

By: Senator(s) Kirby

To: Insurance; Finance

## SENATE BILL NO. 3052

1 AN ACT TO REVISE THE LAWS CREATING THE MISSISSIPPI WINDSTORM  
2 UNDERWRITING ASSOCIATION; TO AMEND SECTION 83-34-1, MISSISSIPPI  
3 CODE OF 1972, TO DEFINE CERTAIN TERMS; TO AMEND SECTION 83-34-3,  
4 MISSISSIPPI CODE OF 1972, TO REVISE THE ORGANIZATIONAL STRUCTURE  
5 OF THE ASSOCIATION; TO CREATE SECTION 83-34-4, MISSISSIPPI CODE OF  
6 1972, TO REQUIRE ALL BROKERS FOR NONADMITTED INSURERS TO COLLECT  
7 AND REMIT TO THE ASSOCIATION A NONADMITTED INSURER FEE; TO AMEND  
8 SECTION 83-34-5, MISSISSIPPI CODE OF 1972, TO REVISE THE POWERS OF  
9 THE ASSOCIATION; TO AMEND SECTION 83-34-7, MISSISSIPPI CODE OF  
10 1972, TO REVISE THE MEMBERSHIP OF THE BOARD OF DIRECTORS; TO AMEND  
11 SECTION 83-34-9, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR  
12 ASSESSABLE INSURER PARTICIPATION; TO CREATE SECTION 83-34-10,  
13 MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE ASSOCIATION, WITH  
14 CONSENT OF THE COMMISSIONER OF INSURANCE, TO LEVY REGULAR  
15 ASSESSMENTS AGAINST ASSESSABLE INSURERS UPON CERTAIN EVENTS; TO  
16 AMEND SECTION 83-34-11, MISSISSIPPI CODE OF 1972, TO DIRECT THE  
17 COMMISSIONER OF INSURANCE TO IMPLEMENT A SURCHARGE ON ALL PROPERTY  
18 AND CASUALTY PREMIUMS STATEWIDE IN ORDER TO RECOVER REGULAR  
19 ASSESSMENTS AND REIMBURSE ASSESSABLE INSURERS; TO CREATE SECTION  
20 83-34-12, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR DEFERRAL OF A  
21 REGULAR ASSESSMENT BY ORDER OF THE COMMISSIONER OF INSURANCE; TO  
22 AMEND SECTION 83-34-13, MISSISSIPPI CODE OF 1972, TO REVISE THE  
23 REQUIRED CONTENTS OF THE ASSOCIATION'S PLAN OF OPERATION; TO AMEND  
24 SECTION 83-34-15, MISSISSIPPI CODE OF 1972, TO REVISE THE PROCESS  
25 FOR APPLICATION FOR COVERAGE; TO AMEND SECTION 83-34-17,  
26 MISSISSIPPI CODE OF 1972, TO AMEND IN CONFORMITY WITH OTHER  
27 PROVISIONS; TO AMEND SECTION 83-34-19, MISSISSIPPI CODE OF 1972,  
28 TO REVISE THE PROCESS FOR APPEAL OF DECISIONS MADE BY THE  
29 ASSOCIATION OR COMMISSIONER OF INSURANCE; TO AMEND SECTION  
30 83-34-21, MISSISSIPPI CODE OF 1972, IN CONFORMITY WITH OTHER  
31 PROVISIONS; TO AMEND SECTION 83-34-23, MISSISSIPPI CODE OF 1972,  
32 TO PROVIDE IMMUNITY FROM LIABILITY FOR THE ASSOCIATION AND THE  
33 COMMISSIONER OF INSURANCE; TO BRING FORWARD SECTION 83-34-25,  
34 MISSISSIPPI CODE OF 1972, FOR PURPOSE OF AMENDMENT; TO AMEND  
35 SECTION 83-34-27, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE  
36 EXAMINATION OF DATA AND PAYMENTS OF ASSESSABLE INSURERS AND  
37 BROKERS FOR NONADMITTED INSURERS; TO BRING FORWARD SECTION  
38 83-34-29, MISSISSIPPI CODE OF 1972, FOR PURPOSE OF AMENDMENT; TO  
39 CREATE SECTION 83-34-31, MISSISSIPPI CODE OF 1972, TO AUTHORIZE  
40 THE ASSOCIATION TO ISSUE BONDS AND ENTER INTO LOANS; TO CREATE  
41 SECTION 83-34-33, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR A  
42 SURCHARGE FOR EXCESS HURRICANE LOSSES; TO CREATE SECTION 83-34-35,  
43 MISSISSIPPI CODE OF 1972, TO DIRECT THE COMMISSIONER OF INSURANCE  
44 TO APPROVE ASSOCIATION RATES AT LEAST ADEQUATE TO FUND ANNUAL  
45 REINSURANCE ABOVE A CERTAIN RESERVE; AND FOR RELATED PURPOSES.

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

47 **SECTION 1.** Section 83-34-1, Mississippi Code of 1972, is  
48 amended as follows:

49           83-34-1. In this chapter, unless the context otherwise  
50 requires:

51           (a) "Essential property insurance" means insurance  
52 against direct loss to property from the risk of windstorm and  
53 hail in the manner as defined and limited in the standard real  
54 property and contents insurance forms approved by the  
55 commissioner. Essential property insurance shall not include  
56 coverage for any loss other than the actual cash value of the  
57 structure and contents. Essential property insurance includes  
58 builders risks coverage. The extent of risk covered, the insuring  
59 language and the exclusions are all subject to approval by the  
60 commissioner. Policies, rules and rates shall be filed with the  
61 commissioner in the manner provided for insurance companies.

62           (b) "Association" means the Mississippi Windstorm  
63 Underwriting Association established pursuant to the provisions of  
64 this chapter.

65           (c) "Plan of operation" means the plan of operation of  
66 the association approved or promulgated by the \* \* \* commissioner  
67 pursuant to the provisions of this chapter.

68           (d) "Insurable property" means \* \* \* real property, and  
69 contents therein when requested, at fixed locations in the coast  
70 area \* \* \*, which property is determined by the association \* \* \*  
71 to be in an insurable condition and otherwise meet the  
72 underwriting requirements of the association. \* \* \* Any one- or  
73 two-family dwelling built, rebuilt, altered or remodeled in  
74 compliance with the applicable building codes, including \* \* \*  
75 design-wind requirements, that is not otherwise rendered  
76 uninsurable by reason of use, occupancy or state of repair, shall  
77 be an insurable risk \* \* \*. \* \* \* Neighborhood area, location and  
78 environmental hazards beyond the control of the applicant or owner  
79 of the property shall not be considered in determining insurable  
80 condition. \* \* \* "Insurable property" shall not include insurance  
81 on motor vehicles. "Insurable property" includes mobile homes or

82 manufactured housing that are affixed in compliance with  
83 applicable codes.

84 (e) "Commissioner" means the Insurance Commissioner of  
85 the State of Mississippi.

86 (f) "Coast area" means Hancock, Harrison, Jackson,  
87 Pearl River, Stone and George Counties.

88 (g) (i) "Net direct premiums," for purposes of  
89 calculating percentages of participation for assessable insurers  
90 for the year 2007, means gross direct premiums, excluding  
91 reinsurance assumed and ceded, written on property in this state  
92 for the risk of windstorm and hail \* \* \* less return premiums upon  
93 cancelled contracts, dividends paid or credited to policyholders,  
94 or the unused or unabsorbed portion of premium deposits \* \* \*.  
95 "Net direct premiums" includes the premium charge component for  
96 the risk of windstorm and hail to property in all policies,  
97 including multi-peril and other policies that package or combine  
98 coverage for other risks. The plan of operation shall prescribe  
99 the portion of premium allocated for the risk of windstorm and  
100 hail in multi-peril and other policies that package or combine  
101 coverage for other risks. "Net direct premiums" shall not include  
102 farm property. "Net direct premiums" shall not include the  
103 property components of motor vehicles and other mobile property,  
104 but includes premiums for the risks of windstorm and hail for  
105 mobile homes or manufactured housing.

106 (ii) "Net direct premiums," for purposes of  
107 calculating percentages of participation for assessable insurers  
108 after the year 2007, means those premiums reported by the  
109 assessable insurers in their annual statements to the Department  
110 of Insurance that were charged for insurance for any and all risks  
111 on real property and contents in the state. The department shall  
112 determine which lines of insurance shall be included in the  
113 calculation of net direct premiums. The included lines may be  
114 changed from time to time in the discretion of the commissioner.

115 "Net direct premiums" shall not include premiums for insuring farm  
116 property that are reported timely to the association as provided  
117 in the plan of operation.

118 (iii) The commissioner is authorized and directed  
119 to provide to the association annual statements, other reports and  
120 any statistics necessary to provide the information herein  
121 required and which the commissioner is hereby authorized and  
122 empowered to obtain from any assessable insurer.

123 (h) "Farm property" means property used for farming  
124 purposes; however, it shall not include any property used for  
125 dwelling purposes or any outbuildings used in connection  
126 therewith.

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

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

132 (k) "Percentage of participation" for an assessable  
133 insurer means the percentage determined by dividing the assessable  
134 insurers net direct premiums written in this state in the previous  
135 year, less any credits that the association may allow, by the  
136 aggregate net direct premiums written in this state by all  
137 assessable insurers of the association in the previous year.

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

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

144 **SECTION 2.** Section 83-34-3, Mississippi Code of 1972, is  
145 amended as follows:

146 83-34-3. (1) There is hereby created the Mississippi  
147 Windstorm Underwriting Association, which shall be a separate and

148 independent entity as provided for herein \* \* \* . At its option,  
149 the association may incorporate. All assets of the association  
150 shall hereinafter belong to and remain with the association.

151 (2) From and after the effective date of Senate Bill No.  
152 3052, 2007 Regular Session, the association shall no longer have  
153 members. Former "members" of the association shall be "assessable  
154 insurers" and shall have no rights to the assets and profits of  
155 the association, but shall have the obligation for regular  
156 assessments as provided herein. As a condition of its authority  
157 to continue to transact the business of insurance in this state,  
158 any licensed insurer shall be an assessable insurer so long as the  
159 association is in existence. By transacting business in this  
160 state, each such licensed insurer agrees to be bound by the  
161 provisions of this statute and the plan of operation as approved  
162 by the commissioner, and all amendments and revisions thereto.

163 (3) Any licensed insurer first authorized to write  
164 insurance after the effective date of Senate Bill No. 3052, 2007  
165 Regular Session, shall become an assessable insurer on the first  
166 day of January immediately following such authorization. The  
167 determination of such insurer's participation in the association  
168 shall be made based upon writings in the prior year in the same  
169 manner as for all other assessable insurers of the association.

170 (4) The premiums, assessments, fees, investment income  
171 and other revenue of the association are funds received for the  
172 sole purpose of providing insurance coverage, paying claims for  
173 Mississippi citizens insured by the association, securing and  
174 repaying debt obligations issued by the association, and  
175 conducting all other activities of the association, all as  
176 required or permitted by this chapter. Such revenue shall not be  
177 considered taxes, fees, licenses or charges for services imposed  
178 by the State of Mississippi on individuals, businesses, or  
179 agencies, and shall not be used for other purposes.

180       (5) It is the intent of the Legislature that the association  
181 be and act as a nonprofit entity. The association shall be free  
182 from taxation of every kind by the state and any political  
183 subdivision or other instrumentality thereof. It is the intent of  
184 the Legislature that the association be tax exempt from all taxes,  
185 including federal taxes, and the association is granted the  
186 authority to take those steps necessary to obtain federal tax  
187 exempt status.

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

193       (7) In the event of the termination of the association by  
194 act of the Legislature, or other means, the assets of the  
195 association shall be applied first to pay all debts, liabilities  
196 and obligations of the association, including the establishment of  
197 reasonable reserves for any contingent liabilities or obligations,  
198 and all remaining assets of the association shall become property  
199 of the state.

200       (8) The association is to be run as a private enterprise and  
201 is not subject to the procurement provisions of Section 31-7-13,  
202 and policies and decisions of the association, including, but not  
203 limited to, decisions relating to incurring debt, levying of  
204 assessments, the issuance and sale of bonds, claims decisions  
205 under association policies, hiring and firing of employees, and  
206 all services relating to the operation of the association are not  
207 subject to the provisions of Section 25-9-101 et seq. The  
208 association is not required to obtain or to hold a license or  
209 certificate of authority issued by the commissioner or any other  
210 office. The association is not required to participate as a  
211 member insurer of the Mississippi Insurance Guaranty Association.

212           **SECTION 3.** The following section shall be codified as  
213 Section 83-34-4, Mississippi Code of 1972:

214           83-34-4. (1) Nonadmitted insurers shall not be assessable  
215 insurers of the association. In lieu being an assessable insurer,  
216 all brokers for nonadmitted insurers shall collect and remit to  
217 the association a nonadmitted insurer fee on all premiums  
218 collected after July 1, 2007, for all insurance written by such  
219 broker for a policy from a nonadmitted insurer for any and all  
220 risks on real property and contents in this state. By procuring  
221 or selling insurance on property in this state from a nonadmitted  
222 insurer, each broker for a nonadmitted insurer agrees to be bound  
223 by the provisions of this chapter and to collect and remit the  
224 nonadmitted insurer fee provided for herein.

225           (2) The nonadmitted insurer fee shall be a percentage of the  
226 total policy premium but the nonadmitted insurer fee shall not be  
227 considered premium and is not subject to premium taxes or  
228 commissions. However, failure to pay the nonadmitted insurer fee  
229 shall be treated the same as failure to pay premium. "Total  
230 policy premium" includes taxes and commissions.

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

235           (4) Brokers for nonadmitted insurers shall remit the  
236 nonadmitted insurer fee directly to the association on no less  
237 than a monthly basis. In addition to the nonadmitted insurer fee  
238 provided for herein, brokers for nonadmitted insurers shall also  
239 collect and remit surcharges as provided by this chapter.

240           **SECTION 4.** Section 83-34-5, Mississippi Code of 1972, is  
241 amended as follows:

242           83-34-5. The association shall, pursuant to the provisions  
243 of this chapter and the plan of operation, and with respect to

244 essential property insurance on insurable property, have the power  
245 on behalf of its assessable insurers:

246 (a) To issue policies of essential property insurance  
247 on insurable property to applicants;

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

251 (c) To purchase reinsurance for all or part of the  
252 risks of the association;

253 (d) To levy and collect regular assessments from  
254 assessable insurers;

255 (e) To issue bonds or incur other forms of  
256 indebtedness, including, but not limited to, loans, lines of  
257 credit or letters of credit;

258 (f) To establish underwriting criteria consistent with  
259 the provisions of this chapter and as approved by the  
260 commissioner; and

261 (g) All other powers necessary to carry out the  
262 provisions and intent of this chapter.

263 **SECTION 5.** Section 83-34-7, Mississippi Code of 1972, is  
264 amended as follows:

265 83-34-7. (1) The Board of Directors of the Mississippi  
266 Insurance Underwriting Association as presently constituted shall  
267 serve as the temporary board of directors of the association.  
268 Such temporary board of directors shall prepare and submit a plan  
269 of operation in accordance with Section 83-34-13 and shall serve  
270 until the permanent board of directors shall take office in  
271 accordance with the plan of operation. The permanent board shall  
272 consist of five (5) representatives of the members to be appointed  
273 by the temporary board of directors subject to the approval of the  
274 commissioner and three (3) agents from the coast area to be  
275 appointed by the commissioner. The terms of the members of the  
276 board of directors in place before the effective date of Senate



277 Bill No. 3052, 2007 Regular Session, shall expire on the effective  
278 date of Senate Bill No. 3052, 2007 Regular Session, and such  
279 persons shall cease to serve on the board and shall relinquish all  
280 power and control of the association.

281 (2) From and after the effective date of Senate Bill No.  
282 3052, 2007 Regular Session, the board of directors of the  
283 association shall consist of seven (7) representatives of the  
284 assessable insurer companies and five (5) agents all to be  
285 appointed annually by the commissioner to serve during the  
286 following fiscal year of the association. No less than two (2) of  
287 the agent directors shall be appointed from agents with their  
288 offices in the coast area. No less than two (2) of the agent  
289 directors shall be appointed from agents with their offices not in  
290 the coast area. On or before the effective day of Senate Bill  
291 No.\_\_\_\_, 2007 Regular Session, the commissioner shall make such  
292 appointments and request such resignations from the existing board  
293 as are appropriate to comply with this section.

294 (3) The board of directors has the power to act and make  
295 binding decisions on behalf of the association on all issues.

296 **SECTION 6.** Section 83-34-9, Mississippi Code of 1972, is  
297 amended as follows:

298 83-34-9. (1) All assessable insurers of the association  
299 shall participate in regular assessments levied by the association  
300 based upon their percentage of participation. The association may  
301 allow assessable insurers of groups of insurers to combine their  
302 annual net direct premiums and other data, including data that  
303 supports any incentives that may be allowed by the association, to  
304 the extent that such grouping promotes the voluntary writing of  
305 essential property insurance in the coast area. Any provisions  
306 for credits and grouping of data shall be prescribed in the plan  
307 of operation.

308 (2) All profits of the association shall remain as assets of  
309 the association.

310       (3) The plan of operation may provide financial incentives  
311 or financial penalties, or both, to encourage assessable insurers  
312 to write essential property insurance in the coast area. Such  
313 incentives and penalties may include a reduction in recovery of  
314 regular assessments, a nonrecoverable participation in losses  
315 incurred by the association above the amounts covered by the  
316 regular assessments, and other incentives and penalties as  
317 provided in the plan of operation. The commissioner shall approve  
318 the plan of operation as provided in Section 83-34-13.

319       **SECTION 7.** The following shall be codified as Section  
320 83-34-10, Mississippi Code of 1972:

321       83-34-10. In the event of a storm that may produce losses in  
322 excess of funds that may be immediately available to the  
323 association, or in the event that the association determines that  
324 it will otherwise have a claim deficit or any other deficit, then  
325 the association, with consent of the commissioner, shall have the  
326 power to levy regular assessments against assessable insurers  
327 based upon their percentage of participation. In any year, the  
328 aggregate total of regular assessments shall not exceed the  
329 greater of ten percent (10%) of the deficit or ten percent (10%)  
330 of the aggregate statewide direct written premiums for property  
331 insurance for the prior calendar year of all association  
332 assessable insurers. Regular assessments shall be paid by  
333 assessable insurers within sixty (60) days of receipt of the  
334 notice of the assessments.

335       **SECTION 8.** Section 83-34-11, Mississippi Code of 1972, is  
336 amended as follows:

337       83-34-11. (1) Within one hundred twenty (120) days of the  
338 levy of any regular assessments, the commissioner shall implement  
339 a surcharge on all property and casualty insurance premiums for  
340 insurance for property and operations in this state designed to  
341 recover to the association within one (1) year the amount of such  
342 regular assessment for reimbursement to assessable insurers who

343 paid the regular assessment. "Premiums" includes premiums for  
344 policies issued by or for the association. Such surcharge shall  
345 be specifically identified on either the premium statements or the  
346 policy declarations pages or other appropriate policy forms as  
347 relating to the specific MWUA regular assessment for which it was  
348 implemented. The commissioner shall name each such surcharge so  
349 that it can be uniformly identified by insurers and brokers.

350 (2) The surcharge shall be a percentage of the total policy  
351 premium, but the surcharge shall not be considered premium and is  
352 not subject to premium taxes or commissions. However, failure to  
353 pay the surcharge shall be treated the same as failure to pay  
354 premium. "Total policy premium" includes taxes and commissions.

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

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

362 (5) Each licensed insurer issuing insurance for property and  
363 casualty risks in the state and each broker for nonadmitted  
364 insurers, shall collect the regular assessment surcharges  
365 established by the commissioner under the authority of this  
366 section. Funds collected by such insurers and brokers as regular  
367 assessment surcharges shall be collected and held in trust and  
368 shall be fully remitted to the association on a quarterly basis  
369 with forms providing appropriate information as designed by the  
370 association. Insurers and brokers shall remit such funds to the  
371 association within twenty (20) days after the end of each quarter.  
372 At such time the insurers and brokers shall further remit to the  
373 association all interest earned on the surcharge funds. However,  
374 assessable insurers of the association who have paid to the  
375 association the regular assessment that is the basis of the

376 surcharge shall not be required to remit interest earned on  
377 collected surcharges from the lines of business on which their  
378 regular assessment was based.

379 (6) The association shall reimburse assessable insurers for  
380 regular assessments from the funds collected as regular assessment  
381 surcharges. Reimbursements shall be made to assessable insurers  
382 in the same percentages as the regular assessments were paid by  
383 assessable insurers. The association must endeavor to make  
384 reimbursements from the surcharge funds collected within sixty  
385 (60) days of the end of each quarter. Any funds collected by the  
386 association in excess of the amount necessary to reimburse  
387 assessable insurers for regular assessments shall be general funds  
388 of the association.

389 (7) The association and the commissioner are both  
390 specifically given the power to audit licensed insurers and  
391 brokers for nonadmitted insurers to confirm the accuracy of  
392 remittances of surcharges at the expense of the licensed insurers  
393 and brokers.

394 (8) The association shall report quarterly to the  
395 commissioner providing all financial information for each regular  
396 assessment surcharge, including:

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

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

400 (c) Any information requested by the commissioner.

401 **SECTION 9.** The following shall be codified as Section  
402 83-34-12, Mississippi Code of 1972:

403 83-34-12. The regular assessment of a assessable insurer  
404 may, after hearing, be ordered deferred, in whole or in part, upon  
405 application by the insurer if, in the opinion of the commissioner,  
406 payment of the assessment would render the insurer insolvent or in  
407 danger of insolvency, or would otherwise leave the insurer in such  
408 a condition that further transaction of the insurer's business

409 would be hazardous to its policyholders, creditors, assessable  
410 insurers, subscribers, stockholders or the public. If that  
411 payment of an assessment against an assessable insurer is deferred  
412 by order of the commissioner, in whole or in part, the amount by  
413 which the assessment is deferred shall be assessed against other  
414 assessable insurer in the same manner as provided in Section  
415 83-34-9.

416 **SECTION 10.** Section 83-34-13, Mississippi Code of 1972, is  
417 amended as follows:

418 83-34-13. (1) Within forty-five (45) days after the  
419 effective date of Senate Bill No. 3052, 2007 Regular Session, the  
420 directors of the association shall submit to the commissioner for  
421 review and approval a proposed plan of operation revised to be  
422 consistent with the provisions of Senate Bill No. 3052, 2007  
423 Regular Session. The association shall maintain a plan of  
424 operation. The plan shall provide for the efficient, economical,  
425 fair and nondiscriminatory administration of the association. The  
426 plan may include methods for the assessment of all assessable  
427 insurers for deficits and expenses \* \* \*, the establishment of  
428 necessary facilities, management of the association, \* \* \*,  
429 underwriting standards, \* \* \*, procedures for determining the  
430 amounts of insurance to be provided to specific risks, time limits  
431 and procedures for processing applications for insurance, and for  
432 such other provisions as may be deemed necessary by the board to  
433 carry out the purposes of this chapter.

434 (2) The plan of operation may provide financial incentives  
435 or financial penalties, or both, to encourage assessable insurers  
436 to write essential property insurance in the coast area. The  
437 incentives and penalties may include a reduction in recovery of  
438 regular assessments, a nonrecoverable participation in losses  
439 incurred by the association above the amounts covered by the  
440 regular assessments, and other incentives and penalties as  
441 provided in the plan of operation.

442       (3) The \* \* \* commissioner shall approve the plan of  
443 operation and all amendments before they become effective. It is  
444 the obligation of the commissioner to confirm that such plan  
445 fulfills the purposes of this chapter. \* \* \* If the commissioner  
446 approves a proposed plan or amendment, he shall certify the  
447 approval to the directors, and the plan, or amendment thereto,  
448 shall become effective ten (10) days after such certification. If  
449 the commissioner disapproves all or any part of the proposed plan  
450 of operation, or amendment thereto, he shall return the same to  
451 the directors with a written statement giving the reasons for  
452 disapproval and any recommendations the commissioner may wish to  
453 make. Within ten (10) days thereafter, the directors may alter  
454 the plan or amendment in accordance with the commissioner's  
455 recommendation or may \* \* \* return a new plan to the  
456 commissioner. \* \* \* The commissioner shall consider the proposals  
457 and shall then promulgate and place into effect a plan of  
458 operation certifying the same to the directors of the association.  
459 Any such plan promulgated by the commissioner shall take effect  
460 ten (10) days after certification to the directors.

461       (4) \* \* \* The commissioner may review the plan of operation  
462 at any time he deems expedient or prudent. After review of the  
463 plan, the commissioner may amend the plan after consultation with  
464 the directors of the association and upon certification to the  
465 directors of the amendment.

466       **SECTION 11.** Section 83-34-15, Mississippi Code of 1972, is  
467 amended as follows:

468       83-34-15. (1) (a) Any person having an insurable interest  
469 in insurable property is entitled to apply to the association for  
470 such coverage \* \* \*. Applications shall be made on behalf of the  
471 owner of the insurable interest by a licensed resident broker or  
472 agent authorized by him. Applications shall be submitted on forms  
473 prescribed by the association.

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

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

481           (2) If the association determines that the property is  
482 insurable and that there is no unpaid premium due from the  
483 applicant for prior insurance on the property, the association,  
484 upon receipt of the premium or such portion thereof as is  
485 prescribed in the plan of operation, shall cause to be issued, or  
486 issue, a policy of essential property insurance \* \* \*. Such  
487 coverage shall be dependant upon the timely payment of premiums or  
488 premium installments as provided for at the time of application.  
489 Coverage limits shall be determined by the value of the insurable  
490 property at the time the policy is issued subject to maximum  
491 limits which shall be set forth under the plan of operation \* \* \*.

492           (3) If the association for any reason denies an application  
493 and refuses to issue or cause to be issued an insurance  
494 policy \* \* \* to any applicant, or takes no action on an  
495 application within the time prescribed in the plan of operation,  
496 such applicant may appeal to the commissioner. The commissioner  
497 or a designated member of his staff, after reviewing the facts,  
498 may direct the association to issue or cause to be issued an  
499 insurance policy to the applicant; however, no coverage shall be  
500 in effect until such time as the premium is paid and the policy  
501 issued. In carrying out his duties pursuant to this section, the  
502 commissioner may request, and the association shall provide, any  
503 information the commissioner deems necessary to a determination  
504 concerning the reasons for the denial or delay of the application.

505           **SECTION 12.** Section 83-34-17, Mississippi Code of 1972, is  
506 amended as follows:

507           83-34-17. The rates, rating plans, rating rules, forms and  
508 endorsements applicable to the insurance written by the  
509 association shall be those approved for use of the association by  
510 the commissioner. \* \* \* Rates shall be nondiscriminatory as to  
511 the same class of risk.

512           **SECTION 13.** Section 83-34-19, Mississippi Code of 1972, is  
513 amended as follows:

514           83-34-19. (1) Any assessable insurer or other licensed  
515 insurer, or broker for a nonadmitted insurer, who may be aggrieved  
516 by an act, order, ruling or decision of the association may,  
517 within thirty (30) days after such ruling, appeal to the  
518 commissioner. Any hearings held by the commissioner pursuant to  
519 such an appeal shall be in accordance with the procedure set forth  
520 in the insurance laws of Mississippi. The commissioner is  
521 authorized to appoint a member of his staff for the purpose of  
522 hearing such appeals, and a ruling based upon such hearing shall  
523 have the same effect as if heard by the commissioner. All  
524 assessable insurers or other licensed insurers, or brokers for a  
525 nonadmitted insurer, aggrieved by any order or decision of the  
526 commissioner may appeal to the Chancery Court of the First  
527 Judicial District of Hinds County, Mississippi, consistent with  
528 the insurance laws of the State of Mississippi.

529           (2) The association and any assessable insurer, other  
530 licensed insurer or broker for a nonadmitted insurer that may be  
531 aggrieved by an act, order, ruling or decision of the commissioner  
532 may, within thirty (30) days after such act, order, ruling or  
533 decision, appeal to the Chancery Court of the First Judicial  
534 District of Hinds County, Mississippi, consistent with the  
535 insurance laws of the State of Mississippi.

536           **SECTION 14.** Section 83-34-21, Mississippi Code of 1972, is  
537 amended as follows:

538           83-34-21. All reports of inspection performed by or on  
539 behalf of the association shall be made available to the



540 assessable insurers of the association, applicants, agents,  
541 brokers and the commissioner.

542 **SECTION 15.** Section 83-34-23, Mississippi Code of 1972, is  
543 amended as follows:

544 83-34-23. There shall be no liability on the part of \* \* \*  
545 the insurance commissioner or any of his staff and representatives  
546 for any and all actions taken under and pursuant to the provisions  
547 of this chapter. There shall be no liability on the part of the  
548 association, its agents, representatives or employees, the members  
549 of the board, or any assessable insurer of the association, except  
550 for the contractual obligations of any contract of insurance and  
551 the duty to pay assessments as provided in this chapter.

552 **SECTION 16.** Section 83-34-25, Mississippi Code of 1972, is  
553 brought forward as follows:

554 83-34-25. The association shall file in the office of the  
555 commissioner on or before March 1 of each year a statement which  
556 shall summarize the transactions, conditions, operations and  
557 affairs of the association during the preceding fiscal year ending  
558 December 31. Such statement shall contain such matters and  
559 information as are prescribed by the commissioner and shall be in  
560 such form as required by him. The commissioner may at any time  
561 require the association to furnish to him any additional  
562 information with respect to its transactions or any other matter  
563 which the commissioner deems to be material to assist him in  
564 evaluating the operation and experience of the association.

565 **SECTION 17.** Section 83-34-27, Mississippi Code of 1972, is  
566 amended as follows:

567 83-34-27. The commissioner may from time to time make an  
568 examination into the affairs of the association when he deems  
569 prudent and, in undertaking such examination, may hold a public  
570 hearing. The expenses of such examination shall be borne and paid  
571 by the association. The association and the commissioner may from  
572 time to time make an examination of the data and payments of

573 assessable insurers or other licensed insurers or brokers for  
574 nonadmitted insurers as it deems prudent. The expenses of such  
575 examination shall be borne and paid by the examined party or  
576 entity. Any person noticed for such examination may appeal the  
577 examination or the cost thereof, or both, to the commissioner.

578       **SECTION 18.** Section 83-34-29, Mississippi Code of 1972, is  
579 brought forward as follows:

580       83-34-29. The association is authorized to promulgate rules  
581 for the implementation of this chapter, subject to the approval of  
582 the commissioner.

583       **SECTION 19.** The following shall be codified as Section  
584 83-34-31, Mississippi Code of 1972:

585       83-34-31. (1) The board of directors, subject to the  
586 approval of the commissioner, shall have the power and authority  
587 to issue bonds, and the power and authority to enter into loans,  
588 letters of credit, lines of credit, and other forms of  
589 indebtedness, as needed for operations, the purchase of  
590 reinsurance, claim losses, and incurred but not reported claims.

591       (2) All such bonds and loans are secured by the power and  
592 duty of the commissioner to implement surcharges against all  
593 property and casualty insurance premiums for insurance for  
594 property and operations in this state sufficient to repay the  
595 bonds or loans, or both.

596       (3) If any of the bonds remain unsold sixty (60) days after  
597 issuance, the commissioner shall require all assessable insurers  
598 to purchase the bonds, which purchased bonds shall be treated as  
599 admitted assets; each assessable insurer shall be required to  
600 purchase that percentage of the unsold portion of the bond issue  
601 that equals the assessable insurer's current percentage of  
602 participation. An assessable insurer shall not be required to  
603 purchase the bonds to the extent that the commissioner determines  
604 that the purchase would endanger or impair the solvency of the  
605 insurer. The bonds must be in a form approved by the

606 commissioner. With approval of the commissioner, the association  
607 may issue bonds or incur other indebtedness to retire or  
608 consolidate bonds as appropriate. Bonds and other debt  
609 obligations issued by or on behalf of the association are not to  
610 be considered "state bonds" and shall not be an obligation of the  
611 state.

612 (4) The state hereby covenants with holders of bonds issued  
613 pursuant to this section that the state will not limit, alter or  
614 deny the duties and obligations of this chapter, and of the  
615 association and the commissioner as established by this chapter,  
616 necessary to fulfill the terms of any agreements with bondholders,  
617 or in any way impair the rights and remedies of such bondholders  
618 as long as any such bonds remain outstanding unless adequate  
619 provision has been made for the payment of such bonds pursuant to  
620 the documents authorizing the issuance of such bonds.

621 **SECTION 20.** The following shall be codified as Section  
622 83-34-33, Mississippi Code of 1972:

623 83-34-33. (1) When the association knows or has reason to  
624 believe that (a) it has or will incur losses from a hurricane that  
625 exceed reinsurance and other reasonably available assets of the  
626 association, such that one or more bond issues or other financing,  
627 or both, will be necessary to pay claims losses and other related  
628 expenses, or (b) the association has a deficit that cannot be  
629 reasonably resolved by income available to the association, then  
630 the association shall immediately give notice to the commissioner  
631 and request that the commissioner implement by an excess hurricane  
632 loss surcharge on all property and casualty insurance premiums for  
633 insurance for property and operations in this state designed to  
634 recover to the association the amount of all such bonds and other  
635 indebtedness resulting from the hurricane, or other deficit.

636 (2) At such time as the commissioner can reasonably estimate  
637 the amount of bonds or indebtedness, or both, necessitated by a  
638 hurricane event, and in no event more than ninety (90) days from

639 the notice given by the association, the commissioner shall have  
640 the duty and the power to implement an excess hurricane loss  
641 surcharge on all property and casualty insurance premiums for  
642 insurance for property and operations in this state.

643 (3) If the surcharge is designed to repay bonds, it shall be  
644 designated as such and all funds recovered from the surcharge  
645 shall be used for repayment of the bonds for which it was  
646 implemented, until such time as the bonds have been paid or  
647 redeemed.

648 (4) If the surcharge is designed to repay a specific  
649 indebtedness incurred for losses from a specific hurricane, it  
650 shall be designated as such and all funds recovered from the  
651 surcharge shall be used for repayment of the indebtedness for  
652 which it was implemented, until such time as the indebtedness has  
653 been paid or redeemed.

654 (5) Such surcharge shall be specifically identified on  
655 either the premium statements or the policy declarations pages or  
656 other appropriate policy forms as relating to the specific  
657 hurricane losses or bonds or indebtedness for which it was  
658 implemented. The commissioner shall name each such surcharge such  
659 that it can be uniformly identified by insurers and brokers.

660 (6) The surcharge shall be a percentage of the total policy  
661 premium but the surcharge shall not be considered premium and is  
662 not subject to premium taxes or commissions. However, failure to  
663 pay the surcharge shall be treated the same as failure to pay  
664 premium. "Total policy premium" includes taxes and commissions.

665 (7) The commissioner shall implement an appropriate  
666 surcharge percentage sufficient to recover the amount necessary  
667 for repayment of bonds and indebtedness necessitated by a  
668 hurricane, or the resolution of other deficit, as applicable. If  
669 at any time such surcharge shall be insufficient, the commissioner  
670 shall increase the surcharge as necessary and appropriate. The

671 commissioner shall cease surcharges as he determines appropriate  
672 funds have been collected.

673 (8) Each licensed insurer issuing insurance for property and  
674 casualty risks in the state and each broker for nonadmitted  
675 insurers, shall collect the surcharges established by the  
676 commissioner under the authority of this section. Funds collected  
677 by such licensed insurers and brokers for nonadmitted insurers as  
678 surcharges authorized by this section shall be collected and held  
679 in trust and shall be fully remitted to the association on a  
680 quarterly basis with forms providing appropriate information as  
681 designed by the association. Insurers and brokers shall remit  
682 such funds to the association within twenty (20) days after the  
683 end of each quarter. At such time the insurers and brokers shall  
684 further remit to the association all interest earned on the  
685 surcharge funds.

686 (9) The association and the commissioner are both  
687 specifically given the power to audit licensed insurers and  
688 brokers for nonadmitted insurers to confirm the accuracy of  
689 remittances of surcharges at the expense of the licensed insurers  
690 and brokers.

691 (10) The commissioner has the duty and power to adjust the  
692 percentage of any surcharge previously established as he finds  
693 appropriate taking into consideration any relevant factors,  
694 including, but not limited to, consolidation or replacement of  
695 bonds, any additional indebtedness resulting from a hurricane, the  
696 rate of recovery, anticipated length of total recovery, and impact  
697 of other hurricanes; however, the commissioner shall not reduce  
698 the amount of assessments implemented and designated to pay or  
699 redeem bonds, or other indebtedness below the amount necessary to  
700 timely pay or redeem such bonds, or other indebtedness.

701 (11) When the association knows or has reason to believe  
702 that surcharges authorized by this section previously established  
703 by the commissioner will be insufficient to timely pay or redeem

704 bonds or indebtedness, the association shall immediately give  
705 notice to the commissioner. The commissioner shall alter such  
706 surcharge as necessary to timely pay or redeem bonds or pay other  
707 indebtedness.

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

711 (a) The original and current outstanding indebtedness  
712 of all bonds and loans;

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

714 (c) Any information requested by the commissioner.

715 (13) The commissioner may request, and the association shall  
716 provide, on an immediate basis to the commissioner any financial  
717 information or other information concerning any surcharge. This  
718 section shall not limit the reporting requirements provided by  
719 83-34-25.

720 **SECTION 21.** The following shall be codified as Section  
721 83-34-35, Mississippi Code of 1972:

722 83-34-35. In order to avoid or lessen the possibility and  
723 amount of surcharges authorized by this chapter, the commissioner  
724 shall approve rates for policies issued by the association at  
725 least adequate to fund annual reinsurance above a self-insured  
726 retention of One Hundred Million Dollars (\$100,000,000.00) that,  
727 combined with any readily available reserves of the association,  
728 is sufficient to cover at least the probable maximum losses from a  
729 storm expected to occur once every one hundred (100) years as  
730 predicted by a model or method approved by the commissioner for  
731 the properties insured by the association at the time the  
732 reinsurance was negotiated. The amount of reinsurance in the  
733 forgoing rate adequacy requirement shall increase every two (2)  
734 years by increasing the probable maximum loss by five (5) years,  
735 until such time as the probable maximum loss insured is for a  
736 storm expected to occur every one hundred fifty (150) years. The

737 commissioner may approve rates in excess of the minimums required  
738 by this section as consistent with his duties and the insurance  
739 laws of the State of Mississippi.

740         **SECTION 22.** This act shall take effect and be in force from  
741 and after its passage.