

3997

2009-2010 Regular Sessions

I N S E N A T E

April 7, 2009

Introduced by Sen. ESPADA -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law and the public authorities law, in relation to the creation of the insurer fund for underserved neighborhood/rural area development corporation

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The insurance law is amended by adding a new section 1415
2 to read as follows:

3 S 1415. INSURER FUND FOR UNDERSERVED NEIGHBORHOOD/RURAL AREA DEVELOP-
4 MENT. (A) FOR THE PURPOSES OF THIS SECTION:

5 (1) "IFUND CORPORATION", "CORPORATION" OR "IFUND" SHALL MEAN THE
6 INSURER FUND FOR UNDERSERVED NEIGHBORHOOD/RURAL AREA DEVELOPMENT CORPO-
7 RATION;

8 (2) "QUALIFIED INVESTMENT" SHALL INCLUDE ANY LOAN, THE PURCHASE OF ANY
9 LOAN, THE PURCHASE OF ANY ASSET, THE EXTENSION OF CREDIT AND THE
10 PURCHASES OF EQUITY:

11 (A) TO OR FROM COMMUNITY DEVELOPMENT CORPORATIONS, NON-PROFIT INTERME-
12 DIARIES QUALIFIED UNDER SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE
13 WHICH PACKAGE LOANS AND ADMINISTER LOAN FUNDS AND QUALIFIED COMMUNITY
14 DEVELOPMENT ENTITIES AS DEFINED IN SECTION 450(A) OF THE INTERNAL REVEN-
15 UE CODE AND REGULATIONS HEREUNDER;

16 (B) TO FINANCE OR FACILITATE THE FINANCING OF SINGLE- OR MULTI-FAMILY
17 HOUSING AFFORDABLE TO PERSONS OF LOW AND MODERATE INCOME, FAMILY FARMS,
18 SMALL BUSINESSES AND OTHER COMMUNITY DEVELOPMENT ACTIVITIES APPROVED BY
19 THE SUPERINTENDENT THAT REVITALIZE OR STABILIZE UNDERSERVED AREAS,
20 CERTIFIED CAPITAL COMPANIES AS DEFINED IN SECTION ELEVEN OF THE TAX LAW,
21 COMMUNITY SERVICE FACILITIES, INCLUDING CHILD CARE, EDUCATIONAL, HEALTH
22 OR SOCIAL SERVICES TARGETING UNDERSERVED AREAS, THE DEVELOPMENT, ESTAB-
23 LISHMENT OR OPERATION OF HEALTH INFORMATION TECHNOLOGY, AND THE ENVIRON-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 MENTAL CLEANUP OR REDEVELOPMENT OF INDUSTRIAL SITES IN AN UNDERSERVED
2 AREA; AND

3 (C) IN NEW YORK STATE AND LOCAL GOVERNMENT AGENCY BONDS THAT PRIMARILY
4 BENEFIT UNDERSERVED AREAS IN AN AMOUNT THAT, IN THE AGGREGATE, DOES NOT
5 EXCEED TEN PERCENT OF THE INVESTMENT CAPITAL OF THE CORPORATION;

6 (3) "LOW AND MODERATE INCOME" SHALL MEAN PERSONS OR FAMILIES WHICH
7 HAVE INCOMES THAT DO NOT EXCEED EIGHTY PERCENT OF THE MEDIAN INCOME FOR
8 THE METROPOLITAN STATISTICAL AREA, IF A PERSON OR FAMILY IS LOCATED IN
9 SUCH AN AREA, OR THE STATEWIDE NONMETROPOLITAN STATISTICAL AREA, IF A
10 PERSON OR FAMILY IS LOCATED OUTSIDE A METROPOLITAN STATISTICAL AREA;

11 (4) "MEMBER" SHALL MEAN A MEMBER OF THE CORPORATION;

12 (5) "UNDERSERVED AREAS" SHALL MEAN: (A) AREAS OF THE STATE WHICH QUAL-
13 IFY AS "DISTRESSED" OR "HIGHLY DISTRESSED" PURSUANT TO THE GENERAL
14 MUNICIPAL LAW; OR (B) AREAS OF THE STATE WITH A MAJORITY OF RESIDENTS OF
15 LOW OR MODERATE INCOME;

16 (6) "FAMILY FARM" SHALL MEAN A FARM WHICH IS THE PRIMARY SOURCE OF
17 INCOME FOR INDIVIDUALS RESIDING AT THE SAME ADDRESS AND RELATED BY
18 CONSANGUINITY, AFFINITY OR ADOPTION AND WHICH HAS GROSS SALES OF FARM
19 PRODUCTS OF LESS THAN FIVE HUNDRED THOUSAND DOLLARS ANNUALLY;

20 (7) "SMALL BUSINESSES" SHALL HAVE THE SAME MEANING AS DESCRIBED IN
21 SECTION ONE HUNDRED THIRTY-ONE OF THE ECONOMIC DEVELOPMENT LAW;

22 (8) "OPERATING EXPENSES" SHALL MEAN THE EXPENSES THE CORPORATION
23 INCURS IN THE ACCOMPLISHMENT OF ITS PURPOSE;

24 (9) "INVESTMENT CAPITAL" SHALL MEAN THE FUNDS CONTRIBUTED TO THE
25 CORPORATION BY ITS MEMBERS IN ORDER TO MAKE QUALIFIED INVESTMENTS PURSU-
26 ANT TO ITS PLAN OF OPERATIONS; AND

27 (10) "HEALTH INFORMATION TECHNOLOGY" SHALL MEAN TECHNOLOGY USED TO:
28 ELECTRONICALLY SHARE PATIENT INFORMATION; IMPROVE CARE COORDINATION;
29 PROMOTE EFFICIENCIES IN THE DELIVERY OF, OR PAYMENT FOR, CARE; OR
30 ENHANCE OUTCOMES, PATIENT SELF-MANAGEMENT AND/OR QUALITY, OR OTHER MEANS
31 OF IMPROVING INTEROPERABILITY AND/OR INTERCONNECTEDNESS OF HEALTH CARE
32 PROVIDERS, CONSUMERS AND/OR PAYERS.

33 (B)(1) THE INSURER FUND FOR UNDERSERVED NEIGHBORHOOD/RURAL AREA DEVEL-
34 OPMENT CORPORATION IS HEREBY ESTABLISHED CONSISTING OF ALL INSURERS
35 AUTHORIZED TO WRITE AND ENGAGED IN WRITING, WITHIN THIS STATE, ON A
36 DIRECT BASIS, ANY OF THE TYPES OF INSURANCE DESCRIBED IN PARAGRAPHS ONE
37 THROUGH TEN, TWELVE THROUGH SEVENTEEN AND NINETEEN THROUGH THIRTY OF
38 SUBSECTION (A) OF SECTION ONE THOUSAND ONE HUNDRED THIRTEEN OF THIS
39 CHAPTER. EVERY SUCH INSURER SHALL BE AND SHALL REMAIN A MEMBER OF THE
40 CORPORATION AS A CONDITION OF ITS AUTHORITY TO CONTINUE TO TRANSACT SUCH
41 TYPES OF INSURANCE IN THIS STATE AND SHALL CONTRIBUTE ITS PROPORTIONAL
42 SHARE OF THE INVESTMENT CAPITAL AND OPERATING EXPENSES OF THE CORPO-
43 RATION.

44 (2) THE CORPORATION SHALL BE A FOR-PROFIT CORPORATION CONSTITUTING A
45 LEGAL ENTITY SEPARATE AND DISTINCT FROM ITS MEMBERS. ALL FUNDS AND
46 RESERVES OF THE CORPORATION SHALL BE SEPARATELY HELD AND INVESTED. IT
47 SHALL MAINTAIN COMPLETE ACCOUNTS OF ALL MONIES RECEIVED AND ALL LOSSES
48 AND EXPENSES INCURRED IN CONNECTION WITH ITS OPERATIONS.

49 (3) THE PURPOSE OF THE CORPORATION SHALL BE TO PROMOTE THE ECONOMIC
50 WELFARE AND HEALTH AND WELL-BEING OF THE CITIZENS OF THIS STATE THROUGH
51 QUALIFIED INVESTMENTS IN UNDERSERVED AREAS OF THE STATE.

52 (C) (1) THE CORPORATION SHALL OPERATE IN ACCORDANCE WITH A PLAN OF
53 OPERATION, WHICH PROVIDES FOR THE ACCOMPLISHMENT OF ITS PURPOSE. ON OR
54 BEFORE APRIL FIRST, TWO THOUSAND TEN, THE CORPORATION SHALL SUBMIT SUCH
55 PLAN OF OPERATIONS FOR APPROVAL BY THE SUPERINTENDENT.

56 (2) SUCH PLAN SHALL INCLUDE:

1 (A) A PRELIMINARY ASSESSMENT OF ALL MEMBERS FOR INITIAL OPERATING
2 EXPENSES NECESSARY TO COMMENCE OPERATIONS, ESTABLISH NECESSARY FACILI-
3 TIES AND MANAGE THE AFFAIRS OF THE CORPORATION;

4 (B) ONGOING MECHANISMS FOR THE ASSESSMENT AND COLLECTION OF PROPOR-
5 TIONAL MEMBER CONTRIBUTIONS TOWARDS THE OPERATING EXPENSES AND INVEST-
6 MENT CAPITAL OF THE CORPORATION PURSUANT TO PARAGRAPHS THREE AND FOUR OF
7 THIS SUBSECTION AND THE PAYMENT OR DISTRIBUTION OF INCOME ON SUCH
8 INVESTMENTS TO MEMBERS;

9 (C) A METHOD FOR THE SOLICITATION, REVIEW AND SELECTION OF QUALIFIED
10 INVESTMENTS BY THE CORPORATION WHICH SHALL INCLUDE, BUT NOT BE LIMITED
11 TO:

12 (I) THE CONVENING OF SIX MEETINGS ANNUALLY IN LOCAL COMMUNITIES,

13 (II) THE DEVELOPMENT OF AN INFRASTRUCTURE TO EFFECTIVELY DISPERSE AND
14 DEPLOY INVESTMENT CAPITAL THROUGHOUT THE STATE,

15 (III) THE HIRING OF STAFF TO WORK WITH COMMUNITY GROUPS TO IDENTIFY
16 LOCAL INVESTMENT OPPORTUNITIES, AND

17 (IV) THE IDENTIFICATION OF UNMET INSURANCE NEEDS IN UNDERSERVED AREAS
18 AND THE DEVELOPMENT OF STRATEGIES TO DELIVER, PROVIDE, DEVELOP, MARKET
19 OR TAILOR INSURANCE PRODUCTS TO MEET THOSE NEEDS THROUGH THE EFFORTS OF
20 THE MEMBERS OF THE CORPORATION;

21 (D) A PROCESS, SUBJECT TO APPROVAL BY THE SUPERINTENDENT, BY WHICH
22 MEMBERS MAY APPLY FOR AND RECEIVE A CREDIT AGAINST REQUIRED INVESTMENT
23 CAPITAL CONTRIBUTIONS FOR QUALIFIED INVESTMENTS MADE DIRECTLY RATHER
24 THAN THROUGH THE CORPORATION;

25 (E) ANNUAL GOALS FOR THE COMMITMENT OF A SIGNIFICANT AMOUNT OF INVEST-
26 MENT CAPITAL;

27 (F) A PROCESS, SUBJECT TO APPROVAL BY THE SUPERINTENDENT, UNDER WHICH
28 FOREIGN MEMBERS OF THE CORPORATION MAY APPLY FOR AND RECEIVE A CREDIT
29 AGAINST REQUIRED INVESTMENT CAPITAL CONTRIBUTIONS FOR A QUALIFIED
30 INVESTMENT IT MADE IN ITS STATE OF DOMICILE EITHER DIRECTLY OR THROUGH
31 AN ENTITY FORMED FOR THE PURPOSE OF MAKING QUALIFIED INVESTMENTS;

32 (G) A MEANS TO PUBLICIZE THE PURPOSE OF THE CORPORATION IN UNDERSERVED
33 AREAS AND AMONG ENTITIES WHICH INVEST IN UNDERSERVED AREAS, AND WITH
34 FEDERAL AND STATE AGENCIES ENGAGED IN AFFORDABLE HOUSING PRODUCTION AND
35 ECONOMIC REVITALIZATION ACTIVITIES; AND

36 (H) A CORPORATE FISCAL YEAR THAT COMMENCES ON JULY FIRST OF EACH YEAR.

37 (3) EVERY MEMBER OF THE CORPORATION SHALL PARTICIPATE IN ITS OPERATING
38 EXPENSES IN THE PROPORTION THAT THE NET DIRECT PREMIUMS OF THE MEMBER
39 WRITTEN DURING THE PRECEDING CALENDAR YEAR BEARS TO THE AGGREGATE NET
40 DIRECT PREMIUMS WRITTEN IN THIS STATE BY ALL MEMBERS OF THE CORPORATION.
41 EACH MEMBER'S PARTICIPATION IN THE CORPORATION SHALL BE DETERMINED ANNU-
42 ALLY ON THE BASIS OF SUCH NET DIRECT PREMIUMS WRITTEN DURING THE PRECED-
43 ING CALENDAR YEAR, AS REPORTED IN THE ANNUAL STATEMENTS AND OTHER
44 REPORTS FILED BY THE MEMBER WITH THE SUPERINTENDENT.

45 (4) (A) FOR THE FISCAL YEAR OF THE CORPORATION BEGINNING JULY FIRST,
46 TWO THOUSAND TEN, EACH MEMBER SHALL CONTRIBUTE TO THE INVESTMENT CAPITAL
47 OF THE CORPORATION AN AMOUNT NOT LESS THAN AN AMOUNT EQUAL TO ONE
48 HUNDRED MILLION DOLLARS MULTIPLIED BY A FRACTION, THE NUMERATOR OF WHICH
49 IS THE CAPITAL AND SURPLUS OR SURPLUS TO POLICYHOLDERS MAINTAINED BY
50 SUCH MEMBER FOR THE PRECEDING CALENDAR YEAR AND THE DENOMINATOR OF WHICH
51 IS THE AGGREGATE CAPITAL AND SURPLUS OR SURPLUS TO POLICYHOLDERS MAIN-
52 TAINED BY ALL OF THE MEMBERS OF THE CORPORATION FOR THE PRECEDING CALEN-
53 DAR YEAR.

54 (B) FOR THE FISCAL YEAR OF SUCH CORPORATION BEGINNING JULY FIRST, TWO
55 THOUSAND ELEVEN, EACH MEMBER SHALL CONTRIBUTE TO THE INVESTMENT CAPITAL
56 OF THE CORPORATION AN AMOUNT NOT LESS THAN TWO HUNDRED FIFTY MILLION

1 DOLLARS MULTIPLIED BY THE FRACTION DESCRIBED IN SUBPARAGRAPH (A) OF THIS
2 PARAGRAPH. FOR ALL FISCAL YEARS COMMENCING AFTER JULY FIRST, TWO THOU-
3 SAND TWELVE, EACH MEMBER SHALL CONTRIBUTE AN AMOUNT NOT LESS THAN THE
4 SAME FRACTION DESCRIBED IN SUBPARAGRAPH (A) OF THIS PARAGRAPH MULTIPLIED
5 BY, AT THE DISCRETION OF THE BOARD OF DIRECTORS OF THE CORPORATION, (I)
6 FIVE HUNDRED MILLION DOLLARS; OR (II) ONE PERCENT OF THE AGGREGATE NET
7 DIRECT PREMIUMS WRITTEN BY ALL OF THE MEMBERS OF THE CORPORATION IN THE
8 PRECEDING CALENDAR YEAR; OR (III) FIVE ONE-HUNDREDTHS OF ONE PERCENT OF
9 THE CAPITAL AND SURPLUS OR SURPLUS TO POLICYHOLDERS OF ALL OF THE
10 MEMBERS OF THE CORPORATION IN THE PRECEDING CALENDAR YEAR. THE CORPO-
11 RATION MAY REQUEST FROM THE SUPERINTENDENT, AND IF APPROVED BY THE
12 SUPERINTENDENT, MAY ADOPT IN ITS BY-LAWS AND PLAN OF OPERATIONS, STAND-
13 ARDS WHICH ESTABLISH A MINIMUM AMOUNT OF CAPITAL AND SURPLUS OR SURPLUS
14 TO POLICYHOLDERS FOR PARTICIPATION IN THE CORPORATION. THE SUPERINTEN-
15 DENT MAY ALSO WAIVE PARTICIPATION FOR AN INSURER OTHERWISE OBLIGATED TO
16 PARTICIPATE AS A MEMBER OF THE CORPORATION, IF THE SUPERINTENDENT DETER-
17 MINES THAT THE FINANCIAL CONDITION OF THE INSURER IS SUCH THAT PARTICI-
18 PATION IN THE CORPORATION WOULD BE DETRIMENTAL TO THE POLICYHOLDERS OF
19 THE INSURER.

20 (D) (1) THE CORPORATION SHALL BE GOVERNED BY A BOARD OF SIXTEEN DIREC-
21 TORS. THE GOVERNOR, OR HIS OR HER DESIGNEE, THE SPEAKER OF THE ASSEMBLY,
22 OR HIS OR HER DESIGNEE, AND THE TEMPORARY PRESIDENT OF THE SENATE, OR
23 HIS OR HER DESIGNEE, SHALL SERVE AS EX-OFFICIO MEMBERS. EIGHT DIRECTORS,
24 FOUR REPRESENTING INSURERS ENGAGED IN TRANSACTING THE TYPES OF INSURANCE
25 DESCRIBED IN PARAGRAPHS ONE AND TWO OF SUBSECTION (A) OF SECTION ONE
26 THOUSAND ONE HUNDRED THIRTEEN OF THIS CHAPTER AND FOUR REPRESENTING
27 INSURERS ENGAGED IN TRANSACTING OTHER TYPES OF INSURANCE DESCRIBED IN
28 SUCH SUBSECTION, SHALL BE ELECTED BY CUMULATIVE VOTING BY ALL THE
29 MEMBERS OF THE CORPORATION, WHOSE VOTES SHALL BE WEIGHTED IN ACCORDANCE
30 WITH EACH MEMBER'S NET DIRECT PREMIUMS WRITTEN DURING THE PRECEDING
31 CALENDAR YEAR. FIVE DIRECTORS SHALL REPRESENT CONSUMERS AND SHALL HAVE
32 DEMONSTRATED EXPERTISE IN COMMUNITY DEVELOPMENT AND INVESTMENTS. OF
33 THESE FIVE DIRECTORS, ONE SHALL BE APPOINTED BY THE GOVERNOR, TWO SHALL
34 BE APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE AND TWO SHALL BE
35 APPOINTED BY THE SPEAKER OF THE ASSEMBLY.

36 (2) THE DIRECTORS SHALL SERVE WITHOUT COMPENSATION BUT SHALL BE REIM-
37 BURED FOR THEIR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORM-
38 ANCE OF THEIR DUTIES UNDER THIS ARTICLE.

39 (E) (1) THE CORPORATION SHALL ANNUALLY FILE A STATEMENT IN THE OFFICE
40 OF THE SUPERINTENDENT AND WITH THE GOVERNOR, THE SPEAKER OF THE ASSEMBLY
41 AND THE TEMPORARY PRESIDENT OF THE SENATE ON OR BEFORE THE FIRST DAY OF
42 SEPTEMBER. THE STATEMENT SHALL BE IN A FORM APPROVED BY AND CONTAIN
43 INFORMATION PRESCRIBED BY THE SUPERINTENDENT WITH RESPECT TO ITS TRANS-
44 ACTIONS, CONDITION, OPERATIONS AND AFFAIRS DURING THE PRECEDING YEAR AND
45 SHALL BE MADE AVAILABLE TO THE PUBLIC ELECTRONICALLY AND IN PUBLISHED
46 FORM AT NO COST.

47 (2) THE SUPERINTENDENT MAY, AT ANY TIME, REQUIRE THE CORPORATION TO
48 FURNISH ADDITIONAL INFORMATION WITH RESPECT TO ITS TRANSACTIONS, CONDI-
49 TION OR ANY MATTER CONNECTED THEREWITH WHICH HE OR SHE CONSIDERS TO BE
50 MATERIAL AND WHICH WILL ASSIST HIM OR HER IN EVALUATING THE SCOPE, OPER-
51 ATION AND IMPACT OF THE CORPORATION'S INVESTMENTS AND SHALL PERFORM, OR
52 ARRANGE FOR THE PERFORMANCE OF, AN AUDIT OF THE CORPORATION'S AFFAIRS ON
53 AN ANNUAL BASIS.

54 S 2. Subdivision 1 of section 2426 of the public authorities law, as
55 amended by chapter 354 of the laws of 1984, is amended to read as
56 follows:

1 1. "Financial institution". Any bank, trust company, national bank,
2 savings bank, state or federal savings and loan association, or state or
3 federal credit union, insurance company, pension fund or retirement
4 system of any corporation, association, OR any other entity which is
5 owned or controlled by any one or more of the above, provided the same
6 is supervised by or responsible to any agency of the federal government,
7 the state, any department thereof or the governing body of any city,
8 town or village of the state or any other entity approved by the agency
9 or any one or more of the above when lawfully acting as a trustee or
10 otherwise in a fiduciary capacity. The term "financial institution"
11 shall also include the New York state housing finance agency and the New
12 York state urban development corporation, the New York city housing
13 development corporation, the New York city department of housing preser-
14 vation and development, THE INSURER FUND FOR UNDERSERVED
15 NEIGHBORHOOD/RURAL AREA DEVELOPMENT CORPORATION and any person who is
16 approved as a mortgage lender by the federal housing administration for
17 purposes of insurance issued by such administration or licensed by the
18 state of New York as a mortgage banker.

19 S 3. The opening paragraph of subdivision 2 of section 2428 of the
20 public authorities law, as amended by chapter 354 of the laws of 1984,
21 is amended to read as follows:

22 The agency shall limit its insurance on a rehabilitation or preserva-
23 tion loan to an amount not in excess of fifty per centum of the
24 outstanding principal indebtedness, provided, however, that the agency
25 may insure an amount not in excess of seventy-five per centum of the
26 outstanding principal indebtedness of a rehabilitation loan if it shall
27 find, pursuant to rules or regulations which it shall establish that the
28 extent of rehabilitation is sufficient to justify such additional insur-
29 ance, provided further, however, that the agency may insure an amount
30 equal to the full outstanding principal indebtedness when the loan has
31 been made by a public benefit corporation of the state of New York which
32 public benefit corporation has issued or will issue bonds or notes, some
33 or all of the proceeds of which bonds or notes were used or will be used
34 to make such loan, or when the loan has been made by a public employee
35 pension fund OR WHEN A QUALIFIED INVESTMENT IS MADE BY THE INSURER FUND
36 FOR UNDERSERVED NEIGHBORHOOD/RURAL AREA DEVELOPMENT CORPORATION.

37 S 4. This act shall take effect immediately.