

STATE OF NEW YORK

2963

2019-2020 Regular Sessions

IN ASSEMBLY

January 28, 2019

Introduced by M. of A. PHEFFER AMATO, JONES, ORTIZ, COOK, CRESPO -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to creating the state flood insurance association

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The insurance law is amended by adding a new article 54-A to read as follows:

ARTICLE 54-A

NEW YORK FLOOD INSURANCE ASSOCIATION

Section 5450. Definitions.

5451. Association.

5452. Procedures.

5453. Rates, rating plans, rules and statistics.

5454. Participation.

5455. Appeals.

5456. Availability of reports; immunity.

5457. Annual statement.

5458. Examinations.

5459. Reimbursement fund.

5460. Additional powers of the association.

§ 5450. Definitions. In this article:

(a) "Flood insurance" means coverage against loss of or damage to any property resulting from flood, as defined in paragraphs five and six of subsection (a) of section one thousand one hundred thirteen of this chapter and implemented by section three thousand four hundred forty-four of this chapter.

(b) "Association" means the New York flood insurance association established by this article.

(c) "Plan of operation" or "plan" means the plan of operation complying with section five thousand four hundred fifty-one of this article.

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

LBD03731-01-9

1 (d) "Insurable property" means real property at fixed locations
2 anywhere in this state, or the tangible personal property located there-
3 on, which is determined by the association, after inspection and pursu-
4 ant to criteria specified in the plan, to be insurable. Neighborhood or
5 area location shall not be considered in determining insurable condi-
6 tion. Property is not insurable if it has characteristics of ownership,
7 condition, occupancy or maintenance which violate public policy.

8 (e) "Net direct premiums" means gross direct premiums written on prop-
9 erty in this state for flood insurance less return premiums or the
10 unused or unabsorbed portions of premium deposits.

11 (f) "Homeowners insurance" means such homeowners insurance policies
12 defined in subsection (a) of section two thousand three hundred fifty-
13 one of this chapter, as are determined by the superintendent to be
14 equivalent to any homeowners policies developed by a nationally recog-
15 nized principal rate service organization, except that where the market
16 value of the insured property is less than its replacement cost, then
17 the coverage shall be provided in policies determined by the superinten-
18 dent to be equivalent to that contained in market value (HO-8) policies.

19 § 5451. Association. (a) The association known as the New York flood
20 insurance association is established, consisting of all insurers author-
21 ized to write and engaged in writing within this state, on a direct
22 basis, flood coverage insurance. Every such insurer shall be and remain
23 a member of the association as a condition of its authority to continue
24 to transact flood and homeowners insurance in this state.

25 (b) The association shall be governed by a board of thirteen direc-
26 tors, ten of whom shall be elected annually by cumulative voting by the
27 members of the association, whose votes in such election shall be
28 weighted in accordance with each member's net direct premiums written
29 during the preceding calendar year. The remaining three directors shall
30 be appointed annually by the superintendent and be duly licensed insur-
31 ance agents or brokers representative of broad segments of the public
32 obtaining insurance through the association.

33 (c) The association shall, pursuant to the provisions of this article
34 and the plan of operation and with respect to flood coverage issued
35 pursuant to subsection (g) of this section and homeowners insurance
36 should the same be made available through the association in accordance
37 with a determination of necessity made by the superintendent pursuant to
38 section five thousand four hundred sixty of this article on insurable
39 property, have the power on behalf of its members:

40 (i) to cause policies of insurance to be issued to applicants;

41 (ii) to assume reinsurance from its members; and

42 (iii) to cede reinsurance.

43 (d) The association shall adhere to a plan of operation, consistent
44 with the provisions of this article, approved by the superintendent
45 after consultation with affected individuals and organizations. The
46 plan shall provide for economical, fair and non-discriminatory adminis-
47 tration and prompt and efficient provision of flood coverage pursuant to
48 subsection (g) of this section and homeowners insurance, when a determi-
49 nation of necessity is made by the superintendent pursuant to section
50 five thousand four hundred sixty of this article to promote orderly
51 community development. It shall contain other matters including, but not
52 limited to, provision for necessary facilities; management of the asso-
53 ciation; assessment of members to defray losses and expenses; commission
54 arrangements; reasonable and objective underwriting standards; accept-
55 ance and cession of reinsurance and procedures for determining amounts
56 of insurance to be provided by the association. The amounts shall not be

1 in excess of one million five hundred thousand dollars for the insurable
2 real property or the tangible personal property thereon.

3 (e) The directors of the association may, on their own initiative or
4 at the request of the superintendent, amend the plan subject to approval
5 by the superintendent.

6 (f) The association shall offer homeowners insurance, as defined in
7 subsection (f) of section five thousand four hundred fifty of this arti-
8 cle upon a determination of necessity having been made by the super-
9 intendent pursuant to section five thousand four hundred sixty of this
10 article.

11 (g) In addition to flood insurance, homeowners insurance should the
12 same be made available through the association in accordance with a
13 determination of necessity pursuant to section five thousand four
14 hundred sixty of this article. On or before October first, two thousand
15 twenty-one, the superintendent shall require the association to report
16 to him or her as to the number of policies written pursuant to this
17 subsection and paragraph three of subsection (f) of section five thou-
18 sand four hundred fifty-four of this article, and any other information
19 the superintendent may require. On or before January first, two thousand
20 twenty-two, the superintendent shall report to the governor and the
21 legislature regarding the number of policies issued pursuant to this
22 section and such paragraph and shall include recommendations as to the
23 continuation of such insurance offerings.

24 (h) The association shall adhere to a plan of operation, consistent
25 with the provisions of this article, approved by the superintendent
26 after consultation with affected individuals and organizations. The
27 plan shall provide for economical, fair and non-discriminatory adminis-
28 tration and prompt and efficient provision of flood coverage pursuant to
29 subsection (g) of this section and homeowners insurance, when a determi-
30 nation of necessity is made by the superintendent pursuant to section
31 five thousand four hundred sixty of this article to promote orderly
32 community development. It shall contain other matters, including, but
33 not limited to, provision for necessary facilities; management of the
34 association; assessment of members to defray losses and expenses;
35 commission arrangements; reasonable and objective standards; acceptance
36 and cession of reinsurance and procedures for determining amounts of
37 insurance to be provided by the association. The amounts shall not be
38 in excess of one million five hundred thousand dollars for the insurable
39 real property or the tangible personal property thereon.

40 (i) The directors of the association may, on their own initiative or
41 at the request of the superintendent, amend the plan subject to approval
42 by the superintendent.

43 (j) Not less than once every thirty days, the association shall report
44 to the superintendent, the speaker of the assembly, and the temporary
45 president of the senate on the number, location and type of policies
46 written through a coastal market assistance program pursuant to section
47 five thousand four hundred fourteen of this chapter.

48 § 5452. Procedures. (a) Any person having an insurable interest in
49 insurable property, who has made a diligent effort in the normal insur-
50 ance market to procure flood insurance, pursuant to subsection (g) of
51 section five thousand four hundred fifty-one of this article and home-
52 owners insurance upon a determination of necessity having been made by
53 the superintendent pursuant to section five thousand four hundred sixty
54 of this article from an authorized insurer, is entitled to apply to the
55 association for such coverage. Such application may be made on behalf of
56 an applicant by a broker or agent authorized by him or her.

(b) If the association determines that (i) the property is insurable in accordance with the plan and (ii) there is no unpaid, uncontested premium due from the applicant for prior insurance on the property (as shown by the insured having failed to make written objection to charges within thirty days after billing), the association, upon receipt of the premium or portion prescribed in the plan, shall cause a policy of flood insurance or homeowners insurance upon a determination of necessity having been made by the superintendent pursuant to section five thousand four hundred sixty of this article to be issued for a term of one year.

(c) Any member may cede flood insurance pursuant to subsection (g) of section five thousand four hundred fifty-one of this article and coverage for and homeowners insurance upon a determination of necessity having been made by the superintendent pursuant to section five thousand four hundred sixty of this article written on insurable property to the association as provided in the plan.

(d) The association shall notify those policyholders whose insured properties are located in areas served by a market assistance program established by the superintendent for the purpose of facilitating placement of homeowners' insurance of the possibility of eligibility for coverage through such program. Such notification shall include information on how to apply and such other information as required by the superintendent.

§ 5453. Rates, rating plans, rules and statistics. (a) The rates, rating plans, rating rules and statistics applicable to the insurance written by the association shall be subject to the relevant provisions of article twenty-three of this chapter except as otherwise provided in this section.

(b) Rates, rating plans and rating rules applicable to flood insurance, pursuant to subsection (g) of section five thousand four hundred fifty-one of this article and homeowners insurance upon a determination of necessity having been made by the superintendent pursuant to section five thousand four hundred sixty of this article written by the association shall be no greater than the following percentages of those recommended for the voluntary market by the principal rate service organization in this state:

(1) one hundred twenty percent with respect to:

(A) owner-occupied residential dwellings consisting of not more than four dwelling units;

(B) household furnishings and personal property contained in any household unit;

(C) contents of any retail-type business located in store-type premises and operating in a single location, provided such business is owned by its operators, who are all related by blood or affinity;

(D) real property of eleemosynary institutions used exclusively for such eleemosynary purposes including furnishings and personal property contained therein;

(2) one hundred thirty percent with respect to:

(A) non-owner occupied residential dwellings consisting of not more than four dwelling units;

(B) residential structures consisting of more than four but not exceeding eight units with or without business occupancies;

(C) homeowners insurance upon a determination of necessity having been made by the superintendent pursuant to section five thousand four hundred twelve of this chapter;

1 (3) one hundred forty percent with respect to residential dwellings
2 consisting of more than eight dwelling units, with or without business
3 occupancies;

4 (4) one hundred thirty percent with respect to any risks not otherwise
5 provided for in paragraphs one, two and three of this subsection.

6 (c) The rates, rating plans and rating rules recommended by the prin-
7 cipal rate service organization, together with such other information
8 the superintendent may require, shall be submitted by the association at
9 least sixty days prior to the date on which they are to become effective
10 for risks written by it.

11 (d) Filed rating rules or plans may provide standards for the applica-
12 tion of surcharges for risks containing unsafe or hazardous conditions,
13 and shall provide for prompt removal of the surcharges upon the elimi-
14 nation of those conditions.

15 § 5454. Participation. (a) Every member of the association shall
16 participate in its writings, expenses, profits and losses in the propor-
17 tion that the net direct premiums of the member (but excluding that
18 portion of premiums attributable to the operation of the association)
19 written during the preceding calendar year bear to the aggregate net
20 direct premiums written in this state by all members of the association.
21 Each member's participation in the association shall be determined annu-
22 ally on the basis of such net direct premiums written during the preced-
23 ing calendar year as disclosed in the annual statements and other
24 reports filed by the member with the superintendent.

25 (b) No member shall be obligated in any year to reimburse the associ-
26 ation on account of its proportionate share in the deficit from oper-
27 ations of the association in that year in excess of one percent of its
28 surplus to policyholders. The aggregate amount not so reimbursed shall
29 be reallocated among the remaining members in accordance with the method
30 of determining participation prescribed in this section, after excluding
31 from the computation the total net direct premiums of all members not
32 sharing in such excess deficit. In the event that the deficit from oper-
33 ations allocated to all members in any calendar year shall exceed one
34 percent of their respective surplus to policyholders, the amount of such
35 deficit shall be allocated to each member in accordance with the method
36 of determining participation prescribed in this section.

37 (c) Annually, on a date set by the superintendent, the association
38 shall estimate its deficit from operations, and after application of the
39 funds provided for in subsection (d) of this section, calculate a
40 factor, not to exceed one percent, by relating such deficit to net
41 direct premiums written for the latest calendar year, subject to the
42 approval of the superintendent. Such factor may be reflected in the
43 determination of rates filed by the principal rating organization in
44 this state and by members of the association for fire, extended cover-
45 age, broad form coverage pursuant to subsection (g) of section five
46 thousand four hundred fifty-one of this article and homeowners policies.
47 Notwithstanding the provisions of section five thousand four hundred
48 fifty-three of this article to the contrary, any part of such deficit
49 which exceeds one percent as so calculated, shall be defrayed by an
50 increase in rates for the respective occupancy classes, based upon the
51 association's related loss and expense experience together with other
52 information the superintendent requires, in accordance with filings
53 approved by the superintendent. Each member's share of the estimated
54 deficit shall be collected by the association in accordance with the
55 plan of operation.

(d) In accordance with regulations of the superintendent, the deficit from the operations of the association shall be credited with income earned from the New York property/casualty insurance security fund. The credit shall be an amount determined by the superintendent, which in no year shall exceed income earned or the sum of fifteen million dollars whichever is less. The credit shall be estimated annually by the superintendent on a date set by the superintendent, and such estimated amount shall be credited to the association and transferred from the income as earned during the year by the New York property/casualty insurance security fund. Any difference between the estimated amount of income and the actual amount of income for the year shall be taken into account in computing the estimate for the next period. Notwithstanding the foregoing provisions of this section or any other law to the contrary, if the assets of the association exceed its liabilities on the thirtieth day of November in any year commencing on or after April first, nineteen hundred eighty-two in accordance with regulations of the superintendent, the association shall pay to the New York property/casualty insurance security fund an amount equal to any amounts paid from such fund to the association in accordance with the provisions of article seventy-six of this chapter and this section which have not been repaid prior to such thirtieth day of November, together with any investment income attributable thereto, as determined by the superintendent, up to the amount of such excess. Any such payment shall be made no later than February first of the following year.

(e) Members shall not be relieved of their obligation to reimburse the association for their share of the deficit resulting from the operations of the association prior to August first, nineteen hundred seventy-nine.

(f) (1) Any member that voluntarily writes, as of expiration date, a policy or coverage currently written through the association, shall receive credit against its participation in association writings. Such credit shall be to the extent of twice the net direct premium, on an annual basis, of such policy or coverage voluntarily written and shall apply for one year.

(2) Subject to approval by the superintendent, the association shall develop and implement an incentive plan for members which voluntarily write policies that include windstorm coverage in coastal areas. Such plan shall also include incentives for members to voluntarily write wraparound policies, as defined by the association, in coastal areas, when such wraparound policies include coverage for windstorm on a replacement cost basis in excess of the windstorm coverage contained in an association policy issued to the same policyholder. The purpose of these incentives shall be to encourage the writing of voluntary insurance policies in coastal areas by reducing the participation in the writings of the association of those member companies which voluntarily write policies that include windstorm coverage in such areas. For the purposes of this section, coastal areas include: areas within one mile of a saltwater ocean, sound, inlet or bay on Long Island's south shore or along the shore of Brooklyn, Queens, Staten Island and Long Island's forks; areas within two thousand five hundred feet of a saltwater ocean, sound, inlet or bay on Long Island's north shore, the Bronx or Westchester.

(3) The association shall offer a policy form which may be used only in conjunction with voluntary market wraparound policies that provide windstorm coverage in excess of amounts insured by the association. The policy form, which may include broad form coverage, shall provide replacement cost coverage for dwellings and personal property for repair

1 or replacement without deduction for depreciation on terms and condi-
2 tions generally consistent with policies customarily in use in the
3 voluntary market as modified to make the association policy compatible
4 with voluntary market wraparound policies. Coverage offered by the asso-
5 ciation under such policy shall not exceed six hundred thousand dollars
6 for dwelling coverage and two hundred fifty thousand dollars for
7 personal property, and shall be available to cover one to four family
8 owner-occupied dwellings, apartment units or condominium units. The
9 association may require applicants to provide evidence of the purchase
10 of flood insurance as a condition of eligibility for coverage under this
11 policy. The association shall file the form for approval with the super-
12 intendent.

13 § 5455. Appeals. Any applicant to the association and any person
14 insured pursuant to this article, or their representatives, or any
15 affected insurer, may appeal to the superintendent within thirty days
16 after any ruling, action or decision by or on behalf of the association,
17 with respect to those items the plan of operation defines as appealable
18 matters.

19 § 5456. Availability of reports; immunity. (a) Reports of inspection
20 performed by or on behalf of the association shall be available to
21 members of the association, applicants and the superintendent.

22 (b) No liability or cause of action shall exist against the associ-
23 ation or its agents or employees, an insurer or the superintendent or
24 his or her authorized representatives for any statements made in good
25 faith by them in any reports or communications concerning risks insured
26 or to be insured by the association or at any related administrative
27 hearings.

28 § 5457. Annual statement. (a) The association shall annually file a
29 statement in the office of the superintendent on or before the first day
30 of March. Such statement shall be in a form approved by and contain
31 information required by the superintendent with respect to its trans-
32 actions, condition, operations and affairs during the preceding year.

33 (b) The superintendent may at any time require the association to
34 furnish additional information which he considers to be material in
35 evaluating the scope, operation and experience of the association.

36 § 5458. Examinations. The superintendent may, in accordance with arti-
37 cle three of this chapter, make an examination into the affairs of the
38 association whenever he or she deems it expedient. The expenses of every
39 such examination shall be borne and paid by the association.

40 § 5459. Reimbursement fund. (a) The superintendent shall assess each
41 member of the association an amount sufficient to provide reimbursement
42 payments, pursuant to the provisions of section 1223(a)(1) of the feder-
43 al Urban Property Protection and Reinsurance Act of 1968, to the agency
44 of the federal government administering the act in an aggregate amount
45 not to exceed five per centum of the aggregate property insurance premi-
46 ums earned in the state during the preceding calendar year on those
47 lines of insurance reinsured under such act during the calendar year.

48 (b) The total amount of any assessment on each such member shall be in
49 the proportion that the premiums earned during the preceding calendar
50 year by each such member in this state bear to the aggregate premiums
51 earned in this state during the preceding calendar year on those lines
52 of insurance reinsured under the federal act during the current year by
53 all members of the association. Assessments shall be collectible from
54 all members on and after the forty-fifth day following receipt of a
55 claim from the federal agency.

1 (c) The superintendent shall receive all assessments payable on
2 account of the claim of the federal agency and make all disbursements in
3 carrying out this section from the riot reinsurance revolving fund which
4 is continued. Notwithstanding any other law, rule or regulation requir-
5 ing that money received for or on behalf of the state shall be paid into
6 the state treasury, the superintendent shall deposit the assessments in
7 a separate bank account or accounts in a trust company or bank having
8 trust powers within the state. All deposits shall be secured by obli-
9 gations of the United States or this state and all banks and trust
10 companies are authorized to give the same. The monies of the fund may,
11 at the discretion of the superintendent, be invested in obligations of
12 or guaranteed by this state or the United States. Any income or earnings
13 derived from such investments shall be deposited in the fund.

14 (d) The monies in the fund shall be paid on the order of the super-
15 intendent solely for reimbursement payments as provided in subsection
16 (a) of this section after any investigation the superintendent deems
17 appropriate to verify the correctness of the claim. Any balance remain-
18 ing shall be retained by the superintendent in the fund and used only
19 for the purpose of meeting future claims of the federal agency.

20 (e) The superintendent may at any time require any member to furnish
21 information he or she deems necessary to determine if the member has
22 complied with the provisions of this section.

23 (f) The comptroller shall have the power and authority to audit the
24 accruals, the receipts, the payments and the expenditure of all monies
25 of the fund.

26 § 5460. Additional powers of the association. (a) As used in this
27 article:

28 (1) "Commercial risk insurance", "public entity insurance" and
29 "professional liability insurance" have the meanings ascribed to them by
30 section one hundred seven of this chapter, except that motor vehicle
31 insurance and medical malpractice liability insurance are excluded from
32 such meanings for purposes of this article;

33 (2) "Market" means a line, subline or classification (other than a
34 classification delineated by geographic location) of property/casualty
35 insurance not subject to subsection (b) of section two thousand three
36 hundred five, section two thousand three hundred twenty-eight or section
37 three thousand four hundred twenty-five of this chapter. Provided,
38 however, a "market" shall also include homeowners insurance as defined
39 in subsection (f) of section five thousand four hundred fifty of this
40 article. A "market" shall also include mandatory minimum surety bonds
41 required pursuant to section two hundred fifty-eight-b of the agricul-
42 ture and markets law.

43 (b) The association shall begin, or resume after any suspension, its
44 insurance underwriting operations for any market only after the super-
45 intendent has determined after a hearing on a record that it is neces-
46 sary, due to unavailability of meaningful coverage in a particular
47 voluntary market, to activate the association to write coverage for such
48 market. In making a determination of necessity pursuant to this
49 subsection, the superintendent may consider such factors as: the extent
50 and nature of competition; size and significance of the coverage; avail-
51 ability of adequate limits of coverage; efficacy of any market assist-
52 ance program administered by the superintendent including but not limit-
53 ed to actual placement of coverage through a voluntary market assistance
54 program at the time such determination is to be made; reinsurance avail-
55 ability; extent of consumer complaints to the department of financial
56 services; extent of denials and restrictions of coverage; volume of

1 cancellations and nonrenewals; or changing conditions in the economic,
2 judicial and social environment. If, after activating the association in
3 regard to a particular market, the superintendent determines that ready
4 availability of meaningful coverage in such voluntary market has been
5 restored, the association shall thereupon suspend its underwriting in
6 regard to such market. The superintendent shall, no later than October
7 first, nineteen hundred eighty-six, activate the association to write
8 particular markets in regard to public entities, unless the superinten-
9 dent determines that activation is unnecessary because public entities
10 are able to secure meaningful coverage in voluntary markets, including
11 through any market assistance program administered by the superinten-
12 dent.

13 (c) The directors of the association, after consultation with the
14 superintendent, shall forthwith prepare a plan of operation, subject to
15 approval by the superintendent who shall act expeditiously thereon, and
16 the directors shall take all other necessary steps on and after the
17 effective date of this section to prepare for prompt implementation of
18 the association's powers in the event that any market is activated by
19 the superintendent pursuant to subsection (b) of this section. The
20 directors of the association may, on their own initiative or at the
21 request of the superintendent, amend the plan subject to approval by the
22 superintendent. The superintendent may direct that the plan of opera-
23 tion, or amendments to such plan, shall include specified limits of
24 coverage for particular markets activated.

25 (d) Upon activation by the superintendent of any market pursuant to
26 subsection (b) of this section, all insurers (excluding assessment coop-
27 erative fire insurers) authorized to write and engaged in writing on a
28 direct basis within this state commercial risk, public entity or profes-
29 sional liability insurance, including commercial multiple peril poli-
30 cies, shall participate as members in the association. Every such insur-
31 er shall be and remain a member of the association as a condition of its
32 authority to continue to transact such insurance in this state. In addi-
33 tion to the credit provided pursuant to subsection (f) of section five
34 thousand four hundred fifty-four of this article, the superintendent may
35 by regulation provide for additional credits to such insurers that
36 voluntarily provide a market for those risks that the superintendent
37 determines to be extremely difficult to place in the voluntary market.

38 (e) The association shall with respect to any market activated by the
39 superintendent pursuant to subsection (b) of this section issue policies
40 in accordance with the association's plan of operation, and shall main-
41 tain separate accounts and records for premiums, losses, expenses and
42 investment income attributable to such insurance. Assessments of insur-
43 ers for expenses and any losses of the association in connection with
44 such insurance shall be based on an insurer's net direct premiums
45 attributable to the types of insurance specified in subsection (a) of
46 this section. Rates shall be based upon loss and expense experience of
47 the risks insured by the association pursuant to this section and shall
48 be on an actuarially sound basis, calculated to be self-supporting at
49 the lowest possible rates consistent with the maintenance of solvency of
50 the association and of reasonable reserves, surplus and expenses,
51 including commissions. The provisions of subsection (d) of section five
52 thousand four hundred fifty-four of this article shall not apply to
53 insurance written pursuant to this section.

54 (f) The superintendent may also activate the association for purposes
55 of providing excess or umbrella coverages in connection with a market.

1 Hazards that the superintendent determines are uninsurable shall be
2 excluded from coverages which the association is required to furnish.

3 § 2. Paragraph 3 of subsection (d) of section 7603 of the insurance
4 law is amended to read as follows:

5 (3) The superintendent is authorized to use the income earned on the
6 moneys of the fund to offset the deficit of the New York property insur-
7 ance underwriting association in accordance with subsection (d) of
8 section five thousand four hundred five of this chapter and subsection
9 (d) of section five thousand four hundred fifty-four of this chapter,
10 provided that any income earned on the moneys of the fund which in any
11 one year exceeds fifteen million dollars or which the superintendent has
12 not utilized for the purposes of such subsection shall be credited to
13 the corpus of the fund until the superintendent determines that its net
14 value is two hundred forty million dollars, and thereafter shall be
15 credited, upon certification by the superintendent to the commissioner,
16 to the general fund of the state treasury.

17 § 3. This act shall take effect immediately.