STATE OF NEW YORK

2824

2023-2024 Regular Sessions

IN ASSEMBLY

January 27, 2023

Introduced by M. of A. PHEFFER AMATO, JONES, COOK, COLTON -- 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

§ 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.

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(d) "Insurable property" means real property at fixed locations anywhere in this state, or the tangible personal property located thereon, which is determined by the association, after inspection and pursuant to criteria specified in the plan, to be insurable. Neighborhood or area location shall not be considered in determining insurable condition. Property is not insurable if it has characteristics of ownership, condition, occupancy or maintenance which violate public policy.

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

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

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

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

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

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

(ii) to assume reinsurance from its members; and

(iii) to cede reinsurance.

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

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

(f) The association shall offer homeowners insurance, as defined in subsection (f) of section five thousand four hundred fifty of this article upon a determination of necessity having been made by the superintendent pursuant to section five thousand four hundred sixty of this article.

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

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

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

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

§ 5452. Procedures. (a) Any person having an insurable interest in insurable property, who has made a diligent effort in the normal insurance market to procure 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 from an authorized insurer, is entitled to apply to the association for such coverage. Such application may be made on behalf of 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;

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

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

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

(d) Filed rating rules or plans may provide standards for the application of surcharges for risks containing unsafe or hazardous conditions, and shall provide for prompt removal of the surcharges upon the elimination of those conditions.

§ 5454. Participation. (a) Every member of the association shall participate in its writings, expenses, profits and losses in the proportion that the net direct premiums of the member (but excluding that portion of premiums attributable to the operation of the association) written during the preceding calendar year bear to the aggregate net direct premiums written in this state by all members of the association. Each member's participation in the association shall be determined annually on the basis of such net direct premiums written during the preceding calendar year as disclosed in the annual statements and other reports filed by the member with the superintendent.

(b) No member shall be obligated in any year to reimburse the association on account of its proportionate share in the deficit from operations of the association in that year in excess of one percent of its surplus to policyholders. The aggregate amount not so reimbursed shall be reallocated among the remaining members in accordance with the method of determining participation prescribed in this section, after excluding from the computation the total net direct premiums of all members not sharing in such excess deficit. In the event that the deficit from operations allocated to all members in any calendar year shall exceed one percent of their respective surplus to policyholders, the amount of such deficit shall be allocated to each member in accordance with the method of determining participation prescribed in this section.

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

or replacement without deduction for depreciation on terms and conditions generally consistent with policies customarily in use in the voluntary market as modified to make the association policy compatible with voluntary market wraparound policies. Coverage offered by the association under such policy shall not exceed six hundred thousand dollars for dwelling coverage and two hundred fifty thousand dollars for personal property, and shall be available to cover one to four family owner-occupied dwellings, apartment units or condominium units. The association may require applicants to provide evidence of the purchase of flood insurance as a condition of eligibility for coverage under this policy. The association shall file the form for approval with the superintendent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The association shall begin, or resume after any suspension, its insurance underwriting operations for any market only after the superintendent has determined after a hearing on a record that it is necessary, due to unavailability of meaningful coverage in a particular voluntary market, to activate the association to write coverage for such market. In making a determination of necessity pursuant to this subsection, the superintendent may consider such factors as: the extent and nature of competition; size and significance of the coverage; availability of adequate limits of coverage; efficacy of any market assistance program administered by the superintendent including but not limited to actual placement of coverage through a voluntary market assistance program at the time such determination is to be made; reinsurance availability; extent of consumer complaints to the department of financial services; extent of denials and restrictions of coverage; volume of cancellations and nonrenewals; or changing conditions in the economic, judicial and social environment. If, after activating the association in regard to a particular market, the superintendent determines that ready availability of meaningful coverage in such voluntary market has been restored, the association shall thereupon suspend its underwriting in regard to such market. The superintendent shall, no later than October first, nineteen hundred eighty-six, activate the association to write particular markets in regard to public entities, unless the superintendent determines that activation is unnecessary because public entities are able to secure meaningful coverage in voluntary markets, including through any market assistance program administered by the superintendent.

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

(d) Upon activation by the superintendent of any market pursuant to subsection (b) of this section, all insurers (excluding assessment cooperative fire insurers) authorized to write and engaged in writing on a direct basis within this state commercial risk, public entity or professional liability insurance, including commercial multiple peril policies, shall participate as members in the association. Every such insurer shall be and remain a member of the association as a condition of its authority to continue to transact such insurance in this state. In addition to the credit provided pursuant to subsection (f) of section five thousand four hundred fifty-four of this article, the superintendent may by regulation provide for additional credits to such insurers that voluntarily provide a market for those risks that the superintendent determines to be extremely difficult to place in the voluntary market.

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

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

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

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

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

§ 3. This act shall take effect immediately.