

By: Senator(s) Hewes, Robertson, Gollott,
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To: Insurance; Finance

SENATE BILL NO. 3050
(As Passed the Senate)

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 REVISE OTHER DEFINITIONS; TO AMEND SECTION 83-34-3, MISSISSIPPI
31 CODE OF 1972, TO REVISE THE ORGANIZATIONAL STRUCTURE OF THE
32 ASSOCIATION; TO CREATE SECTION 83-34-4, MISSISSIPPI CODE OF 1972,
33 TO REQUIRE ALL BROKERS FOR NONADMITTED INSURERS TO COLLECT AND
34 REMIT TO THE ASSOCIATION A NONADMITTED INSURER FEE; TO AMEND
35 SECTION 83-34-5, MISSISSIPPI CODE OF 1972, TO REVISE THE POWERS OF
36 THE ASSOCIATION; TO AMEND SECTION 83-34-7, MISSISSIPPI CODE OF
37 1972, TO REVISE THE MEMBERSHIP OF THE BOARD OF DIRECTORS; TO AMEND
38 SECTION 83-34-9, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ALL
39 ASSESSABLE INSURERS SHALL PARTICIPATE IN REGULAR ASSESSMENTS BASED
40 UPON THEIR PARTICIPATION, AND TO ALLOW FINANCIAL INCENTIVES OR
41 PENALTIES TO ENCOURAGE ASSESSABLE INSURERS TO WRITE INSURANCE IN
42 THE COAST AREA; TO CREATE SECTION 83-34-10, MISSISSIPPI CODE OF
43 1972, TO AUTHORIZE THE ASSOCIATION, WITH CONSENT OF THE
44 COMMISSIONER OF INSURANCE, TO LEVY REGULAR ASSESSMENTS AGAINST
45 ASSESSABLE INSURERS UPON CERTAIN EVENTS; TO AMEND SECTION
46 83-34-11, MISSISSIPPI CODE OF 1972, TO DIRECT THE COMMISSIONER OF
47 INSURANCE TO IMPLEMENT A SURCHARGE ON ALL PROPERTY AND CASUALTY
48 PREMIUMS, EXCEPT PREMIUMS FOR WORKERS' COMPENSATION COVERAGE AND
49 PREMIUMS FOR INSURANCE POOLS OR PLANS ADMINISTERED BY THE STATE OF
50 MISSISSIPPI, IN ORDER TO RECOVER REGULAR ASSESSMENTS AND REIMBURSE
51 ASSESSABLE INSURERS; TO CREATE SECTION 83-34-12, MISSISSIPPI CODE
52 OF 1972, TO PROVIDE FOR DEFERRAL OF A REGULAR ASSESSMENT BY ORDER

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

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

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

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

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

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

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

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

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

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

132 portion of the insurance premium tax revenue collected by it under
133 Section 27-15-103 et seq. and allocated for distribution to the
134 General Fund.

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

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

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

155 83-34-1. In this chapter, unless the context otherwise
156 requires:

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

165 language and the exclusions are all subject to approval by the
166 commissioner. Policies, rules and rates shall be filed with the
167 commissioner in the manner provided for insurance companies.

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

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

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

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

192 (f) "Coast area" means Hancock, Harrison, Jackson,
193 Pearl River, Stone and George Counties * * *.

194 (g) (i) "Net direct premiums," for purposes of
195 calculating percentages of participation for assessable insurers
196 for the year 2007, means gross direct premiums, excluding
197 reinsurance assumed and ceded, written on property in this state

198 for the risk of windstorm and hail * * * less return premiums upon
199 cancelled contracts, dividends paid or credited to policyholders,
200 or the unused or unabsorbed portion of premium deposits * * *.

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

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

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

229 (h) "Farm property" means property used for farming
230 purposes; however, it shall not include any property used for

231 dwelling purposes or any outbuildings used in connection
232 therewith.

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

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

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

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

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

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

253 83-34-3. (1) There is hereby created the Mississippi
254 Windstorm Underwriting Association, which shall be a separate and
255 independent entity as provided for herein * * *. At its option,
256 the association may incorporate. All assets of the association
257 shall hereinafter belong to and remain with the association.
258 There shall be no distribution of income or assets other than for
259 the benefit of the association, which shall have the right to
260 invest and reinvest assets.

261 (2) From and after the effective date of Senate Bill No.
262 3050, 2007 Regular Session, the association shall no longer have
263 members. Former "members" of the association shall be "assessable

264 insurers" and shall have no rights to the assets and profits of
265 the association, but shall have the obligation for regular
266 assessments as provided herein. As a condition of its authority
267 to continue to transact the business of insurance in this state,
268 any licensed insurer shall be an assessable insurer so long as the
269 association is in existence. By transacting business in this
270 state, each such licensed insurer agrees to be bound by the
271 provisions of this statute and the plan of operation as approved
272 by the commissioner, and all amendments and revisions thereto.

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

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

290 (5) It is the intent of the Legislature that the association
291 be and act as a nonprofit entity. The association shall be free
292 from taxation of every kind by the state and any political
293 subdivision or other instrumentality thereof. It is the intent of
294 the Legislature that the association be tax exempt from all taxes,
295 including federal taxes, and the association is granted the

296 authority to take those steps necessary to obtain federal tax
297 exempt status.

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

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

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

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

325 83-34-4. (1) Nonadmitted insurers shall not be assessable
326 insurers of the association. In lieu of being an assessable
327 insurer, all brokers for nonadmitted insurers shall collect and
328 remit to the association a nonadmitted insurer fee on all premiums

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

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

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

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

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

353 83-34-5. The association shall, pursuant to the provisions
354 of this chapter and the plan of operation, and with respect to
355 essential property insurance on insurable property, have the power
356 on behalf of its assessable insurers:

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

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

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

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

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

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

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

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

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

378 83-34-7. (1) The Board of Directors of the Mississippi
379 Insurance Underwriting Association as presently constituted shall
380 serve as the temporary board of directors of the association.
381 Such temporary board of directors shall prepare and submit a plan
382 of operation in accordance with Section 83-34-13 and shall serve
383 until the permanent board of directors shall take office in
384 accordance with the plan of operation. The permanent board shall
385 consist of five (5) representatives of the members to be appointed
386 by the temporary board of directors subject to the approval of the
387 commissioner and three (3) agents from the coast area to be
388 appointed by the commissioner. The terms of the members of the
389 board of directors in place before the effective date of Senate
390 Bill No. 3050, 2007 Regular Session, shall expire on the effective
391 date of Senate Bill No. 3050, 2007 Regular Session, and such
392 persons shall cease to serve on the board and shall relinquish all
393 power and control of the association.

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

397 (a) The State Treasurer;

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

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

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

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

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

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

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

416 83-34-9. (1) All assessable insurers of the association
417 shall participate in regular assessments levied by the association
418 based upon their percentage of participation. The association may
419 allow assessable insurers of groups of insurers to combine their
420 annual net direct premiums and other data, including data that
421 supports any incentives that may be allowed by the association, to
422 the extent that such grouping promotes the voluntary writing of
423 essential property insurance in the coast area. Any provisions
424 for credits and grouping of data shall be prescribed in the plan
425 of operation.

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

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

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

440 83-34-10. In the event of a storm that may produce losses in
441 excess of funds that may be immediately available to the
442 association, or in the event that the association determines that
443 it will otherwise have a claim deficit or any other deficit, then
444 the association, with consent of the commissioner, shall have the
445 power to levy regular assessments against assessable insurers
446 based upon their percentage of participation. In any year, the
447 aggregate total of regular assessments shall not exceed the
448 greater of ten percent (10%) of the deficit or ten percent (10%)
449 of the aggregate statewide direct written premiums for property
450 insurance for the prior calendar year of all association
451 assessable insurers. Regular assessments shall be paid by
452 assessable insurers within sixty (60) days of receipt of the
453 notice of the assessments.

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

456 83-34-11. (1) Within one hundred twenty (120) days of the
457 levy of any regular assessments, the commissioner shall implement
458 a surcharge on all property and casualty insurance premiums for

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

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

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

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

486 (5) Each licensed insurer issuing insurance for property and
487 casualty risks in the state and each broker for nonadmitted
488 insurers, shall collect the regular assessment surcharges
489 established by the commissioner under the authority of this
490 section. Funds collected by such insurers and brokers as regular
491 assessment surcharges shall be collected and held in trust and

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

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

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

525 any reimbursement by the association, each assessable insurer must
526 execute an agreement provided by the association agreeing to
527 comply with the intent of this subsection.

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

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

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

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

539 (c) Any information requested by the commissioner.

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

542 83-34-12. The regular assessment of a assessable insurer
543 may, after hearing, be ordered deferred, in whole or in part, upon
544 application by the insurer if, in the opinion of the commissioner,
545 payment of the assessment would render the insurer insolvent or in
546 danger of insolvency, or would otherwise leave the insurer in such
547 a condition that further transaction of the insurer's business
548 would be hazardous to its policyholders, creditors, assessable
549 insurers, subscribers, stockholders or the public. If that
550 payment of an assessment against an assessable insurer is deferred
551 by order of the commissioner, in whole or in part, the amount by
552 which the assessment is deferred shall be assessed against other
553 assessable insurer in the same manner as provided in Section
554 83-34-9.

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

557 83-34-13. (1) Within forty-five (45) days after the
558 effective date of Senate Bill No. 3050, 2007 Regular Session, the
559 directors of the association shall submit to the commissioner for
560 review and approval a proposed plan of operation revised to be
561 consistent with the provisions of Senate Bill No. 3050, 2007
562 Regular Session. The association shall maintain a plan of
563 operation. The plan shall provide for the efficient, economical,
564 fair and nondiscriminatory administration of the association. The
565 plan may include methods for the assessment of all assessable
566 insurers for deficits and expenses * * *, the establishment of
567 necessary facilities, management of the association, * * *,
568 underwriting standards, * * *, procedures for determining the
569 amounts of insurance to be provided to specific risks, time limits
570 and procedures for processing applications for insurance, and for
571 such other provisions as may be deemed necessary by the board to
572 carry out the purposes of this chapter.

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

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

588 (4) The * * * commissioner shall approve the plan of
589 operation and all amendments before they become effective. It is

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

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

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

614 83-34-15. (1) (a) Any person having an insurable interest
615 in insurable property is entitled to apply to the association for
616 such coverage * * *. Applications shall be made on behalf of the
617 owner of the insurable interest by a licensed resident broker or
618 agent authorized by him. Applications shall be submitted on forms
619 prescribed by the association.

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

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

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

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

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

653 83-34-17. The rates, rating plans, rating rules, forms and
654 endorsements applicable to the insurance written by the
655 association shall be those approved for use of the association by

656 the commissioner. * * * Rates shall be nondiscriminatory as to
657 the same class of risk.

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

660 83-34-19. (1) Any assessable insurer or other licensed
661 insurer, or broker for a nonadmitted insurer, who may be aggrieved
662 by an act, order, ruling or decision of the association may,
663 within thirty (30) days after such ruling, appeal to the
664 commissioner. Any hearings held by the commissioner pursuant to
665 such an appeal shall be in accordance with the procedure set forth
666 in the insurance laws of Mississippi. The commissioner is
667 authorized to appoint a member of his staff for the purpose of
668 hearing such appeals, and a ruling based upon such hearing shall
669 have the same effect as if heard by the commissioner. All
670 assessable insurers or other licensed insurers, or brokers for a
671 nonadmitted insurer, aggrieved by any order or decision of the
672 commissioner may appeal to the Chancery Court of the First
673 Judicial District of Hinds County, Mississippi, consistent with
674 the insurance laws of the State of Mississippi.

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

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

684 83-34-21. All reports of inspection performed by or on
685 behalf of the association shall be made available to the
686 assessable insurers of the association, applicants, agents,
687 brokers and the commissioner.

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

690 83-34-23. There shall be no liability on the part of * * *
691 the insurance commissioner or any of his staff and representatives
692 for any action taken under and pursuant to the provisions of this
693 chapter. There shall be no liability on the part of the
694 association, its agents, representatives or employees, the members
695 of the board, or any assessable insurer of the association, except
696 for the contractual obligations of any contract of insurance and
697 the duty to pay assessments as provided in this chapter.

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

700 83-34-27. The commissioner may from time to time make an
701 examination into the affairs of the association when he deems
702 prudent and, in undertaking such examination, may hold a public
703 hearing. The expenses of such examination shall be borne and paid
704 by the association. The association and the commissioner may from
705 time to time make an examination of the data and payments of
706 assessable insurers or other licensed insurers or brokers for
707 nonadmitted insurers as it deems prudent. The expenses of such
708 examination shall be borne and paid by the examined party or
709 entity. Any person noticed for such examination may appeal the
710 examination or the cost thereof, or both, to the commissioner.

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

713 83-34-31. (1) The board of directors, subject to the
714 approval of the commissioner, shall have the power and authority
715 to issue bonds, and the power and authority to enter into loans,
716 letters of credit, lines of credit, and other forms of
717 indebtedness, as needed for operations, the purchase of
718 reinsurance, claim losses, and incurred but not reported claims.

719 (2) All such bonds and loans are secured by the power and
720 duty of the commissioner to implement surcharges against all

721 property and casualty insurance premiums for insurance for
722 property and activities in this state sufficient to repay the
723 bonds or loans, or both.

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

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

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

751 83-34-33. (1) When the association knows or has reason to
752 believe that (a) it has or will incur losses from a hurricane that
753 exceed reinsurance and other reasonably available assets of the

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

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

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

782 (4) If the surcharge is designed to repay a specific
783 indebtedness incurred for losses from a specific hurricane, it
784 shall be designated as such and all funds recovered from the
785 surcharge shall be used for repayment of the indebtedness for

786 which it was implemented, until such time as the indebtedness has
787 been paid or redeemed.

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

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

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

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

818 further remit to the association all interest earned on the
819 surcharge funds.

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

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

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

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

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

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

848 (c) Any information requested by the commissioner.

849 (13) The commissioner may request, and the association shall
850 provide, on an immediate basis to the commissioner any financial

851 information or other information concerning any surcharge. This
852 section shall not limit the reporting requirements provided by
853 83-34-25.

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

856 83-34-35. In order to avoid or lessen the possibility and
857 amount of surcharges authorized by this chapter, the commissioner
858 shall approve rates for policies issued by the association at
859 least adequate to fund annual reinsurance above a self-insured
860 retention of One Hundred Million Dollars (\$100,000,000.00) that,
861 combined with any readily available reserves of the association,
862 is sufficient to cover at least the probable maximum losses from a
863 storm expected to occur once every one hundred (100) years as
864 predicted by a model or method approved by the commissioner for
865 the properties insured by the association at the time the
866 reinsurance was negotiated. The amount of reinsurance in the
867 forgoing rate adequacy requirement shall increase every two (2)
868 years by increasing the probable maximum loss by five (5) years,
869 until such time as the probable maximum loss insured is for a
870 storm expected to occur every one hundred fifty (150) years. The
871 commissioner may approve rates in excess of the minimums required
872 by this section as consistent with his duties and the insurance
873 laws of the State of Mississippi.

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