16 machinery, equipment, easements, water rights, air rights, franchises, and  
17 licenses used or useful in connection with the undertaking; the cost of  
18 demolishing or moving structures from land acquired and the cost of  
19 acquiring any lands to which the structures are to be moved; financing  
20 charges; the cost of plans, specifications, surveys, and estimates of cost and  
21 revenues; administrative and legal expenses; and any other expense  
22 necessary or incident to the project.

23 The following facilities or systems may be revenue bond projects under  
24 this subdivision:

25 ...

26 (r.) In the case of the North Carolina Recovery Finance Authority, the  
27 financing of a deficit in the North Carolina Insurance Underwriting  
28 Association pursuant to G.S. 58-45-47 with the repayment thereof to  
29 come from catastrophe recovery charges pursuant to that section or  
30 other revenues of the North Carolina Recovery Finance Authority,  
31 including payments from the Association or its members."

32 **SECTION 3.6.** G.S. 159-83 is amended by adding a new subsection to read:

33 "(g) The North Carolina Recovery Finance Authority by the power to finance as a  
34 revenue project a deficit in the Association pursuant to G.S. 58-45-47 and for this purpose may  
35 contract for the charging of catastrophe recovery charges pursuant to G.S. 58-45-47, including  
36 covenanting to make such charged as necessary for the payment of revenue bonds, and shall  
37 have the power to pledge and assign its rights to the making, revising, receiving, and enforcing  
38 such changes as security for its revenue bonds."

39 **SECTION 3.7.** G.S. 159-89 is amended by adding a new subdivision to read:

40 "(15) With respect to revenue bonds issued by the North Carolina Recovery  
41 Finance Authority, any agreements with the North Carolina Insurance  
42 Guaranty Association to assign without recourse to the Recovery Finance  
43 Authority the Insurance Guaranty Association's obligation to pay claims  
44 with respect to insurance policies issued by the Insurance Guaranty  
45 Association in an amount estimated to be in excess of its losses and expenses  
46 that exceed available surplus, reinsurance, and other sources of funding of  
47 Insurance Guaranty Association losses, including permissible assessments  
48 on its members, and act as agent for the Recovery Finance Authority to  
49 collect catastrophe recovery charges imposed by it under G.S. 58-45-47 and  
50 direct amounts so collected to the Recovery Finance Authority."

51 **SECTION 3.8.** G.S. 159-90(a)(1) reads as rewritten:

1           "(1) The maturity dates may not exceed the maximum maturity periods  
2           prescribed by the Commission for general obligation bonds pursuant to  
3           ~~G.S. 159-122~~. G.S. 159-122, provided the maturity dates for revenue bonds  
4           issued by the North Carolina Recovery Finance Authority shall be related to  
5           the structuring of the repayment of the proceeds rather than the facilities paid  
6           for, subject to an overall limit of 40 years. For bonds issued in  
7           reimbursement of a loan or advance, the maximum maturity period to be  
8           used in determining the maturity dates of the bonds shall be the maximum  
9           permissible period prescribed by the Commission for the original project for  
10          which the loan or advance was expended, calculated from the date the  
11          original project is completed."

12           **SECTION 3.9.** G.S. 159-93 reads as rewritten:

13           **"§ 159-93. Agreement of the State.**

14           The State of North Carolina does pledge to and agree with the holders of any revenue bonds  
15           or revenue bond anticipation notes heretofore or hereafter issued by the State or any  
16           municipality in this State that so long as any such bonds or notes are outstanding and unpaid  
17           the State will not limit or alter the rights vested in the State or the municipality at the time of  
18           issuance of the bonds or notes to establish, maintain, revise, charge, and collect such rates, fees,  
19           rentals, tolls, catastrophe recovery charges, and other charges for the use, services, facilities,  
20           and commodities of or furnished by the revenue bond project in connection with which the  
21           bonds or notes, or bonds or notes refunded by the bonds or notes, were issued as shall produce  
22           revenues at least sufficient with other available funds to meet the expense of maintenance and  
23           operation of and renewal and replacements to such project, including reserves therefor, to pay  
24           when due the principal, interest, and redemption premiums (if any) of the bonds or notes, and  
25           to fulfill the terms of any agreements made with the bondholders or noteholders, nor will the  
26           State in any way impair the rights and remedies of the bondholders or noteholders until the  
27           bonds or notes and all costs and expenses in connection with any action or proceedings by or  
28           on behalf of the bondholders or noteholders, are fully paid, met, and discharged."

29           **SECTION 3.10.** G.S. 159-95 reads as rewritten:

30           **"§ 159-95. Approval of State agencies.**

31           The general design and plan of any revenue bond project undertaken for water systems or  
32           facilities or sewage disposal systems or facilities shall be subject to the approval of the  
33           Commission for Public Health or the State Environmental Management Commission to the  
34           same extent that such projects would be if they were not financed by revenue bonds, and the  
35           provisions of the revenue bond order shall be consistent with any requirements imposed on the  
36           project by the Commission for Public Health or the State Environmental Management  
37           Commission. No revenue bond project for the acquisition or construction of systems or  
38           facilities for the generation, production, or transmission of gas or electric power may be  
39           undertaken by the State or a municipality unless the State or municipality, as the case may be,  
40           shall first obtain a certificate of convenience and necessity from the North Carolina Utilities  
41           Commission. Bonds issued by the North Carolina Recovery Finance Authority do not require  
42           the approval of the Department of Insurance except to the extent catastrophe recovery charges  
43           therefore require action pursuant to G.S. 58-45-47."

44           **SECTION 3.11.** G.S. 159-96 is amended by adding a new subsection to read:

45           "(f) Notwithstanding the other provisions of this section, there is no geographic or  
46           territorial limitation on the use of proceeds of North Carolina Recovery Finance Authority  
47           revenue bonds other than for payment of a deficit related to a catastrophic event affecting  
48           property covered under insurance policies issued by the North Carolina Insurance Guaranty  
49           Association."

50  
51           **PART IV. REFORM CONSENT TO RATE**

1           **SECTION 4.1.** G.S. 56-36-30 reads as rewritten:

2   "**§ 58-36-30. Deviations.**

3       ...

4       (b)   This subsection applies only to insurance against theft of or physical damage to  
5 nonfleet private passenger motor vehicles and for loss costs and residual market rate filings for  
6 workers' compensation and employers' liability insurance written in connection with those loss  
7 costs and rate filings. A rate in excess of that promulgated by the Bureau may be charged by an  
8 insurer on any specific risk if the higher rate is charged in accordance with rules adopted by the  
9 Commissioner and with the knowledge and written consent of the insured. The insurer is not  
10 required to obtain the written consent of the insured on any renewal of or endorsement to the  
11 policy if the policy renewal or endorsement states that the rates are greater than those rates that  
12 are applicable in the State of North Carolina. The insurer shall retain the signed consent form  
13 and other policy information for each insured and make this information available to the  
14 Commissioner, upon request of the Commissioner. This subsection may be used to provide  
15 motor vehicle liability coverage limits above those required under Article 9A of Chapter 20 of  
16 the General Statutes and above those cedable to the Facility under Article 37 of this Chapter to  
17 persons whose personal excess liability insurance policies require that they maintain specific  
18 higher liability coverage limits. Any data obtained by the Commissioner under this subsection  
19 is proprietary and confidential and is not a public record under G.S. 132-1 or G.S. 58-2-100.

20       (b1) This subsection applies only to insurance against loss to residential real property  
21 with not more than four housing units. A rate in excess of that promulgated by the Bureau may  
22 be charged by an insurer on any specific risk if the higher rate is charged in accordance with  
23 rules adopted by the Commissioner, is based on sound actuarial principles, and is charged with  
24 the knowledge and written consent of the insured. The insurer is not required to obtain the  
25 written consent of the insured on any renewal of or endorsement to the policy if the policy  
26 renewal or endorsement states that the rates are greater than those rates that are applicable in  
27 the State of North Carolina, provided, however, that if the renewal or endorsement rates are  
28 greater than those previously consented to in writing by the insured, the insurer shall give 30  
29 days' notice to the insured and obtain the insured's written consent to the greater rates. The  
30 insurer shall retain the signed consent form and other policy information for each insured and  
31 make this information available to the Commissioner, upon request of the Commissioner. Any  
32 data obtained by the Commissioner under this subsection is proprietary and confidential and is  
33 not a public record under G.S. 132-1 or G.S. 58-2-100.

34       ...."

## 35

### 36 **PART V. CATASTROPHIC MODELING**

37           **SECTION 5.1.** G.S. 58-36-10 reads as rewritten:

38   "**§ 58-36-10. Method of rate making; factors considered.**

39       The following standards shall apply to the making and use of rates:

- 40       (1)   Rates or loss costs shall not be excessive, inadequate or unfairly  
41           discriminatory.
- 42       (2)   Due consideration shall be given to actual loss and expense experience  
43           within this State for the most recent three-year period for which that  
44           information is available; to prospective loss and expense experience within  
45           this State; to the hazards of conflagration and catastrophe; to a reasonable  
46           margin for underwriting profit and to contingencies; to dividends, savings, or  
47           unabsorbed premium deposits allowed or returned by insurers to their  
48           policyholders, members, or subscribers; to investment income earned or  
49           realized by insurers from their unearned premium, loss, and loss expense  
50           reserve funds generated from business within this State; to past and  
51           prospective expenses specially applicable to this State; and to all other

- 1 relevant factors within this State: Provided, however, that countrywide  
2 expense and loss experience and other countrywide data may be considered  
3 only where credible North Carolina experience or data is not available.
- 4 (3) In the case of property insurance rates under this Article, consideration may  
5 be given to the experience of property insurance business during the most  
6 recent five-year period for which that experience is available. In the case of  
7 property insurance rates under this Article, consideration shall be given to  
8 the insurance public protection classifications of fire districts established by  
9 the Commissioner. The Commissioner shall establish and modify from time  
10 to time insurance public protection districts for all rural areas of the State  
11 and for cities with populations of 100,000 or fewer, according to the most  
12 recent annual population estimates certified by the State Budget Officer. In  
13 establishing and modifying these districts, the Commissioner shall use  
14 standards at least equivalent to those used by the Insurance Services Office,  
15 Inc., or any successor organization. The standards developed by the  
16 Commissioner are subject to Article 2A of Chapter 150B of the General  
17 Statutes. The insurance public protection classifications established by the  
18 Commissioner issued pursuant to the provisions of this Article shall be  
19 subject to appeal as provided in G.S. 58-2-75, et seq. The exceptions stated  
20 in G.S. 58-2-75(a) do not apply. If the Rate Bureau presents any modeled  
21 losses with a property insurance rate filing, the Bureau shall present data  
22 from more than one catastrophe model, and the models shall be based on  
23 maximum load designs, such as maximum wind or rain loads, contained  
24 within the State Building Codes promulgated by the State Building Code  
25 Council.

26 ...."

## 27 28 **PART VI. STUDIES**

29 **SECTION 6.1.(a)** LSC Study of Property Insurance Rate Making. – There is  
30 created the Joint Legislative Study Committee on Property Insurance Rate Making. The  
31 Committee shall consist of 10 members to be appointed as follows:

- 32 (1) Five members of the House of Representatives appointed by the Speaker of  
33 the House of Representatives.
- 34 (2) Five members of the Senate appointed by the President Pro Tempore of the  
35 Senate.

36 **SECTION 6.1.(b)** Study. – The Committee shall study the following:

- 37 (1) The structure, function, and operations of the Rate Bureau, with particular  
38 attention to the conditions and characteristics of the insurance market and  
39 the magnitude and type of insurable risks in North Carolina that require the  
40 existence of a body such as the Rate Bureau that no longer exists in any  
41 other state.
- 42 (2) The prevalence and geographic distribution of property insurance policies  
43 (including homeowners' insurance policies and separate policies of  
44 windstorm and hail insurance) issued with a rate in excess of that  
45 promulgated by the North Carolina Rate Bureau that is charged with the  
46 knowledge and written consent of the insured under G.S. 58-36-30(b)  
47 ("Consent to Rate policies").
- 48 (3) Any other subject the Committee finds germane to an understanding of and  
49 basis for legislative proposals to revise the property insurance rate making  
50 process in North Carolina.

