

Senate Amendments to House Bill No. 444

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

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

36 83-34-1. In this chapter, unless the context otherwise
37 requires:

38 (a) "Essential property insurance" means insurance
39 against direct loss to property from the risk of windstorm and
40 hail in the manner as defined and limited in the standard real
41 property and contents insurance forms approved by the
42 commissioner. Essential property insurance * * * may include
43 coverage for * * * either the actual cash value or replacement
44 cost value of the structure and contents. Essential property
45 insurance includes builders risks coverage. The extent of risk
46 covered, the insuring language and the exclusions are all subject
47 to approval by the commissioner. Policies, rules and rates shall
48 be filed with the commissioner in the manner provided for
49 insurance companies.

50 (b) "Association" means the Mississippi Windstorm
51 Underwriting Association established pursuant to the provisions of
52 this chapter.

53 (c) "Plan of operation" means the plan of operation of
54 the association approved or promulgated by the commissioner
55 pursuant to the provisions of this chapter.

56 (d) "Insurable property" means real property, and
57 contents therein when requested, at fixed locations in the coast
58 area, which property is determined by the association to be in an
59 insurable condition and otherwise meets the underwriting
60 requirements of the association. Any one- or two-family dwelling
61 built, rebuilt, altered or remodeled in compliance with the
62 applicable building codes, including design-wind requirements,
63 that is not otherwise rendered uninsurable by reason of use,
64 occupancy or state of repair, shall be an insurable risk.
65 Neighborhood area, location and environmental hazards beyond the
66 control of the applicant or owner of the property shall not be
67 considered in determining insurable condition. "Insurable
68 property" shall not include insurance on motor vehicles or
69 creditor placed insurance on mobile homes. "Insurable property"
70 includes mobile homes, modular homes or manufactured housing that
71 are installed in compliance with applicable codes.

72 (e) "Commissioner" means the Insurance Commissioner of
73 the State of Mississippi.

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

76 (g) (i) "Net direct premiums," for purposes of
77 calculating percentages of participation for assessable insurers
78 for the year 2007, means gross direct premiums, excluding
79 reinsurance assumed and ceded, written on property in this state
80 for the risk of windstorm and hail less return premiums upon
81 cancelled contracts, dividends paid or credited to policyholders,
82 or the unused or unabsorbed portion of premium deposits. "Net
83 direct premiums" includes the premium charge component for the
84 risk of windstorm and hail to property in all policies, including
85 multiperil and other policies that package or combine coverage for
86 other risks. The plan of operation shall prescribe the portion of
87 premium allocated for the risk of windstorm and hail in multiperil
88 and other policies that package or combine coverage for other
89 risks. "Net direct premiums" shall not include farm property.
90 "Net direct premiums" shall not include the property components of
91 motor vehicles and other mobile property, but includes premiums
92 for the risks of windstorm and hail for mobile homes, modular
93 homes or manufactured housing.

94 (ii) "Net direct premiums," for purposes of
95 calculating percentages of participation for assessable insurers
96 after the year 2007, means those premiums reported by the
97 assessable insurers in their annual statements to the Department
98 of Insurance that were charged for insurance for any and all risks
99 on real property and contents in the state. The department shall
100 determine which lines of real property and contents insurance
101 shall be included in the calculation of net direct premiums. The

102 included real property and contents insurance lines may be changed
103 from time to time in the discretion of the commissioner. "Net
104 direct premiums" shall not include premiums for insuring farm
105 property that are reported timely to the association as provided
106 in the plan of operation.

107 (iii) The commissioner is authorized and directed
108 to provide to the association annual statements, other reports and
109 any statistics necessary to provide the information herein
110 required and which the commissioner is hereby authorized and
111 empowered to obtain from any assessable insurer.

112 (h) "Farm property" means property used for farming
113 purposes; however, it shall not include any property used for
114 dwelling purposes or any outbuildings used in connection
115 therewith.

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

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

121 (k) "Percentage of participation" for an assessable
122 insurer means the percentage determined by dividing the assessable
123 insurers net direct premiums written in this state in the previous
124 year by the aggregate net direct premiums written in this state by
125 all assessable insurers of the association in the previous year.
126 The percentage of participation may be modified as provided in
127 Sections 83-34-9(3) and 83-34-13(2).

128 (1) "Nonadmitted insurers" means those insurance
129 companies defined in Section 83-21-17, and any other companies and
130 persons selling insurance on risks in Mississippi that are not
131 licensed to do business in the State of Mississippi.

132 (m) "Agents placing insurance through nonadmitted
133 insurers" means those agents defined in Section 83-21-19 and any
134 other agents placing insurance through a nonadmitted insurer.

135 (n) "Assessable insurer" means each and every insurer
136 authorized to write, and engaged in writing, property insurance
137 within this state on a direct basis.

138 (o) "Minimum reserve" means an amount set forth in the
139 plan of operation which is maintained by the association for the
140 payment of salaries and other expenses necessary for the
141 continuous and ongoing operation of the association.

142 (p) "Recoupable assessment" means any assessment, in
143 whole or in part, that is levied on and payable by assessable
144 insurers to the association which is directly recoverable from
145 policyholders for any covered event occurring during the calendar
146 year 2019 and approved by the commissioner. Any assessment levied
147 due to a covered event occurring during the calendar year 2019
148 shall be a recoupable assessment.

149 (q) "Nonrecoupable assessment" means any assessment
150 levied on and payable by assessable insurers to the association
151 which is not directly recoverable from policyholders.

152 (r) "Excess deficit" means a deficit that exceeds
153 available surplus, reinsurance, recoupable and nonrecoupable

154 assessments and other reasonably available assets of the
155 association. The minimum reserve, as set forth in the plan of
156 operation, shall not be considered reasonably available assets of
157 the association when determining whether an excess deficit has
158 occurred.

159 (s) "Covered event" means an event, such as a
160 hurricane, other windstorm or hailstorm, which causes losses
161 covered by the policies issued by the association to its
162 policyholders.

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

165 83-34-3. (1) From and after March 22, 2007, the Mississippi
166 Windstorm Underwriting Association, as created by Chapter 459,
167 Laws of 1987, shall be a separate and independent entity as
168 provided for herein. At its option, the association may
169 incorporate. All assets belonging to the association on or before
170 March 22, 2007, shall hereinafter belong to and remain with the
171 association. There shall be no distribution of income or assets
172 other than for the benefit of the association, which shall have
173 the right to invest and reinvest assets.

174 (2) From and after March 22, 2007, the association shall no
175 longer have members. Former "members" of the association shall be
176 "assessable insurers" and shall have no rights to the assets and
177 profits of the association, but shall have the obligation for
178 regular assessments as provided herein. Former members shall
179 continue to have the obligations provided in this chapter before

180 March 22, 2007, for all policyholder claims, costs, damages of any
181 kind and expenses in any manner resulting from losses that
182 occurred before March 22, 2007, for which the association may
183 assess as needed the former members in the manner provided in this
184 chapter before March 22, 2007. As a condition of its authority to
185 continue to transact the business of insurance in this state and
186 by transacting business in this state, each licensed insurer
187 agrees to be bound by the provisions of this statute and the plan
188 of operation as approved by the commissioner, and all amendments
189 and revisions thereto.

190 (3) Any licensed insurer first authorized to write insurance
191 after March 22, 2007, shall become an assessable insurer on the
192 first day of January immediately following such authorization.
193 The determination of such insurer's participation in the
194 association shall be made based upon writings in the prior year in
195 the same manner as for all other assessable insurers of the
196 association.

197 (4) Except as provided for in Section 83-34-4(6), the
198 premiums, recoupable and nonrecoupable assessments, fees,
199 investment income and other revenue of the association are funds
200 received for the sole purpose of providing insurance coverage,
201 paying claims for Mississippi citizens insured by the association,
202 securing and repaying debt obligations issued by the association,
203 and conducting all other activities of the association, all as
204 required or permitted by this chapter. Such revenue shall not be
205 considered taxes, fees, licenses or charges for services imposed

206 by the State of Mississippi on individuals, businesses, or
207 agencies, and shall not be used for other purposes.

208 (5) It is the intent of the Legislature that the association
209 be and act as a nonprofit entity. The association shall be free
210 from taxation of every kind by the state and any political
211 subdivision or other instrumentality thereof. It is the intent of
212 the Legislature that the association be tax exempt from all taxes,
213 including federal taxes, and the association is granted the
214 authority to take those steps necessary to obtain federal tax
215 exempt status.

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

221 (7) In the event of the termination of the association by
222 act of the Legislature, or other means, the assets of the
223 association shall be applied first to pay all debts, liabilities
224 and obligations of the association, including the establishment of
225 reasonable reserves for any contingent liabilities or obligations,
226 and all remaining assets of the association shall become property
227 of the state.

228 (8) The association shall operate as a private enterprise
229 and shall not be subject to the procurement provisions of Section
230 31-7-13, and policies and decisions of the association, including,
231 but not limited to, decisions relating to incurring debt, levying

232 of recoupable and nonrecoupable assessments, the issuance and sale
233 of bonds, claims decisions under association policies, hiring and
234 firing of employees, and all services relating to the operation of
235 the association shall not be subject to the provisions of Section
236 25-9-101 et seq. The association shall not be required to obtain
237 or to hold a license or certificate of authority issued by the
238 commissioner or any other office. The association shall not be
239 required to participate as a member insurer of the Mississippi
240 Insurance Guaranty Association.

241 **SECTION 3.** Section 83-34-4, Mississippi Code of 1972, is
242 reenacted and amended as follows:

243 83-34-4. (1) Nonadmitted insurers shall not be assessable
244 insurers of the association. All surplus lines insurance
245 producers placing insurance through nonadmitted insurers shall
246 collect from the insured and remit to the association a
247 nonadmitted policy fee on all premiums for all insurance written
248 by such surplus lines insurance producer for a policy from a
249 nonadmitted insurer for any and all risks in this state, except
250 that policies or portions thereof that cover residential
251 earthquake risks or residential flood risks that are not written
252 through the National Flood Insurance Program shall be exempt from
253 the nonadmitted policy fee. By procuring or selling insurance on
254 property in this state from a nonadmitted insurer, each surplus
255 lines insurance producer placing insurance through a nonadmitted
256 insurer agrees to be bound by the provisions of this chapter and

257 to collect and remit the nonadmitted policy fee provided for
258 herein.

259 (2) The nonadmitted policy fee shall be a percentage of the
260 total policy premium but the nonadmitted policy fee shall not be
261 considered premium and is not subject to premium taxes or
262 commissions. However, failure to pay the nonadmitted policy fee
263 shall be treated the same as failure to pay premium. "Total
264 policy premium" includes taxes and commissions.

265 (3) The nonadmitted policy fee percentage shall be three
266 percent (3%).

267 (4) Within twenty (20) days of the end of the quarter,
268 surplus lines insurance producers placing insurance through
269 nonadmitted insurers shall remit directly to the association all
270 nonadmitted policy fees collected in the preceding quarter. In
271 addition to the nonadmitted policy fee provided for herein,
272 surplus lines insurance producers placing insurance through
273 nonadmitted insurers shall collect and remit excess deficit
274 surcharges as provided by this chapter. Surplus lines insurance
275 producers placing insurance through nonadmitted insurers may
276 designate another surplus lines insurance producer that actually
277 procured the insurance from the nonadmitted carrier to collect and
278 remit the nonadmitted policy fees.

279 (5) Each insured in this state who directly procures or
280 renews insurance with a nonadmitted insurer on properties, risks
281 or exposures located or to be performed, in whole or in part, in
282 this state, other than insurance procured through a surplus lines

283 licensee, shall be subject to the nonadmitted policy fee which
284 shall be paid by the insured according to the procedures provided
285 for premium taxes in Section 83-21-17(5).

286 (6) Monies derived from the nonadmitted policy fee collected
287 under this section may be used by the association, in addition to
288 any uses provided for in Section 83-34-3(4), for education, public
289 outreach, training of building officials and other programs
290 targeted to reduce the number of policies within the association;
291 however, beginning on July 1, 2018, and ending on June 30, 2019,
292 before any fees are remitted to the association, One Million Five
293 Hundred Thousand Dollars (\$1,500,000.00) shall be diverted and
294 deposited into the Capital Expense Fund, and Four Million Five
295 Hundred Thousand Dollars (\$4,500,000.00) shall be diverted and
296 deposited into the Rural Fire Truck Fund or Supplementary Rural
297 Fire Truck Fund. Further, beginning July 1, 2019, and ending on
298 June 30, 2020, before any fees are remitted to the association,
299 Three Million Five Hundred Thousand Dollars (\$3,500,000.00) shall
300 be diverted and deposited into the Rural Fire Truck Fund or
301 Supplementary Rural Fire Truck Fund, and Two Hundred Thousand
302 Dollars (\$200,000.00) shall be diverted for use by the State Fire
303 Marshal's Office for fire prevention and education.

304 (7) This section shall stand repealed from and after July
305 1, * * * 2022.

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

308 83-34-5. The association shall, pursuant to the provisions
309 of this chapter and the plan of operation, and with respect to
310 essential property insurance on insurable property, have the
311 power:

312 (a) To issue policies of essential property insurance
313 on insurable property to applicants;

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

317 (c) To purchase reinsurance for all or part of the
318 risks of the association;

319 (d) To levy and collect * * * recoupable and
320 nonrecoupable assessments from assessable insurers;

321 (e) To issue bonds or incur other forms of
322 indebtedness, including, but not limited to, loans, lines of
323 credit or letters of credit;

324 (f) To establish underwriting criteria consistent with
325 the provisions of this chapter and as approved by the
326 commissioner;

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

329 (h) To enter into contractual agreements with third
330 parties, including the Mississippi Windstorm Mitigation
331 Coordinating Council, for the purposes of developing and
332 implementing windstorm mitigation programs; and

333 (i) All other powers necessary to carry out the
334 provisions and intent of this chapter.

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

337 83-34-7. (1) The Board of Directors of the Mississippi
338 Insurance Underwriting Association as presently constituted shall
339 serve as the temporary board of directors of the association.
340 Such temporary board of directors shall prepare and submit a plan
341 of operation in accordance with Section 83-34-13 and shall serve
342 until the permanent board of directors shall take office in
343 accordance with the plan of operation. The permanent board shall
344 consist of five (5) representatives of the members to be appointed
345 by the temporary board of directors subject to the approval of the
346 commissioner and three (3) agents from the coast area to be
347 appointed by the commissioner. The terms of the members of the
348 board of directors in place before March 22, 2007, shall expire on
349 March 22, 2007, and such persons shall cease to serve on the board
350 and shall relinquish all power and control of the association.

351 (2) (a) From and after * * * July 1, 2019, the board of
352 directors of the association shall consist of the following:

353 (i) The State Treasurer, who shall serve as an ex
354 officio, nonvoting member;

355 (ii) * * * Six (6) of the assessable insurer
356 companies, * * * four (4) to be appointed by the commissioner, one
357 (1) to be appointed by the Governor, and one (1) to be appointed
358 by the Lieutenant Governor; each such assessable insurer appointed

359 shall designate a representative knowledgeable in the matters of
360 the association and authorize such representative to act and vote
361 on its behalf;

362 (iii) Three (3) agents with no less than ten (10)
363 years' experience in the property and casualty industry, two (2)
364 of whom are residents in the coast area, and one (1) of whom is
365 not a resident of the coast area; one (1) such coast area agent to
366 be appointed by the Governor, one (1) such coast area agent to be
367 appointed by the Lieutenant Governor, and the noncoast area agent
368 to be appointed by the commissioner; and

369 (iv) Two (2) business leaders who are residents of
370 the coast area and have * * * no less than ten (10) years'
371 experience in management of a business, one (1) to be appointed by
372 the Governor, and one (1) to be appointed by the Lieutenant
373 Governor.

374 (b) * * * Board members shall serve three-year terms
375 with each term beginning on January 1, and the initial terms shall
376 be staggered in the following manner:

377 (i) The initial term for three (3) of the
378 assessable insurers shall begin on March 22, 2007, and expire on
379 December 31, 2010, thereafter to be appointed for three-year
380 terms;

381 (ii) The initial term for one (1) of the
382 assessable insurers shall begin on March 22, 2007, and expire on
383 December 31, 2009, thereafter to be appointed for three-year
384 terms;

385 (iii) The initial term for one (1) of the
386 assessable insurers shall begin on March 22, 2007, and expire on
387 December 31, 2008, thereafter to be appointed for three-year
388 terms;

389 (iv) The initial term for one (1) of the agents
390 shall begin on March 22, 2007, and expire on December 31, 2010,
391 thereafter to be appointed for three-year terms;

392 (v) The initial term for one (1) of the agents
393 shall begin on March 22, 2007, and expire on December 31, 2009,
394 thereafter to be appointed for three-year terms;

395 (vi) The initial term for one (1) of the agents
396 shall begin on March 22, 2007, and expire on December 31, 2008,
397 thereafter to be appointed for three-year terms;

398 (vii) The initial term for one (1) of the business
399 leaders shall begin on March 22, 2007, and expire on December 31,
400 2010, thereafter to be appointed for three-year terms;

401 (viii) The initial term for one (1) of the
402 business leaders shall begin on March 22, 2007, and expire on
403 December 31, 2008, thereafter to be appointed for three-year
404 terms * * *; and

405 (ix) The initial term for one (1) of the
406 assessable insurers shall begin on July 1, 2019, and expire on
407 December 31, 2019, and thereafter to be appointed for three-year
408 terms.

409 (3) On or before March 22, 2007, the appropriate public
410 official shall make such appointments and request such

411 resignations from the existing board as are appropriate to comply
412 with this section.

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

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

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

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

429 (2) All profits of the association shall remain as assets of
430 the association.

431 (3) The plan of operation shall provide financial incentives
432 or financial penalties, or both, to ensure that assessable
433 insurers write essential property insurance in the coast area.
434 The incentives and penalties may include, but are not limited to,
435 a reduction in * * * recoupable and nonrecoupable
436 assessments, * * * adjustments in the percentage of participation,

437 and other incentives and penalties as provided in the plan of
438 operation. The commissioner shall approve the plan of operation
439 as provided in Section 83-34-13.

440 **SECTION 7.** Section 83-34-10, Mississippi Code of 1972, is
441 amended as follows:

442 83-34-10. (1) In the event of a * * * covered event that
443 may produce losses in excess of funds that may be immediately
444 available to the association, or in the event that the association
445 determines that it will otherwise have a claim deficit or any
446 other deficit, then the association, with consent of the
447 commissioner, shall have the power to levy * * * recoupable and
448 nonrecoupable assessments against assessable insurers based upon
449 their percentage of participation. * * *

450 The minimum reserve, as set forth in the plan of operation,
451 shall not be considered as funds available to the association in
452 determining whether to levy a recoupable or nonrecoupable
453 assessment.

454 (2) A nonrecoupable assessment levied under this section
455 shall not exceed six percent (6%) of the association's year-end
456 total limits in force for the preceding calendar year, or Two
457 Hundred Fifty Million Dollars (\$250,000,000.00), whichever is
458 less. Further, in any calendar year, the annual total of all
459 nonrecoupable assessment funds collected shall not exceed, in the
460 aggregate, Two Hundred Fifty Million Dollars (\$250,000,000.00).

461 **SECTION 8.** Section 83-34-12, Mississippi Code of 1972, is
462 amended as follows:

463 83-34-12. The * * * recoupable or nonrecoupable assessment
464 of an assessable insurer may, after hearing, be ordered deferred,
465 in whole or in part, upon application by the insurer if, in the
466 opinion of the commissioner, payment of the recoupable or
467 nonrecoupable assessment would render the insurer insolvent or in
468 danger of insolvency, or would otherwise leave the insurer in such
469 a condition that further transaction of the insurer's business
470 would be hazardous to its policyholders, creditors, assessable
471 insurers, subscribers, stockholders or the public. If that
472 payment of * * * a recoupable or nonrecoupable assessment against
473 an assessable insurer is deferred by order of the commissioner, in
474 whole or in part, the amount by which the recoupable or
475 nonrecoupable assessment is deferred shall be assessed against
476 other assessable insurers in the same manner as provided in
477 Section 83-34-9.

478 **SECTION 9.** Section 83-34-13, Mississippi Code of 1972, is
479 amended as follows:

480 83-34-13. (1) Within forty-five (45) days after March 22,
481 2007, the directors of the association shall submit to the
482 commissioner for review and approval a proposed plan of operation
483 revised to be consistent with the provisions of Chapter 425, Laws
484 of 2007. The association shall maintain a plan of operation. The
485 plan shall provide for the efficient, economical, fair and
486 nondiscriminatory administration of the association. The plan may
487 include the establishment of a minimum reserve, methods for the
488 nonrecoupable assessment of all assessable insurers for deficits

489 and expenses, the establishment of necessary facilities,
490 management of the association, underwriting standards, procedures
491 for determining the amounts of insurance to be provided to
492 specific risks, time limits and procedures for processing
493 applications for insurance, and for such other provisions as may
494 be deemed necessary by the board to carry out the purposes of this
495 chapter. The plan of operation shall include in the plan of
496 operation a mechanism for recoupment of recoupable assessments.

497 (2) The plan of operation shall provide financial incentives
498 or financial penalties, or both, to ensure that assessable
499 insurers write essential property insurance in the coast area.
500 The incentives and penalties may include, but are not limited to,
501 a reduction in * * * nonrecoupable assessments, * * * adjustments
502 in the percentage of participation, and other incentives and
503 penalties as provided in the plan of operation.

504 (3) The plan of operation shall provide (a) that the
505 association shall offer a two percent (2%) deductible for loss
506 from named storms; and (b) that the association shall also offer
507 options for other deductibles for loss from named storms with
508 appropriate rate reductions that shall include at least a twenty
509 percent (20%) deductible for loss from named storms.

510 (4) The plan of operation shall provide that the association
511 use actuarially appropriate geographical zones for rating and for
512 the use of credits and penalties to encourage voluntary writing in
513 the coast area.

514 (5) The commissioner shall approve the plan of operation and
515 all amendments before they become effective. It is the obligation
516 of the commissioner to confirm that such plan fulfills the
517 purposes of this chapter. If the commissioner approves a proposed
518 plan or amendment, he shall certify the approval to the directors,
519 and the plan, or amendment thereto, shall become effective ten
520 (10) days after such certification. If the commissioner
521 disapproves all or any part of the proposed plan of operation, or
522 amendment thereto, he shall return the same to the directors with
523 a written statement giving the reasons for disapproval and any
524 recommendations the commissioner may wish to make. Within ten
525 (10) days thereafter, the directors may alter the plan or
526 amendment in accordance with the commissioner's recommendation or
527 may return a new plan to the commissioner. The commissioner shall
528 consider the proposals and shall then promulgate and place into
529 effect a plan of operation certifying the same to the directors of
530 the association after approval by the board of directors. Any
531 such plan promulgated by the commissioner shall take effect ten
532 (10) days after certification to the directors.

533 (6) The commissioner may review the plan of operation at any
534 time he deems expedient or prudent. After review of the plan, the
535 commissioner may amend the plan after consultation with the
536 directors of the association and upon certification to the
537 directors of the amendment.

538 **SECTION 10.** Section 83-34-23, Mississippi Code of 1972, is
539 amended as follows:

540 83-34-23. There shall be no liability on the part of the
541 insurance commissioner or any of his staff and representatives for
542 any action taken under and pursuant to the provisions of this
543 chapter. There shall be no liability on the part of the
544 association, its agents, representatives or employees, the members
545 of the board, or any assessable insurer of the association, except
546 for the * * * specific obligations * * * stated in any contract of
547 insurance and the duty to pay assessments as provided in this
548 chapter.

549 **SECTION 11.** Section 83-34-31, Mississippi Code of 1972, is
550 amended as follows:

551 83-34-31. (1) The board of directors, subject to the
552 approval of the commissioner, shall have the power and authority
553 to issue bonds, and the power and authority to enter into loans,
554 letters of credit, lines of credit, and other forms of
555 indebtedness, as needed for operations, the purchase of
556 reinsurance, claim losses, and incurred but not reported claims.

557 * * *

558 (* * * 2) * * * The bonds must be in a form approved by the
559 commissioner. With approval of the commissioner, the association
560 may issue bonds or incur other indebtedness to retire or
561 consolidate bonds as appropriate. Bonds and other debt
562 obligations issued by or on behalf of the association are not to
563 be considered "state bonds" and shall not be an obligation of the
564 state.

565 (* * * 3) The state hereby covenants with holders of bonds
566 issued pursuant to this * * * chapter that the state will not
567 limit, alter or deny the duties and obligations of this chapter,
568 and of the association and the commissioner as established by this
569 chapter, necessary to fulfill the terms of any agreements with
570 bondholders, or in any way impair the rights and remedies of such
571 bondholders as long as any such bonds remain outstanding unless
572 adequate provision has been made for the payment of such bonds
573 pursuant to the documents authorizing the issuance of such bonds.

574 **SECTION 12.** Section 83-34-33, Mississippi Code of 1972, is
575 amended as follows:

576 83-34-33. (1) When the association knows or has reason to
577 believe that (a) it has or will incur losses from a * * * covered
578 event that exceeds available surplus, reinsurance, recoupable or
579 nonrecoupable assessments and other reasonably available assets of
580 the association, such that one or more bond issues or other
581 financing, or both, will be necessary to pay claims losses and
582 other related expenses, or (b) the association has * * * an excess
583 deficit that cannot be reasonably resolved by income available to
584 the association above the minimum reserve, then the association
585 shall immediately give notice to the commissioner and request that
586 the commissioner implement * * * an excess * * * deficit surcharge
587 on all property and casualty insurance premiums for insurance for
588 property and operations in this state designed to recover to the
589 association the amount of all such bonds and other indebtedness
590 resulting from the * * * covered event, or other deficit.

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 activities 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) At such time as the commissioner can reasonably
613 estimate the amount of bonds or indebtedness, or both,
614 necessitated by a * * * covered event, and in no event more than
615 ninety (90) days from the notice given by the association, the
616 commissioner shall have the duty and the power to implement an

617 excess * * * deficit surcharge on all property and casualty
618 insurance premiums for insurance for property and activities in
619 this state. "Premiums" includes premiums for policies issued by
620 or for the association and by or for the Mississippi Residential
621 Property Insurance Underwriting Association. "Premiums" shall not
622 include premiums for workers' compensation coverage, premiums for
623 medical malpractice liability coverage including medical
624 malpractice liability coverage issued by companies created under
625 Section 83-47-1 et seq., nor any premiums for coverage by
626 insurance pools or plans administered by or through the State of
627 Mississippi.

628 (* * * 5) If the excess deficit surcharge is designed to
629 repay bonds, it shall be designated as such and all funds
630 recovered from the excess deficit surcharge shall be used for
631 repayment of the bonds for which it was implemented, until such
632 time as the bonds have been paid or redeemed.

633 (* * * 6) If the excess deficit surcharge is designed to
634 repay a specific indebtedness incurred for losses from a
635 specific * * * covered event, it shall be designated as such and
636 all funds recovered from the excess deficit surcharge shall be
637 used for repayment of the indebtedness for which it was
638 implemented, until such time as the indebtedness has been paid or
639 redeemed.

640 (* * * 7) Such excess deficit surcharge shall be
641 specifically identified on either the premium statements or the
642 policy declarations pages or other appropriate policy forms as

643 relating to the specific * * * covered event losses or bonds or
644 indebtedness for which it was implemented. The commissioner shall
645 name each such excess deficit surcharge so that it can be
646 uniformly identified by insurers and agents.

647 (* * *8) The excess deficit surcharge shall be a percentage
648 of the total policy premium but the excess deficit surcharge shall
649 not be considered premium and is not subject to premium taxes or
650 commissions. However, failure to pay the excess deficit surcharge
651 shall be treated the same as failure to pay premium. "Total
652 policy premium" includes taxes and commissions.

653 (* * *9) The commissioner shall implement an appropriate
654 excess deficit surcharge percentage sufficient to recover the
655 amount necessary for repayment of bonds and indebtedness
656 necessitated by a * * * covered event, or the resolution of other
657 deficit, as applicable. If at any time such surcharge shall be
658 insufficient, the commissioner shall increase the excess deficit
659 surcharge as necessary and appropriate. The commissioner shall
660 cease excess deficit surcharges as he determines appropriate funds
661 have been collected. However, the commissioner shall endeavor to
662 apply excess deficit surcharges on a one-year basis in order to
663 promote consistency, nondiscrimination and fairness among
664 policyholders purchasing or renewing insurance during that year.
665 Any collections in excess of the amounts needed shall be assets of
666 the association for investment and other uses.

667 (* * *10) Each licensed insurer issuing insurance for
668 property and casualty risks in the state and each agent placing

669 insurance through nonadmitted insurers, shall collect the excess
670 deficit surcharges established by the commissioner under the
671 authority of this section. Funds collected by such licensed
672 insurers and agents placing insurance through nonadmitted insurers
673 as excess deficit surcharges authorized by this section shall be
674 collected and held in trust and shall be fully remitted to the
675 association on a quarterly basis with forms providing appropriate
676 information as designed by the association. Insurers and agents
677 shall remit such funds to the association within twenty (20) days
678 after the end of each quarter. At such time the insurers and
679 agents shall further remit to the association all interest earned
680 on the excess deficit surcharge funds.

681 (* * * 11) The association and the commissioner are both
682 specifically given the power to audit licensed insurers and agents
683 placing insurance through nonadmitted insurers to confirm the
684 accuracy of remittances of excess deficit surcharges at the
685 expense of the licensed insurers and agents.

686 (* * * 12) The commissioner has the duty and power to adjust
687 the percentage of any excess deficit surcharge previously
688 established as he finds appropriate taking into consideration any
689 relevant factors, including, but not limited to, consolidation or
690 replacement of bonds, any additional indebtedness resulting from
691 a * * * covered event, the rate of recovery, anticipated length of
692 total recovery, and impact of other * * * covered events; however,
693 the commissioner shall not reduce the amount of * * * excess
694 deficit surcharges implemented and designated to pay or redeem

695 bonds, or other indebtedness below the amount necessary to timely
696 pay or redeem such bonds, or other indebtedness.

697 (* * *13) When the association knows or has reason to
698 believe that excess deficit surcharges authorized by this section
699 previously established by the commissioner will be insufficient to
700 timely pay or redeem bonds or indebtedness, the association shall
701 immediately give notice to the commissioner. The commissioner
702 shall alter such excess deficit surcharge as necessary to timely
703 pay or redeem bonds or pay other indebtedness.

704 (* * *14) The association shall report quarterly to the
705 commissioner providing all financial information for each excess
706 deficit surcharge authorized by this section, including:

707 (a) The original and current outstanding indebtedness
708 of all bonds and loans;

709 (b) Total excess deficit surcharge funds recovered to
710 date; and

711 (c) Any information requested by the commissioner.

712 (* * *15) The commissioner may request, and the association
713 shall provide, on an immediate basis to the commissioner any
714 financial information or other information concerning any excess
715 deficit surcharge. This section shall not limit the reporting
716 requirements provided by Section 83-34-25.

717 **SECTION 13.** Section 83-34-35, Mississippi Code of 1972, is
718 amended as follows:

719 83-34-35. In order to avoid or lessen the possibility and
720 amount of excess deficit surcharges authorized by this chapter,

721 the commissioner shall approve rates for policies issued by the
722 association at least adequate to fund annual reinsurance above a
723 self-insured retention of One Hundred Million Dollars
724 (\$100,000,000.00) that, combined with any readily available
725 reserves of the association, is sufficient to cover at least the
726 probable maximum losses from a storm expected to occur once every
727 one hundred (100) years as predicted by a model or method approved
728 by the commissioner for the properties insured by the association
729 at the time the reinsurance was negotiated. The amount of
730 reinsurance in the foregoing rate adequacy requirement shall
731 increase every two (2) years by increasing the probable maximum
732 loss by five (5) years, until such time as the probable maximum
733 loss insured is for a storm expected to occur every one hundred
734 fifty (150) years. The commissioner may approve rates in excess
735 of the minimums required by this section as consistent with his
736 duties and the insurance laws of the State of Mississippi. Any
737 self-insured retention related to the purchase of reinsurance
738 shall be subject to the prior approval of the commissioner.

739 **SECTION 14.** Section 83-34-11, Mississippi Code of 1972,
740 which implements a surcharge on all property and casualty
741 insurance premiums in this state, is hereby repealed.

742 **SECTION 15.** Section 17-23-1, Mississippi Code of 1972, is
743 brought forward as follows:

744 17-23-1. (1) There is established the Rural Fire Truck
745 Acquisition Assistance Program to be administered by the

746 Department of Insurance for the purpose of assisting counties and
747 municipalities in the acquisition of fire trucks.

748 (2) There is created in the State Treasury a special fund to
749 be designated as the "Rural Fire Truck Fund." The Legislature may
750 appropriate that amount necessary to fulfill the obligations
751 created under this section by the Department of Insurance, from
752 the State General Fund to such special fund, which sum shall be
753 added to the remainder of the money transferred on July 1, 1995,
754 and during the 1996 Regular Session to the Rural Fire Truck Fund.
755 Unexpended amounts remaining in the fund at the end of a fiscal
756 year shall not lapse into the State General Fund, and any interest
757 earned on amounts in the fund shall be deposited to the credit of
758 the fund. Unobligated amounts remaining in the Rural Fire Truck
759 Fund, Fund No. 3507, or in any fund created for funds appropriated
760 or otherwise made available for this program, may be used as
761 matching funds by any county with remaining eligibility as
762 provided herein. It is the intent of the Legislature that the
763 Department of Insurance continue to accept applications from the
764 counties for fire trucks as provided in subsection (3) of this
765 section.

766 (3) (a) A county that meets the requirements provided
767 herein may receive an amount not to exceed Seven Hundred Forty
768 Thousand Dollars (\$740,000.00) as provided in subparagraphs (i),
769 (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x), (xi) and
770 (xii) of this paragraph, and such amount shall be divided as
771 follows: an amount of not more than Fifty Thousand Dollars

772 (\$50,000.00) per fire truck for the first six (6) trucks and not
773 more than Seventy Thousand Dollars (\$70,000.00) per fire truck for
774 the seventh, eighth, ninth, tenth and eleventh trucks, and not
775 more than Ninety Thousand Dollars (\$90,000.00) per fire truck for
776 the twelfth truck. Monies distributed under this chapter shall be
777 expended only for the purchase of new fire trucks and such trucks
778 must meet the National Fire Protection Association (NFPA)
779 standards in the 1900 series.

780 (i) Any county that has not applied for a fire
781 truck under this section is eligible to submit applications for
782 twelve (12) fire trucks as follows: six (6) fire trucks at not
783 more than Fifty Thousand Dollars (\$50,000.00) per truck and five
784 (5) fire trucks at not more than Seventy Thousand Dollars
785 (\$70,000.00) per truck, and one (1) fire truck at not more than
786 Ninety Thousand Dollars (\$90,000.00) or a total of Seven Hundred
787 Forty Thousand Dollars (\$740,000.00).

788 (ii) Any county that has received one (1) fire
789 truck under this section is eligible to submit applications for
790 eleven (11) fire trucks as follows: five (5) fire trucks at not
791 more than Fifty Thousand Dollars (\$50,000.00) per truck and five
792 (5) fire trucks at not more than Seventy Thousand Dollars
793 (\$70,000.00) per truck, and one (1) fire truck at not more than
794 Ninety Thousand Dollars (\$90,000.00) or a total of Six Hundred
795 Ninety Thousand Dollars (\$690,000.00).

796 (iii) Any county that has received two (2) fire
797 trucks under this section is eligible to submit an application for

798 ten (10) fire trucks as follows: four (4) fire trucks at not more
799 than Fifty Thousand Dollars (\$50,000.00) per truck and five (5)
800 fire trucks at not more than Seventy Thousand Dollars (\$70,000.00)
801 per truck, and one (1) fire truck at not more than Ninety Thousand
802 Dollars (\$90,000.00) or a total of not more than Six Hundred Forty
803 Thousand Dollars (\$640,000.00).

804 (iv) Any county that has received three (3) fire
805 trucks under this section is eligible to submit an application for
806 nine (9) fire trucks as follows: three (3) fire trucks at not
807 more than Fifty Thousand Dollars (\$50,000.00) per truck and five
808 (5) fire trucks at not more than Seventy Thousand Dollars
809 (\$70,000.00) per truck, and one (1) fire truck at not more than
810 Ninety Thousand Dollars (\$90,000.00) or a total of not more than
811 Five Hundred Ninety Thousand Dollars (\$590,000.00).

812 (v) Any county that has received four (4) fire
813 trucks under this section is eligible to submit an application for
814 eight (8) fire trucks as follows: two (2) fire trucks at not more
815 than Fifty Thousand Dollars (\$50,000.00) per truck and five (5)
816 fire trucks at not more than Seventy Thousand Dollars (\$70,000.00)
817 per truck, and one (1) fire truck at not more than Ninety Thousand
818 Dollars (\$90,000.00) or a total of not more than Five Hundred
819 Forty Thousand Dollars (\$540,000.00).

820 (vi) Any county that has received five (5) fire
821 trucks under this section is eligible to submit an application for
822 seven (7) fire trucks as follows: one (1) fire truck at not more
823 than Fifty Thousand Dollars (\$50,000.00) per truck and five (5)

824 fire trucks at not more than Seventy Thousand Dollars (\$70,000.00)
825 per truck, and one (1) fire truck at not more than Ninety Thousand
826 Dollars (\$90,000.00) or a total of not more than Four Hundred
827 Ninety Thousand Dollars (\$490,000.00).

828 (vii) Any county that has received six (6) fire
829 trucks under this section is eligible to submit an application for
830 six (6) fire trucks as follows: five (5) fire trucks at not more
831 than Seventy Thousand Dollars (\$70,000.00) per truck, and one (1)
832 fire truck at not more than Ninety Thousand Dollars (\$90,000.00)
833 or a total of not more than Four Hundred Forty Thousand Dollars
834 (\$440,000.00).

835 (viii) Any county that has received seven (7) fire
836 trucks under this section is eligible to submit an application for
837 five (5) fire trucks as follows: four (4) fire trucks at not more
838 than Seventy Thousand Dollars (\$70,000.00) per truck, and one (1)
839 fire truck at not more than Ninety Thousand Dollars (\$90,000.00)
840 or a total of not more than Three Hundred Seventy Thousand Dollars
841 (\$370,000.00).

842 (ix) Any county that has received eight (8) fire
843 trucks under this section is eligible to submit an application for
844 four (4) fire trucks as follows: three (3) fire trucks at not
845 more than Seventy Thousand Dollars (\$70,000.00) per truck, and one
846 (1) fire truck at not more than Ninety Thousand Dollars
847 (\$90,000.00) or a total of not more than Three Hundred Thousand
848 Dollars (\$300,000.00).

849 (x) Any county that has received nine (9) fire
850 trucks under this section is eligible to submit an application for
851 three (3) fire trucks as follows: two (2) fire truck at not more
852 than Seventy Thousand Dollars (\$70,000.00) per truck, and one (1)
853 fire truck at not more than Ninety Thousand Dollars (\$90,000.00)
854 or a total of not more than Two Hundred Thirty Thousand Dollars
855 (\$230,000.00).

856 (xi) Any county that has received ten (10) fire
857 trucks under this section is eligible to submit an application for
858 two (2) fire trucks as follows: one (1) fire truck at not more
859 than Seventy Thousand Dollars (\$70,000.00) per truck, and one (1)
860 fire truck at not more than Ninety Thousand Dollars (\$90,000.00)
861 or a total of not more than One Hundred Sixty Thousand Dollars
862 (\$160,000.00).

863 (xii) Any county that has received eleven (11)
864 fire trucks under this section is eligible to submit an
865 application for one (1) fire truck at not more than Ninety
866 Thousand Dollars (\$90,000.00).

867 (xiii) Any county may apply for one (1) fire truck
868 at not more than Ninety Thousand Dollars (\$90,000.00) as provided
869 in subparagraph (xii), provided that the county agrees to forego
870 any previous fire truck for which the county has not previously
871 applied, and that the county has received approval from the Rural
872 Fire Truck Acquisition Assistance Program Committee to apply for
873 and receive a truck under subparagraph (xii).

874 (b) The board of supervisors of the county shall submit
875 its request for the receipt of monies to the Department of
876 Insurance. A committee composed of the Commissioner of Insurance,
877 the State Fire Coordinator, the Director of the Rating Bureau and
878 the Director of the State Fire Academy shall review the requests
879 by the boards of supervisors and shall determine whether the
880 county or municipality for which the board of supervisors has
881 requested a truck meets the requirements of eligibility under this
882 chapter.

883 (c) To be eligible to receive monies under this
884 chapter:

885 (i) A county or municipality must pledge to set
886 aside or dedicate each year as matching funds, for a period not to
887 extend over ten (10) years, local funds in an amount equal to or
888 not less than one-tenth (1/10) of the amount of monies for which
889 it is requesting distribution from the Rural Fire Truck Fund,
890 which pledged monies may be derived from local ad valorem tax
891 authorized by law or from any other funds available to the county
892 or municipality, except for those funds received by municipalities
893 or counties from the Municipal Fire Protection Fund or the County
894 Volunteer Fire Department Fund, as defined in Sections 83-1-37 and
895 83-1-39.

896 (ii) A municipality must provide adequate
897 documentation of its contract with the county that requires the
898 municipality to provide fire protection in rural areas. The term
899 "rural areas" means any area within the county located outside the

900 boundaries of an incorporated municipality or any incorporated
901 municipality with a population of two thousand five hundred
902 (2,500) or less.

903 (d) The Department of Insurance shall maintain an
904 accurate record of all monies distributed to counties and
905 municipalities and the number of fire trucks purchased and the
906 cost for each fire truck, such records to be kept separate from
907 other records of the Department of Insurance; notify counties and
908 municipalities of the Rural Fire Truck Acquisition Assistance
909 Program and the requirements for them to become eligible to
910 participate; adopt and promulgate such rules and regulations as
911 may be necessary and desirable to implement the provisions of this
912 chapter; and file with the Legislature a report detailing how
913 monies made available under this chapter were distributed and
914 spent during the preceding portion of the fiscal year in each
915 county and municipality, the number of fire trucks purchased, the
916 counties and municipalities making such purchases, and the cost of
917 each fire truck purchased.

918 **SECTION 16.** This act shall take effect and be in force from
919 and after July 1, 2019, and shall stand repealed on June 30, 2019.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT TO AMEND SECTION 83-34-1, MISSISSIPPI CODE OF 1972, TO
2 DEFINE CERTAIN TERMS AS USED IN THE MISSISSIPPI WINDSTORM
3 UNDERWRITING ASSOCIATION LAW; TO AMEND SECTION 83-34-3,
4 MISSISSIPPI CODE OF 1972, IN CONFORMITY; TO AMEND REENACTED
5 SECTION 83-34-4, MISSISSIPPI CODE OF 1972, TO DIVERT A CERTAIN
6 AMOUNT OF FUNDS DERIVED FROM THE NONADMITTED POLICY FEE INTO THE

7 RURAL FIRE TRUCK FUND OR SUPPLEMENTARY RURAL FIRE TRUCK FUND, AND
8 TO EXTEND THE REPEALER ON THE SECTION; TO AMEND SECTION 83-34-5,
9 MISSISSIPPI CODE OF 1972, IN CONFORMITY; TO AMEND SECTION 83-34-7,
10 MISSISSIPPI CODE OF 1972, TO REVISE THE MEMBERSHIP OF THE BOARD OF
11 DIRECTORS OF THE ASSOCIATION; TO AMEND SECTION 83-34-9,
12 MISSISSIPPI CODE OF 1972, IN CONFORMITY; TO AMEND SECTION
13 83-34-10, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE ASSOCIATION
14 TO LEVY RECOUPABLE AND NONRECOUPABLE ASSESSMENTS UPON THE
15 OCCURRENCE OF CERTAIN EVENTS, TO PROVIDE THAT THE MINIMUM RESERVE
16 SHALL NOT BE CONSIDERED AS FUNDS AVAILABLE TO THE ASSOCIATION IN
17 DETERMINING WHETHER TO LEVY A RECOUPABLE OR NONRECOUPABLE
18 ASSESSMENT, AND TO SET THE MAXIMUM TOTAL OF NONRECOUPABLE
19 ASSESSMENTS; TO AMEND SECTION 83-34-12, MISSISSIPPI CODE OF 1972,
20 IN CONFORMITY; TO AMEND SECTION 83-34-13, MISSISSIPPI CODE OF
21 1972, TO PROVIDE THAT THE ASSOCIATION'S PLAN OF OPERATION MAY
22 INCLUDE THE ESTABLISHMENT OF A MINIMUM RESERVE; TO AMEND SECTIONS
23 83-34-23 AND 83-34-31, MISSISSIPPI CODE OF 1972, IN CONFORMITY; TO
24 AMEND SECTION 83-34-33, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE
25 COMMISSIONER OF INSURANCE TO IMPLEMENT AN EXCESS DEFICIT SURCHARGE
26 FOR COVERED EVENT LOSSES ON ALL PROPERTY AND CASUALTY PREMIUMS; TO
27 AMEND SECTION 83-34-35, MISSISSIPPI CODE OF 1972, IN CONFORMITY;
28 TO REPEAL SECTION 83-34-11, MISSISSIPPI CODE OF 1972, WHICH
29 IMPLEMENTS A SURCHARGE ON ALL PROPERTY AND CASUALTY PREMIUMS FOR
30 THE PURPOSE OF REIMBURSING ASSESSABLE INSURERS WHO PAID A REGULAR
31 ASSESSMENT; TO BRING FORWARD SECTION 17-23-1, MISSISSIPPI CODE OF
32 1972, FOR PURPOSE OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

SS36\HB444A.J

Liz Welch
Secretary of the Senate