

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Robert A. O'Leary

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 passage of the accompanying bill:

An Act Relative to Increasing Access to Homeowners Insurance .

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Robert A. O'Leary	Cape and Islands
Sarah K. Peake	4th Barnstable
Cleon H. Turner	1st Barnstable
Matthew C. Patrick	3rd Barnstable
Timothy Madden	Barnstable, Dukes and Nantucket

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

90 (d) Managerial and administrative functions shall be performed by public employees employed
91 by the board. In addition, the board may contract with professionals or service providers for

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

99 Section 4.

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

105 (b)(1) The contract shall contain a promise by the fund to reimburse the insurer for 90 per cent of
106 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 FAIR
109 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 reinsurance
115 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 contracts
117 covering a particular contract year shall not exceed \$4.86 billion for that contract year, except
118 that, beginning with the 2009 contract year, the \$4.86 billion annual limit shall be adjusted based
119 upon the reported exposure from the prior contract year to reflect the percentage change in
120 exposure to the fund for covered policies since 2008.

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

131 (2) Require the fund to determine and pay, as soon as practicable after receiving initial reports of
132 reimbursable losses, the initial amount of reimbursement due, and to determine and pay
133 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 exceed the
138 total claims-paying capacity of the fund, as determined under subsection (c), multiplied by the
139 insurer's share of the total reimbursement premium paid to the fund for the contract year.

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

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

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

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

164 (e) In order to ensure that insurers have properly reported the insured values on which the
165 reimbursement premium is based and to ensure that insurers have properly reported the losses for
166 which reimbursements have been made, the fund shall inspect, examine, and verify the records
167 of each insurer's covered policies at such times as the fund considers appropriate and according

168 to standards established by rule for the specific purpose of validating the accuracy of exposures
169 and losses required to be reported under the terms and conditions of the reimbursement contract.
170 The costs of the examinations shall be borne by the fund. However, in order to remove any
171 incentive for an insurer to delay preparations for an examination, the fund shall be reimbursed by
172 the insurer for any examination expenses incurred in addition to the usual and customary costs of
173 the examination, which additional expenses were incurred as a result of an insurer's failure,
174 despite proper notice, to be prepared for the examination or as a result of an insurer's failure to
175 provide requested information while the examination is in progress. If the fund finds any
176 insurer's records or other necessary information to be inadequate or inadequately posted,
177 recorded, or maintained, the fund may employ experts to reconstruct, rewrite, record, post, or
178 maintain such records or information, at the expense of the insurer being examined, if that
179 insurer has failed to maintain, complete, or correct the records or deficiencies after the fund has
180 given the insurer notice and a reasonable opportunity to do so.

181 Section 5.

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

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

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

207 (d) All premiums paid to the fund under reimbursement contracts shall be treated as premium
208 for approved reinsurance for all accounting, regulatory, premium tax, and retaliatory tax

209 purposes. An insurer's rates may reflect reimbursement premiums paid to the fund, and may, as
210 to any particular geographic area or construction type, be structured to reflect the actual
211 reimbursement premium attributable to that geographic area and construction type.

212 Section 6.

213 (a) (1) Upon the occurrence of a covered event and a determination that the unencumbered
214 balance of the fund is or will be insufficient to pay reimbursement at the levels promised in the
215 reimbursement contracts, the board may take the necessary steps under subsection (c) for the
216 issuance of revenue bonds for the benefit of the fund. The proceeds of these revenue bonds may
217 be used to make reimbursement payments under reimbursement contracts; to refinance or replace
218 previously existing borrowings or financial arrangements; to pay interest on bonds; to fund
219 reserves for the bonds; to pay expenses incident to the issuance or sale of any bond issued under
220 this section, including costs of validating, printing, and delivering the bonds, costs of printing the
221 official statement, costs of publishing notices of sale of the bonds, and related administrative
222 expenses; or for such other purposes related to the financial obligations of the fund as the board
223 may determine. The term of the bonds may not exceed 30 years. The board may pledge or
224 authorize the corporation to pledge all or a portion of all revenues under section 5 and under
225 subsection (b) to secure these revenue bonds, and the board may execute such agreements
226 between the board and the issuer of any revenue bonds and providers of other financing
227 arrangements under subsection (b) of section 7 as the board considers necessary to evidence,
228 secure, preserve, and protect this pledge. If reimbursement premiums received under section 5 or
229 earnings on these premiums are used to pay debt service on revenue bonds, the premiums and
230 earnings shall be used only after the use of the moneys derived from assessments under
231 subsection (b). The funds, credit, property, or taxing power of the commonwealth or political
232 subdivisions of the commonwealth shall not be pledged for the payment of these bonds. The
233 board may also enter into agreements under subsection (c) for the purpose of issuing revenue
234 bonds in the absence of a covered event upon a determination that this action would maximize
235 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 proceeds of
237 the bonds to insurers, thereby enabling insurers to pay the claims of policyholders to assure that
238 policyholders are able to pay the cost of construction, reconstruction, repair, restoration, and
239 other costs associated with damage to property of policyholders of covered policies after the
240 occurrence of a covered event.

241 (b) (1) If the board determines that the unencumbered balance of the fund is insufficient to pay
242 the obligations, costs, and expenses of the fund and the corporation, including repayment of
243 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 policyholder to
258 the insurer that issued the policy. Each insurer shall collect from each policyholder the full
259 amount of the assessment payable in respect to the policyholder's policy. All premium notices or
260 invoices issued after the effective date of this act shall include a statement of the amount of the
261 assessment, if any, listed separately from the amount of the premium.

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

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

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

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

288 (7) The emergency assessments authorized by this section are the legal obligation of the
289 policyholder. The emergency assessments are not premiums and are not subject to any taxes,
290 fees, or commissions. The amounts imposed on policyholders under this section are not subject

291 to any retaliatory tax provisions or similar provisions. An insurer may treat the failure of an
292 insured to pay an assessment as a failure to pay the premium. An insurer is not liable for
293 uncollectible assessments.

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

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

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

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

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

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

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

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

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

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

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

323 (vii) The commonwealth hereby covenants with holders of bonds of the corporation that the
324 commonwealth will not repeal or abrogate the power of the board to direct the insurance

325 commissioner to levy the assessments and to collect the proceeds of the revenues pledged to the
326 payment of these bonds as long as any such bonds remain outstanding unless adequate provision
327 has been made for the payment of these bonds pursuant to the documents authorizing the
328 issuance of the bonds.

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

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

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

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

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

361 (2) The commonwealth hereby covenants with holders of bonds of the corporation that the
362 commonwealth will not limit or alter the denial of authority under this subsection or the rights
363 under this chapter vested in the fund or the corporation to fulfill the terms of any agreements
364 made with such bondholders or in any way impair the rights and remedies of those bondholders

365 as long as any bonds remain outstanding unless adequate provision has been made for the
366 payment of those bonds pursuant to the documents authorizing the issuance of the bonds.

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

376 (e) When the board makes a determination that emergency assessments are to be levied, the
377 board shall also adopt a plan for the refund of assessment proceeds, which plan will be activated
378 only after all bonds of the corporation have been retired and the unencumbered balance of the
379 fund exceeds the maximum payout of the fund as specified in paragraph (1) of subsection (c) of
380 section 4. The plan shall provide for rebates to then-current policyholders of assessable policies
381 in proportion to premiums paid by the policyholder in the year preceding the year in which
382 rebates are paid out.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

438 features of the coverage. Each insurer, including the joint underwriting association, shall be
439 required to provide this information to each policyholder upon the issuance or renewal of a
440 policy.

441

442 **SECTION 3.** Said chapter 175, as so appearing, is hereby amended by inserting after section
443 99C the following 2 sections: -

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

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

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

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

458 (3) the deductible, whether a flat dollar amount or a percentage of insured value, shall be
459 presented in at least 2 examples that illustrate the application of the deductible to the insured.
460 Nothing herein shall prohibit the insurer from providing any additional information to the
461 insured to assist in the insured's understanding of the deductible to be applied to the insured's
462 policy.

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

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

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

477 (b) The center shall develop criteria for hurricane loss projection models and methodologies that

478 are specific to Massachusetts and may from time to time adopt revisions to these criteria. In
479 establishing the criteria, the center shall consider any models, model software, methods,
480 principles, standards, data, inputs, manuals, validation studies and output ranges that have the
481 potential for improving the accuracy of or reliability of the hurricane loss projections used in
482 homeowners' insurance rate filings. The criteria developed under this subsection shall be based
483 on actual data on Massachusetts construction practices, codes, and buildings. Criteria developed
484 by the center for this purpose shall be a public record.

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

503 (d) There shall be a rebuttable presumption that the recommendations made by the center
504 relative to the accuracy or reliability of particular models, model software, methods, principles,
505 standards, data, inputs, manuals, validation studies and output ranges submitted to the center by
506 insurers shall be considered by the commissioner to be relevant evidence in a rate proceeding on
507 an insurer's rate filing, provided, however that an exemption from the disclosure of trade secrets
508 to the public may apply as set forth in subsection (e).

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

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

520

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

524

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

527

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

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

544

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

569 (d) The plan of operation shall be subject to approval by the commissioner and shall take
570 effect 10 days after the commissioner approves it. If the commissioner disapproves the proposed
571 plan of operation, the association shall, within 30 days, submit for review an appropriately
572 revised plan of operation and, if the association fails to submit such a plan or if the revised plan
573 is also disapproved by the commissioner, the commissioner shall adopt a plan of operation
574 consistent with this section. The association may, on its own initiative or at the request of the
575 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, profits
577 and losses in the proportion that the premiums written by each such member for basic property
578 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 coverage
586 shall be adjusted based on the homeowners premiums written by such a member in any credit-
587 eligible zip code, defined as all zip codes in Massachusetts where the Fair Plan market share
588 exceeds 1.5 times the Fair Plan statewide market share, never less than 15%, averaged over the
589 latest three calendar years, in accordance with the following clauses:

590 (i) The participation ratio of each member writing personal lines insurance shall be
591 recalculated, in accordance with the procedures set forth in subparagraph (1) but subtracting the
592 premium written by members of the association writing only commercial lines insurance from
593 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 shall be
599 (A) reduced by subtracting therefrom 150% of the homeowners premium written by each
600 member in any credit-eligible zip code in the year of an MPIUA loss or (B) shall be increased by
601 adding therefrom 150% of the homeowners premium written by each member in any credit-
602 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 than
604 zero, shall be divided by sum of this calculation across all carriers. The resulting ratio shall be
605 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 insurance
611 shall be further adjusted if such member has written homeowners insurance during the preceding
612 calendar year, hereafter called the base year, on property that was insured by the association in
613 the year immediately preceding such base year and which is located in any credit eligible zip
614 code, defined as all zip codes in Massachusetts where the Fair Plan market share exceeds 1.5
615 times the Fair Plan statewide market share, never less than 15%, averaged over the latest three
616 calendar years. The participation of such a member shall be adjusted by (i) reducing the amount
617 of premium written by such member in subparagraph (1) by one hundred percent of the total
618 homeowners insurance premiums written by the member on property described in this clause in
619 the year of an MPIUA loss or by (ii) increasing the amount of premium written by such member
620 in subparagraph (1) by one hundred percent of the total homeowners insurance premiums written
621 by the member on property described in this clause in the year of an MPIUA profit. Such
622 adjustment shall not apply to any insurance written on property that was insured by the member
623 or any affiliate or subsidiary member in either of the two years preceding the base year.

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

634
635 **SECTION 8.** Subsection (c) of section 5 of said chapter 175C, as so appearing, is hereby
636 amended by inserting after the third sentence, the following sentence: "Nothing in this subsection
637 shall be construed as to prevent the commissioner from considering the following premium

638 adjustments on owner’s policy forms for homeowners in all territories: adjustments to key
639 factors to keep costs reasonable for applicants with Coverage A amounts less than the median
640 Coverage A amount within that territory, coastal area rating factors that are based upon predicted
641 hurricane losses associated with distance from the coast, approving rating adjustments to keep
642 costs reasonable for primary residents, and approving rating adjustments to keep costs reasonable
643 for insureds over the age of 64.”

644

645 **SECTION 9.** Said section 5 of said chapter 175C, as so appearing, is hereby further amended
646 by inserting the following subsection:-

647 (d) The commissioner shall develop a disclosure form to inform individuals seeking to purchase
648 basic property insurance about the risks associated with choosing solely a stand alone liability
649 policy. This form shall be written in plain language, explained to an individual seeking to
650 purchase stand along liability coverage as their sole basic property insurance, and signed by that
651 individual.

652

653 **SECTION 10.** Said chapter 175C is hereby further amended by adding the following section:—

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

664 (a) Said chapter 175C is hereby further amended by adding the following section:—

665 Section 10. The association shall pay a dividend on homeowners insurance premiums for
666 coastal properties occupied as primary residences having a Coverage A limit not greater
667 than the median Coverage A for the territory in which the property is located. This
668 dividend shall be paid in a year which is the third consecutive year in which there have
669 been no hurricane-related losses in the territory and this dividend shall be a third of all
670 hurricane loss premiums, less the cost of reinsurance purchased by the association. This
671 dividend shall not be paid in a year when such payment shall cause the association to
672 realize a net loss for that year, and shall only be made in a year in which the association
673 has purchased adequate reinsurance for hurricane losses, as determined by the
674 commissioner. The possibility of a dividend shall not be considered by the commissioner
675 in approving rates proposed by the association.

676 **SECTION 11.** Notwithstanding the provisions of section 7, the appointment of the 4 directors
677 from the general public appointed by the commissioner of insurance shall be as follows: 2

678 directors shall be appointed for a term of 3 years, 1 director shall be appointed for a term of 2
679 years, and 1 director shall be appointed for a term of 1 year. The appointment of the 2 directors
680 from the general public appointed by the attorney general shall be as follows: 1 director shall be
681 appointed for a term of 2 years and 1 director shall be appointed for a term of 1 year. Upon
682 expiration of these appointments, all subsequent appointments of directors from the general
683 public shall be appointed for 3 year terms

684

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

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

695

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