

1 SB5  
2 94904-2  
3 By Senators Brooks and Glover  
4 RFD: Banking and Insurance  
5 First Read: 05-FEB-08  
6 PFD: 09/20/2007

2  
3  
4  
5  
6  
7  
8 SYNOPSIS: This bill would create the Alabama Coastal  
9 Insurance Authority, comprised of all insurers  
10 authorized to write property insurance in Alabama.  
11 This bill would require all members of the  
12 Authority to participate in the writing, the  
13 expenses, the profits, and the losses that occur  
14 when insuring residential and commercial property  
15 in counties adjacent to the Gulf of Mexico for  
16 essential property insurance. This bill would allow  
17 persons with insurable property in counties  
18 adjacent to the Gulf of Mexico to apply to the  
19 Authority for essential property insurance  
20 coverage.

21 This bill would create the Alabama Coastal  
22 Insurance Authority Board, appointed by the  
23 Governor, to promulgate operational rules for the  
24 Authority to follow.

25 This bill would provide individuals in  
26 certain areas in Alabama counties adjacent to the

1 Gulf of Mexico an income tax credit for certain  
2 weather-resistant property improvements.

3 Under current law, condominium associations  
4 established prior to 1991 are governed by the  
5 Condominium Ownership Act. This bill will allow  
6 unit holders in a pre-1991 condominium to elect to  
7 be governed by the Alabama Uniform Condominium Act.

8 This bill will clarify that condominiums  
9 governed by the Alabama Uniform Condominium Act may  
10 obtain insurance from captive insurance companies  
11 created under the Alabama Captive Insurers Act.

12 This bill will provide an income tax credit  
13 for homeowners for hurricane-resistant home  
14 upgrades of up to one thousand dollars (\$1,000) or  
15 25 percent of the cost, whichever is less.

16  
17 A BILL  
18 TO BE ENTITLED  
19 AN ACT  
20

21 Relating to property insurance, to add a new Chapter  
22 22A to Title 27, Code of Alabama 1975, consisting of Sections  
23 27-22A-1, 27-22A-2, 27-22A-3, 27-22A-4, 27-22A-5, 27-22A-6,  
24 and 27-22A-7 and to add Section 35-8-23 to the Code of Alabama  
25 1975, in order to create the Alabama Coastal Insurance  
26 Authority to provide essential property insurance for  
27 residential and commercial properties in counties adjacent to

1 the Gulf of Mexico; to provide for certain tax credits; and to  
2 create the Alabama Coastal Insurance Authority Board to  
3 promulgate rules for the Authority; to allow condominium  
4 associations organized under the Condominium Ownership Act to  
5 elect to be governed instead by the Uniform Condominium Act;  
6 and to amend Section 35-8A-313, Code of Alabama 1975, to allow  
7 condominium associations to obtain property insurance coverage  
8 from a captive insurance company.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. This act shall be known and may be cited  
11 as the Alabama Coastal Property Insurance Reform Act.

12 Section 2. Chapter 22A of Title 27 consisting of  
13 Sections 27-22A-1, 27-22A-2, 27-22A-3, 27-22A-4, 27-22A-5,  
14 27-22A-6, and 27-22A-7, are added to the Code of Alabama 1975,  
15 to read as follows:

16 Chapter 22A

17 Alabama Coastal Property Insurance Reform

18 §27-22A-1.

19 The purpose for this act is to encourage market  
20 participation by private insurance carriers and an adequate  
21 market for essential property insurance for residential and  
22 commercial property to applicants in counties in Alabama which  
23 are adjacent to the Gulf of Mexico.

24 §27-22A-2.

25 For purposes of this chapter, the following terms  
26 shall have the following meanings:

1           (1) AUTHORITY. The Alabama Coastal Insurance  
2 Authority.

3           (2) BOARD. The Alabama Coastal Insurance Authority  
4 Board.

5           (3) ESSENTIAL PROPERTY INSURANCE. Insurance against  
6 direct loss to insurable property as limited in the standard  
7 fire policy and extended coverage endorsement thereon, as may  
8 be approved by the Commissioner of Insurance.

9           (4) INSURABLE PROPERTY. Immovable property at fixed  
10 locations and tangible personal property located in it, which  
11 property is determined by the Authority to be in an insurable  
12 condition as determined by reasonable underwriting standards.

13           (5) INSURER. As defined in Section 27-1-2.

14           §27-22A-3.

15           (a) There is hereby created and established an  
16 Alabama Coastal Insurance Authority Board that shall consist  
17 of the following nine members appointed by the Governor:

18           (1) Five members representing insurance companies  
19 licensed to transact property insurance in this state, at  
20 least two of which shall represent insurance companies  
21 domiciled in this state.

22           (2) One member licensed in this state as a property  
23 insurance producer.

24           (3) Three members not affiliated with the insurance  
25 industry, one of whom having his or her primary residence in  
26 Baldwin County and one of whom having his or her primary  
27 residence in Mobile County.

1           (b) Members of the board shall serve terms of four  
2 years each and are eligible for reappointment. The Governor  
3 shall stagger the terms of initial appointments with four  
4 members serving two-year terms and five members serving four  
5 year terms, such that four or five members will be newly  
6 appointed or reappointed every two years. Members may continue  
7 to serve until their successors are appointed. When making  
8 appointments, the Governor shall consider the racial, gender,  
9 geographic, urban and rural, and economic diversity of the  
10 state, and shall strive for the board to reflect this  
11 diversity.

12           (c) The board shall promulgate rules and procedures  
13 for the Alabama Coastal Insurance Authority to follow in a  
14 plan of operation.

15           (d) There is no liability on the part of the board  
16 or any member for any act or omission in the performance of  
17 these powers and duties.

18           §27-22A-4.

19           (a) There is hereby created and established the  
20 Alabama Coastal Insurance Authority for the purpose of  
21 providing essential property insurance coverage for  
22 residential and commercial properties in Mobile and Baldwin  
23 Counties. The Authority shall be comprised of all insurers  
24 authorized to write property insurance in Alabama. Each  
25 insurer must be a member of the Authority and remain a member  
26 as long as the Authority is in existence as a condition to  
27 conduct and transact business of insurance in this state.

1 (b) A person having an insurable interest in  
2 insurable property is entitled to apply to the Authority for  
3 coverage and for an inspection of the property.

4 (c) If the Authority determines that the property is  
5 insurable and there is no unpaid premium due from the  
6 applicant for prior insurance on the property, the Authority,  
7 upon receipt of the premium, or a portion of it, shall cause  
8 to be issued a policy of essential property insurance for a  
9 term of at least one year.

10 (d) The board shall develop a plan of operation for  
11 the Authority, which, along with any revisions thereto, shall  
12 be submitted to and approved by the Commissioner of Insurance  
13 before the effective date thereof. A copy of the approved plan  
14 of operation, together with any approved revisions thereto,  
15 shall be maintained for public inspection in the Department of  
16 Insurance.

17 (e) The Authority shall be exempt from all state and  
18 local taxes based on insurance premiums and from state income  
19 tax. To the extent possible, the Authority shall be structured  
20 so as to be exempt from federal income taxes.

21 (f) The Authority shall carry over any unexpended  
22 monies and any unexpended surplus to subsequent fiscal years.  
23 These funds shall be maintained in a special fund to be  
24 designated as the Alabama Coastal Insurance Authority Trust  
25 Fund. Monies in this fund shall not lapse, shall not be  
26 subject to transfer to the General Fund or other state funds,  
27 and shall not be redistributed. Any interest earned or

1 investment earnings on amounts in the fund shall be deposited  
2 to the credit of the fund. Monies in the special trust fund  
3 may be used only for the purpose of assisting the Authority in  
4 defraying expenses, paying claims, and paying reinsurance  
5 costs.

6 §27-22A-5.

7 (a) All members of the Authority shall participate  
8 in its writings, expenses, profits, and losses in the  
9 proportion that the net direct premium of the member written  
10 in Alabama during the preceding calendar year bears to the  
11 aggregate net direct premiums written in Alabama by all  
12 members of the Authority, as certified to the Authority.  
13 Credit for voluntary writings in the Gulf Front, Beach and  
14 Seacoast Zones shall be calculated separately for each zone on  
15 the basis of 100 percent credit for fire policies, 75 percent  
16 credit for homeowners and mobile homeowners policies, and 50  
17 percent credit for commercial multi-perils policies. The  
18 "Total Credit" for each zone shall be allowed a credit  
19 separately for Gulf Front, Beach and Seacoast property  
20 premiums. Premiums for policies excluding wind and hail are  
21 not eligible for credit. Farm premiums are not eligible for  
22 credit. Participation shall be determined separately for each  
23 zone using credits as calculated separately for each zone.

24 (b) The assessment of a member insurer may be  
25 ordered deferred in whole or in part upon application by the  
26 insurer if, in the opinion of the board, payment of the  
27 assessment would render the insurer insolvent or in danger of



1 insolventy or produce a hazard to its policy holders,  
2 creditors, or the public. The deferral must be repaid to the  
3 Authority by the impaired insurer with interest in a manner  
4 prescribed by the board.

5 (c) A member company that perceives an assessment by  
6 the Authority to be unjust or illegal shall pay the assessment  
7 or interest under protest in writing within 30 days of the  
8 assessment. If determined by the board that the assessment was  
9 collected unjustly or illegally, the Authority shall refund  
10 the assessment. If the member fails to pay an assessment  
11 within 30 days, the member is subject to disciplinary actions  
12 prescribed by the board.

13 §27-22A-6.

14 The board shall have the general powers and  
15 authority granted under the laws of this state to property  
16 insurers and in addition thereto, the specific authority to do  
17 all of the following:

18 (1) Enter into contracts as are necessary or proper  
19 to carry out the provisions and purposes of this act,  
20 including the authority, with the approval of the  
21 commissioner, to enter into contracts with persons or other  
22 organizations for the performance of administrative functions  
23 or with similar plans of other states for the joint  
24 performance of common administrative functions.

25 (2) Sue or be sued, including taking any legal  
26 actions necessary or proper to recover or collect monies due  
27 the Authority.

1                   (3) Take legal action as necessary to do any of the  
2 following:

3                   a. To avoid the payment of improper claims against  
4 the Authority or the coverage provided by or through the  
5 Authority.

6                   b. To recover any amounts erroneously or improperly  
7 paid by the Authority.

8                   c. To recover any amounts paid by the Authority as a  
9 result of mistake of fact or law.

10                  d. To recover other amounts due the Authority.

11                  (4) Establish and modify from time to time as  
12 appropriate, rates, rate schedules, rate adjustments, expense  
13 allowances, claim reserve formulas, and any other actuarial  
14 function appropriate to the operation of the Authority. Rates  
15 and rate schedules may be adjusted for appropriate factors  
16 such as type of construction and geographic variation in claim  
17 cost and shall take into consideration appropriate factors in  
18 accordance with established actuarial and underwriting  
19 practices.

20                  (5) Issue policies of insurance in accordance with  
21 the requirements of this act and regulations issued pursuant  
22 thereto.

23                  (6) Appoint appropriate legal, actuarial, and other  
24 committees as necessary to provide technical assistance in the  
25 operation of the Authority, policy, and other contract design,  
26 and any other function within the authority of the Authority.

1           (7) Borrow money to effect the purposes of the  
2 Authority. Any notes or other evidence of indebtedness of the  
3 Authority not in default shall be legal investments for  
4 insurers and may be carried as admitted assets.

5           (8) Establish rules, conditions, and procedures for  
6 member insurers to receive credit for essential property  
7 insurance voluntarily written in the beach area.

8           (9) Employ and fix the compensation of employees.

9           (10) Provide for reinsurance of risks incurred by  
10 the Authority.

11           (11) Provide for wind mitigation credits.

12           (12) Adopt policies and procedures as may be  
13 necessary or convenient for the implementation of this act and  
14 the plan of operation of the Authority.

15           (13) Perform all acts that relate to the function  
16 and purpose of the Authority, whether or not specifically  
17 designated in this act.

18           (14) Establish a trust account or similar account in  
19 which to maintain and carry over any surplus or unexpended  
20 monies which may exist or be created.

21           §27-22A-7.

22           The Commissioner of Insurance, by regulation, may  
23 establish additional powers and duties of the Authority and  
24 may adopt rules and regulations as necessary and proper to  
25 implement this act.

26           Section 3. Section 35-8-23, is added to the Code of  
27 Alabama 1975 to read as follows.

1                   §35-8-23.

2                   Condominium property may be removed from the  
3 provisions of this chapter and placed under the provisions of  
4 Title 35, Chapter 8A, the Alabama Uniform Condominium Act,  
5 provided that two thirds of all unit owners of a condominium  
6 agree. Such a conversion may be effectuated by a vote at a  
7 called meeting, or by petition with each signature of a unit  
8 owner witnessed on the petition by someone other than a unit  
9 owner, such conversion being duly recorded as a change to the  
10 bylaws of the association.

11                   Section 4. Section 35-8A-313, Code of Alabama 1975,  
12 is amended to read as follows:

13                   "§35-8A-313.

14                   "(a) Commencing not later than the time of the first  
15 conveyance of a unit to a person other than a declarant, the  
16 association shall maintain, to the extent reasonably  
17 available:

18                   "(1) Property insurance on the common elements  
19 insuring against all risks of direct physical loss commonly  
20 insured against or, in the case of a conversion building,  
21 against fire and extended coverage perils. The total amount of  
22 insurance after application of any deductibles shall be not  
23 less than the greater of 80 percent of the actual cash value  
24 of the insured property at the time the insurance is purchased  
25 or such greater percentage of such actual cash value as may be  
26 necessary to prevent the applicability of any co-insurance  
27 provision and at each renewal date, exclusive of land,

1 excavations, foundations and other items normally excluded  
2 from property policies; and

3 "(2) Liability insurance, including medical payments  
4 insurance, in an amount determined by the board but not less  
5 than any amount specified in the declaration, covering all  
6 occurrences commonly insured against for death, bodily injury,  
7 and property damage arising out of or in connection with the  
8 use, ownership, or maintenance of the common elements.

9 "(b) In the case of a building containing units  
10 having horizontal boundaries described in the declaration, the  
11 insurance maintained under subdivision (a)(1), to the extent  
12 reasonably available, must include the units, but need not  
13 include improvements and betterments installed by unit owners.

14 "(c) The insurance described in subsections (a) and  
15 (b) may be provided by a captive insurance company defined in  
16 Title 27, Chapter 31B, the Alabama Captive Insurers Act. If  
17 the insurance described in subsections (a) and (b) is not  
18 reasonably available, the association promptly shall cause  
19 notice of that fact to be hand-delivered or sent prepaid by  
20 United States mail to all unit owners. The declaration may  
21 require the association to carry any other insurance, and the  
22 association in any event may carry any other insurance it  
23 deems appropriate to protect the association or the unit  
24 owners.

25 "(d) Insurance policies carried pursuant to  
26 subsection (a) must provide that:

1           "(1) Each unit owner is an insured person under the  
2 policy with respect to liability arising out of his interest  
3 in the common elements or membership in the association;

4           "(2) The insurer waives its right to subrogation  
5 under the policy against any unit owner or member of his  
6 household;

7           "(3) No act or omission by any unit owner, unless  
8 acting within the scope of his authority on behalf of the  
9 association, will void the policy or be a condition to  
10 recovery under the policy; and

11           "(4) If, at the time of a loss under the policy,  
12 there is other insurance in the name of a unit owner covering  
13 the same risk covered by the policy, the association's policy  
14 provides primary insurance.

15           "(e) Any loss covered by the property policy under  
16 subsections (a)(1) and (b) must be adjusted with the  
17 association, but the insurance proceeds for that loss are  
18 payable to any insurance trustee designated for that purpose,  
19 or otherwise to the association, and not to any holder of a  
20 security interest. The insurance trustee or the association  
21 shall hold any insurance proceeds in trust for unit owners and  
22 lien holders as their interests may appear. Subject to the  
23 provisions of subsection (h), the proceeds must be disbursed  
24 first for the repair or restoration of the damaged property,  
25 and the association unit owners and lien holders are not  
26 entitled to receive payment of any portion of the proceeds  
27 unless there is a surplus of proceeds after the property has

1       been completely repaired or restored, or the condominium is  
2       terminated.

3               "(f) An insurance policy issued to the association  
4       does not prevent a unit owner from obtaining insurance for his  
5       own benefit.

6               "(g) An insurer that has issued an insurance policy  
7       under this section shall issue certificates or memoranda of  
8       insurance to the association and, upon written request, to any  
9       unit owner, or holder of a security interest. The insurer  
10      issuing the policy may not cancel or refuse to renew it until  
11      30 days after notice of the proposed cancellation or  
12      nonrenewal has been mailed to the association, each unit owner  
13      and each mortgagee or beneficiary under a deed of trust to  
14      whom a certificate or memorandum of insurance has been issued  
15      at their respective last known addresses.

16              "(h) Any portion of the condominium for which  
17      insurance is required under this section which is damaged or  
18      destroyed must be repaired or replaced promptly by the  
19      association unless:

20              "(1) The condominium is terminated, in which case  
21      section 35-8A-218 applies,

22              "(2) Repair or replacement would be illegal under  
23      any state or local statute or ordinance governing health or  
24      safety, or

25              "(3) Eighty percent of the unit owners, including  
26      every owner of a unit or assigned limited common element which  
27      will not be rebuilt, vote not to rebuild. The cost of repair

1 or replacement in excess of insurance proceeds and reserves is  
2 a common expense.

3 "If the entire condominium is not repaired or  
4 replaced, (i) the insurance proceeds attributable to the  
5 damaged common elements must be used to restore the damaged  
6 area to a condition compatible with the remainder of the  
7 condominium, (ii) except to the extent that other persons will  
8 be distributees under section 35-8A-205(a)(12)(ii),

9 "(1) The insurance proceeds attributable to units  
10 and limited common elements which are not rebuilt must be  
11 distributed to the owners of those units and the owners of the  
12 units to which those limited common elements were allocated,  
13 or to lienholders, as their interests may appear, and

14 "(2) The remainder of the proceeds must be  
15 distributed to all the unit owners or lienholders, as their  
16 interests may appear, in proportion to the common element  
17 interests of all the units.

18 "If the unit owners vote not to rebuild any unit,  
19 that unit's allocated interests are automatically reallocated  
20 upon the vote as if the unit had been condemned under section  
21 35-8A-107(a), and the association promptly shall prepare,  
22 execute, and record an amendment to the declaration reflecting  
23 the reallocations.

24 "(i) The provisions of this section may be varied or  
25 waived in the case of a condominium all of whose units are  
26 restricted to nonresidential use."



1                   Section 5. For tax years beginning after December  
2                   31, 2007, an Alabama income tax credit shall be made available  
3                   against the tax imposed by Chapter 18 of Title 40 of the Code  
4                   of Alabama 1975, for the lesser of the two, 25 percent of the  
5                   cost or one thousand dollars (\$1,000) to individuals in  
6                   counties in Alabama which are adjacent to the Gulf of Mexico  
7                   who make the following improvements in order to provide a more  
8                   weather-resistant property:

9                   (1) Roof deck attachment.

10                  (2) Secondary water barrier.

11                  (3) Roof covering.

12                  (4) Brace gable ends.

13                  (5) Reinforce roof-to-wall connections.

14                  (6) Opening protection.

15                  (7) Exterior doors, including garage doors.

16                  (8) Tie downs.

17                  (9) Non-decorative shutters and window covers  
18                  designed to be storm and hurricane resistant.

19                  (10) Any other mitigating technique approved by the  
20                  Commissioner of Insurance.

21                  In order to obtain the credit described herein, each  
22                  citizen claiming such a credit must maintain sufficient  
23                  records of the improvement, including, but not limited to,  
24                  receipts from contractors, receipts for materials, records  
25                  from local building officials, and such records shall be  
26                  subject to audit under regular state income tax procedures.

1                   Section 6. This act shall become effective on the  
2 first day of the third month following its passage and  
3 approval by the Governor, or its otherwise becoming law.