

By: Senator(s) Hewes, Robertson, Gollott,
Dawkins, Cuevas, Moffatt, Kirby

To: Insurance; Finance

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 3050

1 AN ACT TO CREATE THE MISSISSIPPI ECONOMIC GROWTH AND
2 REDEVELOPMENT ACT OF 2007, TO STIMULATE THE ECONOMIC GROWTH AND
3 REDEVELOPMENT WITHIN ALL AREAS OF THE STATE BY PROMOTING THE
4 AVAILABILITY OF AFFORDABLE COMMERCIAL AND RESIDENTIAL CASUALTY
5 LOSS INSURANCE; TO CREATE A SPECIAL FUND IN THE STATE TREASURY TO
6 BE KNOWN AS THE "MISSISSIPPI WINDSTORM UNDERWRITING ASSOCIATION
7 REINSURANCE ASSISTANCE FUND"; TO PROVIDE THAT MONIES IN THE
8 SPECIAL FUND MAY BE USED BY THE DEPARTMENT OF INSURANCE, UPON
9 APPROPRIATION BY THE LEGISLATURE, FOR THE PURPOSE OF ASSISTING THE
10 MISSISSIPPI WINDSTORM UNDERWRITING ASSOCIATION IN DEFRAYING
11 EXPENSES AND COSTS FOR REINSURANCE; TO PROVIDE THAT THE
12 MISSISSIPPI WINDSTORM UNDERWRITING ASSOCIATION MAY USE SUCH FUNDS
13 FOR THE PURPOSE OF DEFRAYING EXPENSES AND COSTS FOR REINSURANCE;
14 TO PROVIDE THAT ANY MONIES IN EXCESS OF \$50,000,000.00 REMAINING
15 IN THE SPECIAL FUND AT THE END OF A FISCAL YEAR THAT HAVE NOT BEEN
16 APPROPRIATED WILL LAPSE INTO THE STATE GENERAL FUND; TO REQUIRE
17 THE COMMISSIONER OF INSURANCE TO FILE A REPORT WITH THE JOINT
18 LEGISLATIVE BUDGET COMMITTEE NOT LATER THAN SEPTEMBER 1 OF EACH
19 YEAR, RECOMMENDING THE AMOUNT OF ASSISTANCE, IF ANY, NEEDED BY THE
20 MISSISSIPPI WINDSTORM UNDERWRITING ASSOCIATION FOR REINSURANCE
21 EXPENSES AND COSTS AND RECOMMENDING THE AMOUNT NECESSARY TO BE
22 APPROPRIATED FOR DEPOSIT INTO MISSISSIPPI WINDSTORM UNDERWRITING
23 ASSOCIATION REINSURANCE ASSISTANCE FUND; TO PROVIDE THAT A PORTION
24 OF THE STATE INSURANCE PREMIUM TAX REVENUE SHALL BE DEPOSITED INTO
25 THE MISSISSIPPI WINDSTORM UNDERWRITING ASSOCIATION REINSURANCE
26 ASSISTANCE FUND; TO PROVIDE AN ANNUAL CREDIT AGAINST THE STATE
27 INSURANCE PREMIUM TAXES FOR DOMESTIC AND FOREIGN INSURANCE
28 COMPANIES FOR CERTAIN NEW POLICIES WRITTEN IN THE COAST AREA OF
29 THE STATE; TO AMEND SECTION 83-34-1, MISSISSIPPI CODE OF 1972, TO
30 DELETE THE UPPER TIER COUNTIES FROM THE DEFINITION OF THE TERM
31 "COAST AREA" AND TO REVISE OTHER DEFINITIONS; TO AMEND SECTION
32 83-34-3, MISSISSIPPI CODE OF 1972, TO REVISE THE ORGANIZATIONAL
33 STRUCTURE OF THE ASSOCIATION; TO CREATE SECTION 83-34-4,
34 MISSISSIPPI CODE OF 1972, TO REQUIRE ALL BROKERS FOR NONADMITTED
35 INSURERS TO COLLECT AND REMIT TO THE ASSOCIATION A NONADMITTED
36 INSURER FEE; TO AMEND SECTION 83-34-5, MISSISSIPPI CODE OF 1972,
37 TO REVISE THE POWERS OF THE ASSOCIATION; TO AMEND SECTION 83-34-7,
38 MISSISSIPPI CODE OF 1972, TO REVISE THE MEMBERSHIP OF THE BOARD OF
39 DIRECTORS; TO AMEND SECTION 83-34-9, MISSISSIPPI CODE OF 1972, TO
40 PROVIDE THAT ALL ASSESSABLE INSURERS SHALL PARTICIPATE IN REGULAR
41 ASSESSMENTS BASED UPON THEIR PARTICIPATION, AND TO ALLOW FINANCIAL
42 INCENTIVES OR PENALTIES TO ENCOURAGE ASSESSABLE INSURERS TO WRITE
43 INSURANCE IN THE COAST AREA; TO CREATE SECTION 83-34-10,
44 MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE ASSOCIATION, WITH
45 CONSENT OF THE COMMISSIONER OF INSURANCE, TO LEVY REGULAR
46 ASSESSMENTS AGAINST ASSESSABLE INSURERS UPON CERTAIN EVENTS; TO
47 AMEND SECTION 83-34-11, MISSISSIPPI CODE OF 1972, TO DIRECT THE
48 COMMISSIONER OF INSURANCE TO IMPLEMENT A SURCHARGE ON ALL PROPERTY
49 AND CASUALTY PREMIUMS, EXCEPT PREMIUMS FOR WORKERS' COMPENSATION
50 COVERAGE AND PREMIUMS FOR INSURANCE POOLS OR PLANS ADMINISTERED BY
51 THE STATE OF MISSISSIPPI, IN ORDER TO RECOVER REGULAR ASSESSMENTS
52 AND REIMBURSE ASSESSABLE INSURERS; TO CREATE SECTION 83-34-12,

53 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR DEFERRAL OF A REGULAR
54 ASSESSMENT BY ORDER OF THE COMMISSIONER OF INSURANCE; TO AMEND
55 SECTION 83-34-13, MISSISSIPPI CODE OF 1972, TO REVISE THE REQUIRED
56 CONTENTS OF THE ASSOCIATION'S PLAN OF OPERATION; TO AMEND SECTION
57 83-34-15, MISSISSIPPI CODE OF 1972, TO REVISE THE PROCESS FOR
58 APPLICATION FOR COVERAGE; TO AMEND SECTION 83-34-17, MISSISSIPPI
59 CODE OF 1972, TO AMEND IN CONFORMITY WITH OTHER PROVISIONS; TO
60 AMEND SECTION 83-34-19, MISSISSIPPI CODE OF 1972, TO REVISE THE
61 PROCESS FOR APPEAL OF DECISIONS MADE BY THE ASSOCIATION OR
62 COMMISSIONER OF INSURANCE; TO AMEND SECTION 83-34-21, MISSISSIPPI
63 CODE OF 1972, IN CONFORMITY WITH OTHER PROVISIONS; TO AMEND
64 SECTION 83-34-23, MISSISSIPPI CODE OF 1972, TO PROVIDE IMMUNITY
65 FROM LIABILITY FOR THE ASSOCIATION AND THE COMMISSIONER OF
66 INSURANCE; TO AMEND SECTION 83-34-27, MISSISSIPPI CODE OF 1972, TO
67 AUTHORIZE THE EXAMINATION OF DATA AND PAYMENTS OF ASSESSABLE
68 INSURERS AND BROKERS FOR NONADMITTED INSURERS; TO CREATE SECTION
69 83-34-31, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE ASSOCIATION
70 TO ISSUE BONDS AND ENTER INTO LOANS; TO CREATE SECTION 83-34-33,
71 MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE COMMISSION TO IMPLEMENT
72 A SURCHARGE FOR EXCESS HURRICANE LOSSES ON ALL PROPERTY AND
73 CASUALTY PREMIUMS, EXCEPT PREMIUMS FOR WORKERS' COMPENSATION
74 COVERAGE AND PREMIUMS FOR INSURANCE POOLS OR PLANS ADMINISTERED BY
75 THE STATE OF MISSISSIPPI, TO RECOVER AMOUNT OF BONDS OR OTHER
76 INDEBTEDNESS OF THE ASSOCIATION; TO CREATE SECTION 83-34-35,
77 MISSISSIPPI CODE OF 1972, TO DIRECT THE COMMISSIONER OF INSURANCE
78 TO APPROVE ASSOCIATION RATES AT LEAST ADEQUATE TO FUND ANNUAL
79 REINSURANCE ABOVE A CERTAIN RESERVE; AND FOR RELATED PURPOSES.

80 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

81 **SECTION 1.** This act shall be known and may be cited as the
82 "Mississippi Economic Growth and Redevelopment Act of 2007."

83 **SECTION 2.** (1) (a) There is created in the State Treasury
84 a special fund to be designated as the "Mississippi Windstorm
85 Underwriting Association Reinsurance Assistance Fund." The fund
86 shall consist of monies deposited therein as provided under
87 Section 27-65-75(21), Section 4 of this act and monies from any
88 other source designated for deposit into such fund. Unexpended
89 amounts remaining in the fund at the end of a fiscal year shall
90 not lapse into the State General Fund, and any interest earned or
91 investment earnings on amounts in the fund shall be deposited to
92 the credit of the fund; however, any monies in excess of Fifty
93 Million Dollars (\$50,000,000.00) remaining in the fund at the end
94 of a fiscal year that have not been appropriated shall lapse into
95 the State General Fund.

96 (b) Monies in the special fund may be used by the
97 Department of Insurance, upon appropriation by the Legislature,
98 only for the purpose of assisting the Mississippi Windstorm

99 Underwriting Association in defraying expenses and costs for
100 reinsurance under Section 83-34-1 et seq. The association may use
101 any such funds received from the Department of Insurance for the
102 sole purpose of defraying expenses and costs for reinsurance.
103 Monies in the fund used for the purposes described in this
104 paragraph (b) shall be in addition to other funds available from
105 any other source for such purposes.

106 (c) Monies in the special fund may not be used,
107 expended or transferred for any other purpose except upon
108 amendment to this section by a bill enacted by the Legislature
109 with a vote of not less than two-thirds (2/3) of the members of
110 each house present and voting.

111 (2) (a) The Commissioner of Insurance shall file a report
112 with the Joint Legislative Budget Committee not later than
113 September 1 of each year, recommending the amount of assistance,
114 if any, needed by the Mississippi Windstorm Underwriting
115 Association for reinsurance expenses and costs and recommending
116 the amount necessary to be appropriated for deposit into
117 Mississippi Windstorm Underwriting Association Reinsurance
118 Assistance Fund. The Commissioner of Insurance also shall provide
119 a copy of the report to the Attorney General and the Executive
120 Director of the Mississippi Development Authority.

121 (b) The Mississippi Windstorm Underwriting Association
122 shall prepare and file detailed reports with the Clerk of the
123 House of Representatives, Secretary of the Senate, Commissioner of
124 Insurance, Attorney General and Executive Director of the
125 Mississippi Development Authority regarding the receipt and
126 expenditure of monies by the association under this section.

127 **SECTION 3.** (1) Using state fiscal year 2005 (the fiscal
128 year ending June 30, 2005) as the base year, the State Tax
129 Commission shall annually deposit into the special fund, created
130 in Section 2 of this act from insurance premium tax revenue
131 collected by it under the provisions of Section 27-15-103 et seq.,

132 an amount equal to the annual growth after the base year of the
133 portion of the insurance premium tax revenue collected by it under
134 Section 27-15-103 et seq. and allocated for distribution to the
135 General Fund.

136 (2) This section shall stand repealed from and after July 1,
137 2011.

138 **SECTION 4.** There shall be allowed as a credit against the
139 tax imposed under Sections 27-15-103 through 27-15-129, in an
140 amount equal to ten percent (10%) of the gross premium receipts on
141 new policies written for essential property insurance (as defined
142 in Section 83-34-1) within the coast area of this state on or
143 after January 1, 2007, for any domestic or foreign insurance
144 company which writes policies within the coast area; provided,
145 however, the credit allowed hereunder shall not exceed One Hundred
146 Thousand Dollars (\$100,000.00) during any calendar year. The
147 State Tax Commission and the Department of Insurance shall
148 determine what constitutes new policies written, or covering risk,
149 within the coast area of this state. Any tax credit claimed under
150 this section but not used in any taxable year may be carried
151 forward for the three (3) succeeding tax years. For purposes of
152 this section, "coast area" shall have the meaning as provided in
153 Section 83-34-1.

154 **SECTION 5.** Section 83-34-1, Mississippi Code of 1972, is
155 amended as follows:

156 83-34-1. In this chapter, unless the context otherwise
157 requires:

158 (a) "Essential property insurance" means insurance
159 against direct loss to property from the risk of windstorm and
160 hail in the manner as defined and limited in the standard real
161 property and contents insurance forms approved by the
162 commissioner. Essential property insurance shall not include
163 coverage for any loss other than the actual cash value of the
164 structure and contents. Essential property insurance includes

165 builders risks coverage. The extent of risk covered, the insuring
166 language and the exclusions are all subject to approval by the
167 commissioner. Policies, rules and rates shall be filed with the
168 commissioner in the manner provided for insurance companies.

169 (b) "Association" means the Mississippi Windstorm
170 Underwriting Association established pursuant to the provisions of
171 this chapter.

172 (c) "Plan of operation" means the plan of operation of
173 the association approved or promulgated by the * * * commissioner
174 pursuant to the provisions of this chapter.

175 (d) "Insurable property" means * * * real property, and
176 contents therein when requested, at fixed locations in the coast
177 area * * *, which property is determined by the association * * *
178 to be in an insurable condition and otherwise meets the
179 underwriting requirements of the association. * * * Any one- or
180 two-family dwelling built, rebuilt, altered or remodeled in
181 compliance with the applicable building codes, including * * *
182 design-wind requirements, that is not otherwise rendered
183 uninsurable by reason of use, occupancy or state of repair, shall
184 be an insurable risk. * * * Neighborhood area, location and
185 environmental hazards beyond the control of the applicant or owner
186 of the property shall not be considered in determining insurable
187 condition. * * * "Insurable property" shall not include insurance
188 on motor vehicles. "Insurable property" includes mobile homes,
189 modular homes or manufactured housing that are installed in
190 compliance with applicable codes.

191 (e) "Commissioner" means the Insurance Commissioner of
192 the State of Mississippi.

193 (f) "Coast area" means Hancock, Harrison and Jackson
194 Counties * * *.

195 (g) (i) "Net direct premiums," for purposes of
196 calculating percentages of participation for assessable insurers
197 for the year 2007, means gross direct premiums, excluding

198 reinsurance assumed and ceded, written on property in this state
199 for the risk of windstorm and hail * * * less return premiums upon
200 cancelled contracts, dividends paid or credited to policyholders,
201 or the unused or unabsorbed portion of premium deposits * * *.

202 "Net direct premiums" includes the premium charge component for
203 the risk of windstorm and hail to property in all policies,
204 including multi-peril and other policies that package or combine
205 coverage for other risks. The plan of operation shall prescribe
206 the portion of premium allocated for the risk of windstorm and
207 hail in multi-peril and other policies that package or combine
208 coverage for other risks. "Net direct premiums" shall not include
209 farm property. "Net direct premiums" shall not include the
210 property components of motor vehicles and other mobile property,
211 but includes premiums for the risks of windstorm and hail for
212 mobile homes, modular homes or manufactured housing.

213 (ii) "Net direct premiums," for purposes of
214 calculating percentages of participation for assessable insurers
215 after the year 2007, means those premiums reported by the
216 assessable insurers in their annual statements to the Department
217 of Insurance that were charged for insurance for any and all risks
218 on real property and contents in the state. The department shall
219 determine which lines of insurance shall be included in the
220 calculation of net direct premiums. The included lines may be
221 changed from time to time in the discretion of the commissioner.
222 "Net direct premiums" shall not include premiums for insuring farm
223 property that are reported timely to the association as provided
224 in the plan of operation.

225 (iii) The commissioner is authorized and directed
226 to provide to the association annual statements, other reports and
227 any statistics necessary to provide the information herein
228 required and which the commissioner is hereby authorized and
229 empowered to obtain from any assessable insurer.

230 (h) "Farm property" means property used for farming
231 purposes; however, it shall not include any property used for
232 dwelling purposes or any outbuildings used in connection
233 therewith.

234 (i) "Losses" includes expenses for the adjustment and
235 resolution of claims and operational and other general expenses.

236 (j) "Bonds, loans, lines of credit and indebtedness"
237 include interest, finance charges, and any and all other costs
238 associated with the financing.

239 (k) "Percentage of participation" for an assessable
240 insurer means the percentage determined by dividing the assessable
241 insurers net direct premiums written in this state in the previous
242 year by the aggregate net direct premiums written in this state by
243 all assessable insurers of the association in the previous year.
244 The percentage of participation may be modified as provided in
245 Sections 83-34-9(3) and 83-34-13(2).

246 (l) "Nonadmitted insurers" mean those insurance
247 companies defined in Section 83-21-17, and any other companies and
248 persons selling insurance on risks in Mississippi that are not
249 licensed to do business in the State of Mississippi.

250 (m) "Brokers for nonadmitted insurers" means those
251 agents defined in 83-21-19.

252 **SECTION 6.** Section 83-34-3, Mississippi Code of 1972, is
253 amended as follows:

254 83-34-3. (1) There is hereby created the Mississippi
255 Windstorm Underwriting Association, which shall be a separate and
256 independent entity as provided for herein * * *. At its option,
257 the association may incorporate. All assets of the association
258 shall hereinafter belong to and remain with the association.
259 There shall be no distribution of income or assets other than for
260 the benefit of the association, which shall have the right to
261 invest and reinvest assets.

262 (2) From and after the effective date of Senate Bill No.
263 3050, 2007 Regular Session, the association shall no longer have
264 members. Former "members" of the association shall be "assessable
265 insurers" and shall have no rights to the assets and profits of
266 the association, but shall have the obligation for regular
267 assessments as provided herein. As a condition of its authority
268 to continue to transact the business of insurance in this state,
269 any licensed insurer shall be an assessable insurer so long as the
270 association is in existence. By transacting business in this
271 state, each such licensed insurer agrees to be bound by the
272 provisions of this statute and the plan of operation as approved
273 by the commissioner, and all amendments and revisions thereto.

274 (3) Any licensed insurer first authorized to write insurance
275 after the effective date of Senate Bill No. 3050, 2007 Regular
276 Session, shall become an assessable insurer on the first day of
277 January immediately following such authorization. The
278 determination of such insurer's participation in the association
279 shall be made based upon writings in the prior year in the same
280 manner as for all other assessable insurers of the association.

281 (4) The premiums, assessments, fees, investment income and
282 other revenue of the association are funds received for the sole
283 purpose of providing insurance coverage, paying claims for
284 Mississippi citizens insured by the association, securing and
285 repaying debt obligations issued by the association, and
286 conducting all other activities of the association, all as
287 required or permitted by this chapter. Such revenue shall not be
288 considered taxes, fees, licenses or charges for services imposed
289 by the State of Mississippi on individuals, businesses, or
290 agencies, and shall not be used for other purposes.

291 (5) It is the intent of the Legislature that the association
292 be and act as a nonprofit entity. The association shall be free
293 from taxation of every kind by the state and any political
294 subdivision or other instrumentality thereof. It is the intent of

295 the Legislature that the association be tax exempt from all taxes,
296 including federal taxes, and the association is granted the
297 authority to take those steps necessary to obtain federal tax
298 exempt status.

299 (6) Any debt obligations issued by the association, their
300 transfer, and the income therefrom, including any profit made on
301 the sale thereof, shall at all times be free from taxation of
302 every kind by the state and any political subdivision or other
303 instrumentality thereof.

304 (7) In the event of the termination of the association by
305 act of the Legislature, or other means, the assets of the
306 association shall be applied first to pay all debts, liabilities
307 and obligations of the association, including the establishment of
308 reasonable reserves for any contingent liabilities or obligations,
309 and all remaining assets of the association shall become property
310 of the state.

311 (8) The association shall operate as a private enterprise
312 and shall not be subject to the procurement provisions of Section
313 31-7-13, and policies and decisions of the association, including,
314 but not limited to, decisions relating to incurring debt, levying
315 of assessments, the issuance and sale of bonds, claims decisions
316 under association policies, hiring and firing of employees, and
317 all services relating to the operation of the association shall
318 not be subject to the provisions of Section 25-9-101 et seq. The
319 association shall not be required to obtain or to hold a license
320 or certificate of authority issued by the commissioner or any
321 other office. The association shall not be required to
322 participate as a member insurer of the Mississippi Insurance
323 Guaranty Association.

324 **SECTION 7.** The following section shall be codified as
325 Section 83-34-4, Mississippi Code of 1972:

326 83-34-4. (1) Nonadmitted insurers shall not be assessable
327 insurers of the association. In lieu of being an assessable

328 insurer, all brokers for nonadmitted insurers shall collect and
329 remit to the association a nonadmitted insurer fee on all premiums
330 collected after July 1, 2007, for all insurance written by such
331 broker for a policy from a nonadmitted insurer for any and all
332 risks on real property and contents in this state. By procuring
333 or selling insurance on property in this state from a nonadmitted
334 insurer, each broker for a nonadmitted insurer agrees to be bound
335 by the provisions of this chapter and to collect and remit the
336 nonadmitted insurer fee provided for herein.

337 (2) The nonadmitted insurer fee shall be a percentage of the
338 total policy premium but the nonadmitted insurer fee shall not be
339 considered premium and is not subject to premium taxes or
340 commissions. However, failure to pay the nonadmitted insurer fee
341 shall be treated the same as failure to pay premium. "Total
342 policy premium" includes taxes and commissions.

343 (3) The nonadmitted insurer fee percentage shall be set by
344 the commissioner. Such percentage may be changed from time to
345 time in the discretion of the commissioner, but in no event shall
346 the nonadmitted insurer percentage be less than five percent (5%).

347 (4) Brokers for nonadmitted insurers shall remit the
348 nonadmitted insurer fee directly to the association on no less
349 than a monthly basis. In addition to the nonadmitted insurer fee
350 provided for herein, brokers for nonadmitted insurers shall
351 collect and remit surcharges as provided by this chapter.

352 **SECTION 8.** Section 83-34-5, Mississippi Code of 1972, is
353 amended as follows:

354 83-34-5. The association shall, pursuant to the provisions
355 of this chapter and the plan of operation, and with respect to
356 essential property insurance on insurable property, have the power
357 on behalf of its assessable insurers:

358 (a) To issue policies of essential property insurance
359 on insurable property to applicants;

360 (b) At its option, and with consent of the
361 commissioner, to issue policies of related essential property
362 insurance on insurable property to applicants;

363 (c) To purchase reinsurance for all or part of the
364 risks of the association;

365 (d) To levy and collect regular assessments from
366 assessable insurers;

367 (e) To issue bonds or incur other forms of
368 indebtedness, including, but not limited to, loans, lines of
369 credit or letters of credit;

370 (f) To establish underwriting criteria consistent with
371 the provisions of this chapter and as approved by the
372 commissioner;

373 (g) To invest and reinvest income and assets subject to
374 the oversight of the commissioner; and

375 (h) All other powers necessary to carry out the
376 provisions and intent of this chapter.

377 **SECTION 9.** Section 83-34-7, Mississippi Code of 1972, is
378 amended as follows:

379 83-34-7. (1) The Board of Directors of the Mississippi
380 Insurance Underwriting Association as presently constituted shall
381 serve as the temporary board of directors of the association.
382 Such temporary board of directors shall prepare and submit a plan
383 of operation in accordance with Section 83-34-13 and shall serve
384 until the permanent board of directors shall take office in
385 accordance with the plan of operation. The permanent board shall
386 consist of five (5) representatives of the members to be appointed
387 by the temporary board of directors subject to the approval of the
388 commissioner and three (3) agents from the coast area to be
389 appointed by the commissioner. The terms of the members of the
390 board of directors in place before the effective date of Senate
391 Bill No. 3050, 2007 Regular Session, shall expire on the effective
392 date of Senate Bill No. 3050, 2007 Regular Session, and such

393 persons shall cease to serve on the board and shall relinquish all
394 power and control of the association.

395 (2) From and after the effective date of Senate Bill No.
396 3050, 2007 Regular Session, the board of directors of the
397 association shall consist of the following:

398 (a) The State Treasurer;

399 (b) Five (5) representatives of the assessable insurer
400 companies, to be appointed by the commissioner;

401 (c) Three (3) agents who are residents of the coast
402 area with at least ten (10) years' experience in the property and
403 casualty industry, to be appointed by the Governor; and

404 (d) Two (2) business leaders who are residents of the
405 coast area, one (1) to be appointed by the Governor and one (1) to
406 be appointed by the Lieutenant Governor.

407 (3) On or before the effective day of Senate Bill No. 3050,
408 2007 Regular Session, the appropriate public official shall make
409 such appointments and request such resignations from the existing
410 board as are appropriate to comply with this section.

411 (4) The board shall be staffed by as many employees as it
412 deems necessary.

413 (5) The board of directors has the power to act and make
414 binding decisions on behalf of the association on all issues.

415 **SECTION 10.** Section 83-34-9, Mississippi Code of 1972, is
416 amended as follows:

417 83-34-9. (1) All assessable insurers of the association
418 shall participate in regular assessments levied by the association
419 based upon their percentage of participation. The association may
420 allow assessable insurers of groups of insurers to combine their
421 annual net direct premiums and other data, including data that
422 supports any incentives that may be allowed by the association, to
423 the extent that such grouping promotes the voluntary writing of
424 essential property insurance in the coast area. Any provisions

425 for credits and grouping of data shall be prescribed in the plan
426 of operation.

427 (2) All profits of the association shall remain as assets of
428 the association.

429 (3) The plan of operation shall provide financial incentives
430 or financial penalties, or both, to ensure that assessable
431 insurers write essential property insurance in the coast area.
432 The incentives and penalties may include, but are not limited to,
433 a reduction in recovery of regular assessments, a nonrecoverable
434 participation in losses incurred by the association above the
435 amounts covered by the regular assessments, adjustments in the
436 percentage of participation, and other incentives and penalties as
437 provided in the plan of operation. The commissioner shall approve
438 the plan of operation as provided in Section 83-34-13.

439 **SECTION 11.** The following shall be codified as Section
440 83-34-10, Mississippi Code of 1972:

441 83-34-10. In the event of a storm that may produce losses in
442 excess of funds that may be immediately available to the
443 association, or in the event that the association determines that
444 it will otherwise have a claim deficit or any other deficit, then
445 the association, with consent of the commissioner, shall have the
446 power to levy regular assessments against assessable insurers
447 based upon their percentage of participation. In any year, the
448 aggregate total of regular assessments shall not exceed the
449 greater of ten percent (10%) of the deficit or ten percent (10%)
450 of the aggregate statewide direct written premiums for property
451 insurance for the prior calendar year of all association
452 assessable insurers. Regular assessments shall be paid by
453 assessable insurers within sixty (60) days of receipt of the
454 notice of the assessments.

455 **SECTION 12.** Section 83-34-11, Mississippi Code of 1972, is
456 amended as follows:

457 83-34-11. (1) Within one hundred twenty (120) days of the
458 levy of any regular assessments, the commissioner shall implement
459 a surcharge on all property and casualty insurance premiums for
460 insurance for property and activities in this state designed to
461 recover to the association within one (1) year the amount of such
462 regular assessment for reimbursement to assessable insurers who
463 paid the regular assessment. "Premiums" includes premiums for
464 policies issued by or for the association and by or for the
465 Mississippi Residential Property Insurance Underwriting
466 Association. "Premiums" shall not include premiums for workers'
467 compensation coverage nor any premiums for coverage by insurance
468 pools or plans administered by the State of Mississippi. Such
469 surcharge shall be specifically identified on either the premium
470 statements or the policy declarations pages or other appropriate
471 policy forms as relating to the specific Mississippi Windstorm
472 Underwriting Association regular assessment for which it was
473 implemented. The commissioner shall name each such surcharge so
474 that it can be uniformly identified by insurers and brokers.

475 (2) The surcharge shall be a percentage of the total policy
476 premium, but the surcharge shall not be considered premium and is
477 not subject to premium taxes or commissions. However, failure to
478 pay the surcharge shall be treated the same as failure to pay
479 premium. "Total policy premium" includes taxes and commissions.

480 (3) If at any time, the surcharge to repay regular
481 assessments shall be insufficient, the commissioner shall increase
482 the surcharge as necessary and appropriate. However, in no event
483 may the aggregate total of all regular assessments in a year
484 exceed the maximum amounts specified in Section 83-34-10.

485 (4) The commissioner shall cease regular assessment
486 surcharges as he determines appropriate funds have been collected.

487 (5) Each licensed insurer issuing insurance for property and
488 casualty risks in the state and each broker for nonadmitted
489 insurers, shall collect the regular assessment surcharges

490 established by the commissioner under the authority of this
491 section. Funds collected by such insurers and brokers as regular
492 assessment surcharges shall be collected and held in trust and
493 shall be fully remitted to the association on a quarterly basis
494 with forms providing appropriate information as designed by the
495 association. Insurers and brokers shall remit such funds to the
496 association within twenty (20) days after the end of each quarter.
497 At such time the insurers and brokers shall further remit to the
498 association all interest earned on the surcharge funds. However,
499 assessable insurers of the association who have paid to the
500 association the regular assessment that is the basis of the
501 surcharge shall not be required to remit interest earned on
502 collected surcharges from the lines of business on which their
503 regular assessment was based.

504 (6) The association shall reimburse assessable insurers for
505 regular assessments from the funds collected as regular assessment
506 surcharges. Reimbursements shall be made to assessable insurers
507 in the same percentages as the regular assessments were paid by
508 assessable insurers. The association must endeavor to make
509 reimbursements from the surcharge funds collected within sixty
510 (60) days of the end of each quarter. Any funds collected by the
511 association in excess of the amount necessary to reimburse
512 assessable insurers for regular assessments shall be general funds
513 of the association.

514 (7) The reimbursement to assessable insurers for regular
515 assessments as provided in subsection (6) must be refunded to the
516 association by any insurer that reduces its property writings in
517 the state by more than ten percent (10%) in the five-year period
518 beginning January 1 of the year following the regular assessment,
519 unless such insurer is granted an exception by the commissioner
520 after public hearing on the request for exception. The reasons
521 for an exception by the commissioner shall include, but are not
522 limited to, inadequate solvency to continue writing at the

523 previous level. Refunds shall be proportionate to the point in
524 time during the five-year period the assessable insurer drops its
525 property writings more than ten percent (10%). Prior to receiving
526 any reimbursement by the association, each assessable insurer must
527 execute an agreement provided by the association agreeing to
528 comply with the intent of this subsection.

529 (8) The association and the commissioner are both
530 specifically given the power to audit licensed insurers and
531 brokers for nonadmitted insurers to confirm the accuracy of
532 remittances of surcharges at the expense of the licensed insurers
533 and brokers.

534 (9) The association shall report quarterly to the
535 commissioner providing all financial information for each regular
536 assessment surcharge, including:

537 (a) The original amount of the regular assessment and
538 the amount remaining not reimbursed to assessable insurers;

539 (b) Total surcharge funds recovered to date; and

540 (c) Any information requested by the commissioner.

541 **SECTION 13.** The following shall be codified as Section
542 83-34-12, Mississippi Code of 1972:

543 83-34-12. The regular assessment of a assessable insurer
544 may, after hearing, be ordered deferred, in whole or in part, upon
545 application by the insurer if, in the opinion of the commissioner,
546 payment of the assessment would render the insurer insolvent or in
547 danger of insolvency, or would otherwise leave the insurer in such
548 a condition that further transaction of the insurer's business
549 would be hazardous to its policyholders, creditors, assessable
550 insurers, subscribers, stockholders or the public. If that
551 payment of an assessment against an assessable insurer is deferred
552 by order of the commissioner, in whole or in part, the amount by
553 which the assessment is deferred shall be assessed against other
554 assessable insurer in the same manner as provided in Section
555 83-34-9.

556 **SECTION 14.** Section 83-34-13, Mississippi Code of 1972, is
557 amended as follows:

558 83-34-13. (1) Within forty-five (45) days after the
559 effective date of Senate Bill No. 3050, 2007 Regular Session, the
560 directors of the association shall submit to the commissioner for
561 review and approval a proposed plan of operation revised to be
562 consistent with the provisions of Senate Bill No. 3050, 2007
563 Regular Session. The association shall maintain a plan of
564 operation. The plan shall provide for the efficient, economical,
565 fair and nondiscriminatory administration of the association. The
566 plan may include methods for the assessment of all assessable
567 insurers for deficits and expenses * * *, the establishment of
568 necessary facilities, management of the association, * * *,
569 underwriting standards, * * *, procedures for determining the
570 amounts of insurance to be provided to specific risks, time limits
571 and procedures for processing applications for insurance, and for
572 such other provisions as may be deemed necessary by the board to
573 carry out the purposes of this chapter.

574 (2) The plan of operation shall provide financial incentives
575 or financial penalties, or both, to ensure that assessable
576 insurers write essential property insurance in the coast area.
577 The incentives and penalties may include, but are not limited to,
578 a reduction in recovery of regular assessments, a nonrecoverable
579 participation in losses incurred by the association above the
580 amounts covered by the regular assessments, adjustments in the
581 percentage of participation, and other incentives and penalties as
582 provided in the plan of operation.

583 (3) The plan of operation shall provide (a) that the
584 association shall offer a two percent (2%) deductible for loss
585 from named storms; and (b) that the association shall also offer
586 options for other deductibles for loss from named storms with
587 appropriate rate reductions that shall include at least a twenty
588 percent (20%) deductible for loss from named storms.

589 (4) The * * * commissioner shall approve the plan of
590 operation and all amendments before they become effective. It is
591 the obligation of the commissioner to confirm that such plan
592 fulfills the purposes of this chapter. * * * If the commissioner
593 approves a proposed plan or amendment, he shall certify the
594 approval to the directors, and the plan, or amendment thereto,
595 shall become effective ten (10) days after such certification. If
596 the commissioner disapproves all or any part of the proposed plan
597 of operation, or amendment thereto, he shall return the same to
598 the directors with a written statement giving the reasons for
599 disapproval and any recommendations the commissioner may wish to
600 make. Within ten (10) days thereafter, the directors may alter
601 the plan or amendment in accordance with the commissioner's
602 recommendation or may * * * return a new plan to the
603 commissioner. * * * The commissioner shall consider the proposals
604 and shall then promulgate and place into effect a plan of
605 operation certifying the same to the directors of the association.
606 Any such plan promulgated by the commissioner shall take effect
607 ten (10) days after certification to the directors.

608 (5) * * * The commissioner may review the plan of operation
609 at any time he deems expedient or prudent. After review of the
610 plan, the commissioner may amend the plan after consultation with
611 the directors of the association and upon certification to the
612 directors of the amendment.

613 **SECTION 15.** Section 83-34-15, Mississippi Code of 1972, is
614 amended as follows:

615 83-34-15. (1) (a) Any person having an insurable interest
616 in insurable property is entitled to apply to the association for
617 such coverage * * *. Applications shall be made on behalf of the
618 owner of the insurable interest by a licensed resident broker or
619 agent authorized by him. Applications shall be submitted on forms
620 prescribed by the association.

621 (b) The association may require an inspection of any
622 properties after application or request for renewal and may charge
623 a fee for such inspection.

624 (c) The term "insurable interest" as used in this
625 subsection shall be deemed to include any lawful and substantial
626 economic interest in the safety or preservation of property from
627 loss, destruction or pecuniary damage.

628 (2) If the association determines that the property is
629 insurable and that there is no unpaid premium due from the
630 applicant for prior insurance on the property, the association,
631 upon receipt of the premium or such portion thereof as is
632 prescribed in the plan of operation, shall cause to be issued, or
633 issue, a policy of essential property insurance * * *. Such
634 coverage shall be dependent upon the timely payment of premiums or
635 premium installments as provided for at the time of application.
636 Coverage limits shall be determined by the value of the insurable
637 property at the time the policy is issued subject to maximum
638 limits which shall be set forth under the plan of operation * * *.

639 (3) If the association for any reason denies an application
640 and refuses to issue or cause to be issued an insurance
641 policy * * * to any applicant, or takes no action on an
642 application within the time prescribed in the plan of operation,
643 such applicant may appeal to the commissioner. The commissioner
644 or a designated member of his staff, after reviewing the facts,
645 may direct the association to issue or cause to be issued an
646 insurance policy to the applicant; however, no coverage shall be
647 in effect until such time as the premium is paid and the policy
648 issued. In carrying out his duties pursuant to this section, the
649 commissioner may request, and the association shall provide, any
650 information the commissioner deems necessary to a determination
651 concerning the reasons for the denial or delay of the application.

652 **SECTION 16.** Section 83-34-17, Mississippi Code of 1972, is
653 amended as follows:

654 83-34-17. The rates, rating plans, rating rules, forms and
655 endorsements applicable to the insurance written by the
656 association shall be those approved for use of the association by
657 the commissioner. * * * Rates shall be nondiscriminatory as to
658 the same class of risk.

659 **SECTION 17.** Section 83-34-19, Mississippi Code of 1972, is
660 amended as follows:

661 83-34-19. (1) Any assessable insurer or other licensed
662 insurer, or broker for a nonadmitted insurer, who may be aggrieved
663 by an act, order, ruling or decision of the association may,
664 within thirty (30) days after such ruling, appeal to the
665 commissioner. Any hearings held by the commissioner pursuant to
666 such an appeal shall be in accordance with the procedure set forth
667 in the insurance laws of Mississippi. The commissioner is
668 authorized to appoint a member of his staff for the purpose of
669 hearing such appeals, and a ruling based upon such hearing shall
670 have the same effect as if heard by the commissioner. All
671 assessable insurers or other licensed insurers, or brokers for a
672 nonadmitted insurer, aggrieved by any order or decision of the
673 commissioner may appeal to the Chancery Court of the First
674 Judicial District of Hinds County, Mississippi, consistent with
675 the insurance laws of the State of Mississippi.

676 (2) The association and any assessable insurer, other
677 licensed insurer or broker for a nonadmitted insurer that may be
678 aggrieved by an act, order, ruling or decision of the commissioner
679 may, within thirty (30) days after such act, order, ruling or
680 decision, appeal to the Chancery Court of the First Judicial
681 District of Hinds County, Mississippi, consistent with the
682 insurance laws of the State of Mississippi.

683 **SECTION 18.** Section 83-34-21, Mississippi Code of 1972, is
684 amended as follows:

685 83-34-21. All reports of inspection performed by or on
686 behalf of the association shall be made available to the

687 assessable insurers of the association, applicants, agents,
688 brokers and the commissioner.

689 **SECTION 19.** Section 83-34-23, Mississippi Code of 1972, is
690 amended as follows:

691 83-34-23. There shall be no liability on the part of * * *
692 the insurance commissioner or any of his staff and representatives
693 for any action taken under and pursuant to the provisions of this
694 chapter. There shall be no liability on the part of the
695 association, its agents, representatives or employees, the members
696 of the board, or any assessable insurer of the association, except
697 for the contractual obligations of any contract of insurance and
698 the duty to pay assessments as provided in this chapter.

699 **SECTION 20.** Section 83-34-27, Mississippi Code of 1972, is
700 amended as follows:

701 83-34-27. The commissioner may from time to time make an
702 examination into the affairs of the association when he deems
703 prudent and, in undertaking such examination, may hold a public
704 hearing. The expenses of such examination shall be borne and paid
705 by the association. The association and the commissioner may from
706 time to time make an examination of the data and payments of
707 assessable insurers or other licensed insurers or brokers for
708 nonadmitted insurers as it deems prudent. The expenses of such
709 examination shall be borne and paid by the examined party or
710 entity. Any person noticed for such examination may appeal the
711 examination or the cost thereof, or both, to the commissioner.

712 **SECTION 21.** The following shall be codified as Section
713 83-34-31, Mississippi Code of 1972:

714 83-34-31. (1) The board of directors, subject to the
715 approval of the commissioner, shall have the power and authority
716 to issue bonds, and the power and authority to enter into loans,
717 letters of credit, lines of credit, and other forms of
718 indebtedness, as needed for operations, the purchase of
719 reinsurance, claim losses, and incurred but not reported claims.

720 (2) All such bonds and loans are secured by the power and
721 duty of the commissioner to implement surcharges against all
722 property and casualty insurance premiums for insurance for
723 property and activities in this state sufficient to repay the
724 bonds or loans, or both.

725 (3) If any of the bonds remain unsold sixty (60) days after
726 issuance, the commissioner shall require all assessable insurers
727 to purchase the bonds, which purchased bonds shall be treated as
728 admitted assets; each assessable insurer shall be required to
729 purchase that percentage of the unsold portion of the bond issue
730 that equals the assessable insurer's current percentage of
731 participation. An assessable insurer shall not be required to
732 purchase the bonds to the extent that the commissioner determines
733 that the purchase would endanger or impair the solvency of the
734 insurer. The bonds must be in a form approved by the
735 commissioner. With approval of the commissioner, the association
736 may issue bonds or incur other indebtedness to retire or
737 consolidate bonds as appropriate. Bonds and other debt
738 obligations issued by or on behalf of the association are not to
739 be considered "state bonds" and shall not be an obligation of the
740 state.

741 (4) The state hereby covenants with holders of bonds issued
742 pursuant to this section that the state will not limit, alter or
743 deny the duties and obligations of this chapter, and of the
744 association and the commissioner as established by this chapter,
745 necessary to fulfill the terms of any agreements with bondholders,
746 or in any way impair the rights and remedies of such bondholders
747 as long as any such bonds remain outstanding unless adequate
748 provision has been made for the payment of such bonds pursuant to
749 the documents authorizing the issuance of such bonds.

750 **SECTION 22.** The following shall be codified as Section
751 83-34-33, Mississippi Code of 1972:

752 83-34-33. (1) When the association knows or has reason to
753 believe that (a) it has or will incur losses from a hurricane that
754 exceed reinsurance and other reasonably available assets of the
755 association, such that one or more bond issues or other financing,
756 or both, will be necessary to pay claims losses and other related
757 expenses, or (b) the association has a deficit that cannot be
758 reasonably resolved by income available to the association, then
759 the association shall immediately give notice to the commissioner
760 and request that the commissioner implement by an excess hurricane
761 loss surcharge on all property and casualty insurance premiums for
762 insurance for property and activities in this state designed to
763 recover to the association the amount of all such bonds and other
764 indebtedness resulting from the hurricane, or other deficit.

765 (2) At such time as the commissioner can reasonably estimate
766 the amount of bonds or indebtedness, or both, necessitated by a
767 hurricane event, and in no event more than ninety (90) days from
768 the notice given by the association, the commissioner shall have
769 the duty and the power to implement an excess hurricane loss
770 surcharge on all property and casualty insurance premiums for
771 insurance for property and activities in this state. "Premiums"
772 includes premiums for policies issued by or for the association
773 and by or for the Mississippi Residential Property Insurance
774 Underwriting Association. "Premiums" shall not include premiums
775 for workers' compensation coverage nor any premiums for coverage
776 by insurance pools or plans administered by the State of
777 Mississippi.

778 (3) If the surcharge is designed to repay bonds, it shall be
779 designated as such and all funds recovered from the surcharge
780 shall be used for repayment of the bonds for which it was
781 implemented, until such time as the bonds have been paid or
782 redeemed.

783 (4) If the surcharge is designed to repay a specific
784 indebtedness incurred for losses from a specific hurricane, it

785 shall be designated as such and all funds recovered from the
786 surcharge shall be used for repayment of the indebtedness for
787 which it was implemented, until such time as the indebtedness has
788 been paid or redeemed.

789 (5) Such surcharge shall be specifically identified on
790 either the premium statements or the policy declarations pages or
791 other appropriate policy forms as relating to the specific
792 hurricane losses or bonds or indebtedness for which it was
793 implemented. The commissioner shall name each such surcharge so
794 that it can be uniformly identified by insurers and brokers.

795 (6) The surcharge shall be a percentage of the total policy
796 premium but the surcharge shall not be considered premium and is
797 not subject to premium taxes or commissions. However, failure to
798 pay the surcharge shall be treated the same as failure to pay
799 premium. "Total policy premium" includes taxes and commissions.

800 (7) The commissioner shall implement an appropriate
801 surcharge percentage sufficient to recover the amount necessary
802 for repayment of bonds and indebtedness necessitated by a
803 hurricane, or the resolution of other deficit, as applicable. If
804 at any time such surcharge shall be insufficient, the commissioner
805 shall increase the surcharge as necessary and appropriate. The
806 commissioner shall cease surcharges as he determines appropriate
807 funds have been collected.

808 (8) Each licensed insurer issuing insurance for property and
809 casualty risks in the state and each broker for nonadmitted
810 insurers, shall collect the surcharges established by the
811 commissioner under the authority of this section. Funds collected
812 by such licensed insurers and brokers for nonadmitted insurers as
813 surcharges authorized by this section shall be collected and held
814 in trust and shall be fully remitted to the association on a
815 quarterly basis with forms providing appropriate information as
816 designed by the association. Insurers and brokers shall remit
817 such funds to the association within twenty (20) days after the

818 end of each quarter. At such time the insurers and brokers shall
819 further remit to the association all interest earned on the
820 surcharge funds.

821 (9) The association and the commissioner are both
822 specifically given the power to audit licensed insurers and
823 brokers for nonadmitted insurers to confirm the accuracy of
824 remittances of surcharges at the expense of the licensed insurers
825 and brokers.

826 (10) The commissioner has the duty and power to adjust the
827 percentage of any surcharge previously established as he finds
828 appropriate taking into consideration any relevant factors,
829 including, but not limited to, consolidation or replacement of
830 bonds, any additional indebtedness resulting from a hurricane, the
831 rate of recovery, anticipated length of total recovery, and impact
832 of other hurricanes; however, the commissioner shall not reduce
833 the amount of assessments implemented and designated to pay or
834 redeem bonds, or other indebtedness below the amount necessary to
835 timely pay or redeem such bonds, or other indebtedness.

836 (11) When the association knows or has reason to believe
837 that surcharges authorized by this section previously established
838 by the commissioner will be insufficient to timely pay or redeem
839 bonds or indebtedness, the association shall immediately give
840 notice to the commissioner. The commissioner shall alter such
841 surcharge as necessary to timely pay or redeem bonds or pay other
842 indebtedness.

843 (12) The association shall report quarterly to the
844 commissioner providing all financial information for each
845 surcharge authorized by this section, including:

846 (a) The original and current outstanding indebtedness
847 of all bonds and loans;

848 (b) Total surcharge funds recovered to date; and

849 (c) Any information requested by the commissioner.

850 (13) The commissioner may request, and the association shall

851 provide, on an immediate basis to the commissioner any financial
852 information or other information concerning any surcharge. This
853 section shall not limit the reporting requirements provided by
854 83-34-25.

855 **SECTION 23.** The following shall be codified as Section
856 83-34-35, Mississippi Code of 1972:

857 83-34-35. In order to avoid or lessen the possibility and
858 amount of surcharges authorized by this chapter, the commissioner
859 shall approve rates for policies issued by the association at
860 least adequate to fund annual reinsurance above a self-insured
861 retention of One Hundred Million Dollars (\$100,000,000.00) that,
862 combined with any readily available reserves of the association,
863 is sufficient to cover at least the probable maximum losses from a
864 storm expected to occur once every one hundred (100) years as
865 predicted by a model or method approved by the commissioner for
866 the properties insured by the association at the time the
867 reinsurance was negotiated. The amount of reinsurance in the
868 forgoing rate adequacy requirement shall increase every two (2)
869 years by increasing the probable maximum loss by five (5) years,
870 until such time as the probable maximum loss insured is for a
871 storm expected to occur every one hundred fifty (150) years. The
872 commissioner may approve rates in excess of the minimums required
873 by this section as consistent with his duties and the insurance
874 laws of the State of Mississippi.

875 **SECTION 24.** This act shall take effect and be in force from
876 and after its passage.