

SENATE NO. 624

AN ACT ESTABLISHING A MASSACHUSETTS WINDSTORM CATASTROPHE FUND

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

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

CHAPTER 175K

THE MASSACHUSETTS WINDSTORM CATASTROPHE FUND

5 Section 1. The general court finds that:

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

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

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

14 (d) The purpose of this act is to restore a stable, orderly, and competitive property insurance market
15 and to safeguard the Massachusetts economy by creating a fund to provide a stable source of

16 reimbursement to both the FAIR Plan and private sector insurers for a portion of their losses from
17 catastrophic windstorm events.

18 (e) It is essential to the functioning of a governmental program to restore market stability and increase
19 insurance capacity so that revenues received by the program be exempt from federal taxation. It is
20 therefore the legislative intent of this chapter that the program be structured as a trust fund under the
21 direction and control of a board composed of statewide elected officials and that the program operate
22 exclusively for the purpose of protecting and advancing the commonwealth's interest in market
23 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 provided by
26 the fund, an amount determined according to principles of actuarial science to be adequate, but not
27 excessive, in the aggregate, to pay current and future obligations and expenses of the fund, based on
28 the aggregate statewide average annual loss to all insurers from covered events. In calculating the
29 aggregate statewide average annual loss from covered events, the fund shall use an average of the
30 results of at least two catastrophic loss models generally accepted within the actuarial community.

31 The term "actuarially indicated" includes additional amounts if needed to pay debt service on revenue
32 bonds issued under this chapter and to provide required debt service coverage in excess of the amounts
33 required to pay actual debt service on revenue bonds issued under this chapter. The "actuarially
34 indicated" premium for each insurer shall be determined according to principles of actuarial science to
35 reflect each insurer's relative exposure to hurricane losses.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

81 (c) Moneys in the fund may not be expended, loaned, or appropriated except (i) to pay obligations of
82 the fund arising out of reimbursement contracts entered into under section 4, (ii) to pay debt service on
83 revenue bonds issued under section 6, and (iii) to pay the costs of the mitigation program under section
84 7, costs of procuring reinsurance, and the costs of administration of the fund. The board shall invest

85 the moneys in the fund in the manner provided by law for other funds of the commonwealth. Except as
86 otherwise provided in this chapter, earnings from all investments shall be retained in the fund.

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

96 Section 4.

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

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

105 (2) The governing board may provide participating insurers other than the Massachusetts FAIR Plan
106 with the option to select a coverage level lower than the 90 per cent level specified in paragraph (1),
107 but no lower than 45 per cent, in exchange for a proportionally lower reimbursement premium. The

108 board shall specify such optional coverage levels at the same time as it approves the reimbursement
109 premium formula under section 5. The optional coverage levels must be approved by unanimous vote
110 of the membership of the board.

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

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

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

125 (d) The contract shall:

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

128 (2) Require the fund to determine and pay, as soon as practicable after receiving initial reports of
129 reimbursable losses, the initial amount of reimbursement due, and to determine and pay adjustments to
130 this amount based on later loss information, subject to such review and verification as the fund

131 considers appropriate. The adjustments to reimbursement amounts shall require the fund to pay, or the
132 insurer to return, amounts reflecting the most recent calculation of losses.

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

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

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

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

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

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

174 Section 5.

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

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

193 (c) No later than November 1 of each year, each insurer shall notify the fund of its insured values
194 under covered policies by zip code, as of September 1 of that year. On the basis of these reports, the
195 fund shall calculate the premium due from each insurer for the ensuing contract year, based on the
196 formula adopted under subsection (b). Each insurer shall pay the required annual premium pursuant to
197 a periodic payment plan specified in the contract. The fund shall collect interest on late reimbursement

198 premium payments consistent with the assumptions made in developing the premium formula in
199 accordance with subsection (b).

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

205 Section 6.

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

221 earnings on these premiums are used to pay debt service on revenue bonds, the premiums and earnings
222 shall be used only after the use of the moneys derived from assessments under subsection (b). The
223 funds, credit, property, or taxing power of the commonwealth or political subdivisions of the
224 commonwealth shall not be pledged for the payment of these bonds. The board may also enter into
225 agreements under subsection (c) for the purpose of issuing revenue bonds in the absence of a covered
226 event upon a determination that this action would maximize the ability of the fund to meet future
227 obligations.

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

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

244 subject to annual adjustments by the board to reflect changes in premiums subject to assessments
245 collected under this paragraph in order to meet debt obligations. The same percentage shall apply to all
246 policies in lines of business subject to the assessment issued or renewed during the 12-month period
247 beginning on the effective date of the assessment.

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

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

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

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

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

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

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

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

286 (i) The public benefits corporation created under this subsection will provide a mechanism necessary
287 for the cost-effective and efficient issuance of bonds. This mechanism will eliminate unnecessary costs

288 in the bond issuance process, thereby increasing the amounts available to pay reimbursement for losses
289 to property sustained as a result of hurricane damage.

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

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

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

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

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

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

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

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

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

311 to levy the assessments and to collect the proceeds of the revenues pledged to the payment of these
312 bonds as long as any such bonds remain outstanding unless adequate provision has been made for the
313 payment of these bonds pursuant to the documents authorizing the issuance of the bonds.

314 (4) The bonds of the corporation are not a debt of the commonwealth or of any political subdivision,
315 and neither the commonwealth nor any political subdivision is liable on these bonds. The corporation
316 does not have the power to pledge the credit, the revenues, or the taxing power of the commonwealth
317 or of any political subdivision. The credit, revenues, or taxing power of the commonwealth or of any
318 political subdivision shall not be considered to be pledged to the payment of any bonds of the
319 corporation.

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

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

332 (6) The corporation and its corporate existence shall continue until terminated by law, but no such law
333 shall take effect as long as the corporation has bonds outstanding unless adequate provision has been

334 made for the payment of those bonds pursuant to the documents authorizing the issuance of those
335 bonds. Upon termination of the existence of the corporation, all of its rights and properties in excess of
336 its obligations shall pass to and be vested in the commonwealth.

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

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

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

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

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

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

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

378 (d) The fund may allow insurers to comply with reporting requirements and reporting format
379 requirements by using alternative methods of reporting if the proper administration of the fund is not

380 thereby impaired and if the alternative methods produce data which is consistent with the purposes of
381 this chapter.

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

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

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

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

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

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

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

400 Section 11. Upon the creation of a federal or multi-state catastrophic insurance or reinsurance
401 program intended to serve purposes similar to the purposes of the fund created by this chapter, the

402 board may recommend legislative action for coordination with the federal or multi-state program, for
403 termination of the fund, or for such other actions as the board finds appropriate in the circumstances.

404 Section 12. The fund and the duties of the board under this chapter may be terminated only by law.

405 Upon termination of the fund, all assets of the fund shall revert to the commonwealth.

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

410

411 SECTION 2. Startup funding and capital contribution.—For the purpose of defraying the startup costs
412 of the fund and for the purpose of providing an initial capital contribution to the fund from the
413 commonwealth, the sum of \$7.5 million is appropriated to the fund for the fiscal year 2007-2008, and
414 the sum of \$7.5 million is appropriated to the fund for the fiscal year 2008-2009.

415 SECTION 3. Upon passage of this act, the Massachusetts Property Insurance Underwriting
416 Association shall freeze all rates for the association homeowners insurance policies in large share
417 territories for a period of two years.

418 SECTION 4. The Commissioner on Insurance shall convene a special commission to investigate the
419 current state of the homeowners insurance market in the Commonwealth. The commission shall study
420 the availability and affordability of property insurance, the relevant rate driving factors including, but
421 not limited to, insurance fraud, price gouging, and the types of loss costs and their frequency. The
422 commission shall investigate the current use of storm damage predication data and shall consider any
423 actuarial methods, principles, standards, models, or output ranges that have the potential for improving
424 the accuracy of or reliability of the hurricane loss projections used in property insurance rate filings.

425 The commission shall evaluate the creation and potential benefit of a state-run board on Hurricane
426 Loss Projection Methodology to provide actuarial guidelines and standards for projection of hurricane
427 losses. The commission shall investigate the implementation of regulations restricting private property
428 insurers from reducing their offering of policies by not less than ten percent in a given territory in a
429 given year.

430 The commission shall make any recommendations for legislative or regulatory action on these matters,
431 with the clerks of the house and senate within one year of the passage of this act.