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To: Insurance

HOUSE BILL NO. 1428

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 House Bill No.
152 _____, 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 House Bill No. _____, 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 House

277 Bill No. _____, 2007 Regular Session, shall expire on the effective
278 date of House Bill No. _____, 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 House Bill No.
282 _____, 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 House 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 House Bill No. _____, 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 House Bill No. _____, 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.