

By: Middleton, et al.

S.B. No. 1217

A BILL TO BE ENTITLED

AN ACT

relating to the administration of the Texas Windstorm Insurance Association.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 2210, Insurance Code, is amended by adding Section 2210.016 to read as follows:

Sec. 2210.016. LEGISLATIVE LOBBYING. (a) The association may not use any money under its control to attempt to influence the passage or defeat of a legislative measure.

(b) An employee or board member that violates Subsection (a) is subject to immediate termination and a fine of \$10,000 to be deposited in the catastrophe reserve trust fund.

(c) This section does not prohibit a member of the board of directors or an employee from using money under its control to provide public information or to provide information responsive to a request.

SECTION 2. Subchapter B, Chapter 2210, Insurance Code, is amended by adding Section 2210.063 to read as follows:

Sec. 2210.063. LOCATION OF ASSOCIATION HEADQUARTERS. The headquarters of the association shall be located in a first tier coastal county or second tier coastal county.

SECTION 3. Subchapter B, Chapter 2210, Insurance Code, is amended by adding Section 2210.064 to read as follows:

Sec. 2210.064. ASSOCIATION GENERAL MANAGER. (a) The

1 general manager of the association is responsible and accountable
2 to the commissioner and the board of directors.

3 (b) The general manager is appointed by the commissioner in
4 accordance with this section.

5 (c) The commissioner may remove an existing general manager
6 and appoint a new general manager at any time.

7 (d) The general manager must have demonstrated knowledge of
8 windstorm insurance, general business, or actuarial principles
9 sufficient to make the success of the association probable.

10 (e) A person may not serve as general manager of the
11 association if the person or the person's spouse:

12 (1) is employed by or participates in the management
13 of a business entity or other organization:

14 (A) operating in the property and casualty
15 insurance industry in this state;

16 (B) receiving money from the association, other
17 than insurance claim payments; or

18 (C) receiving money from association
19 policyholders with respect to the policyholders' claims;

20 (2) owns or controls, directly or indirectly, more
21 than a 10 percent interest in a business entity or other
22 organization:

23 (A) operating in the property and casualty
24 insurance industry in this state;

25 (B) receiving money from the association, other
26 than insurance claim payments; or

27 (C) receiving money from association

1 policyholders with respect to the policyholders' claims;

2 (3) uses or receives a substantial amount of tangible
3 goods, services, or money from the association, other than:

4 (A) insurance claim payments; or

5 (B) compensation or reimbursement authorized by
6 law for the general manager's membership, attendance, or expenses.

7 SECTION 4. Section 2210.0725(a), Insurance Code, is amended
8 to read as follows:

9 Sec. 2210.0725. PAYMENT FROM CLASS 1 ASSESSMENTS. (a)
10 Losses in a catastrophe year not paid under Sections 2210.0715 and
11 2210.072 shall be paid as provided by this section from Class 1
12 member assessments not to exceed \$500 million plus an adjustment
13 equal to the Consumer Price Index for that catastrophe year.

14 SECTION 5. Section 2210.074(a), Insurance Code, is amended
15 to read as follows:

16 Sec. 2210.074. PAYMENT THROUGH CLASS 2 ASSESSMENTS. (a)
17 Losses in a catastrophe year not paid under Sections 2210.0715,
18 2210.072, 2210.0725, and 2210.073 shall be paid as provided by this
19 section from Class 2 member assessments not to exceed \$250 million
20 plus an adjustment equal to the Consumer Price Index for that
21 catastrophe year.

22 SECTION 6. Section 2210.0742(a), Insurance Code, is amended
23 to read as follows:

24 Sec. 2210.0742. PAYMENT FROM CLASS 3 ASSESSMENTS. (a)
25 Losses in a catastrophe year not paid under Sections 2210.0715,
26 2210.072, 2210.0725, 2210.073, 2210.074, and 2210.0741 shall be
27 paid as provided by this section from Class 3 member assessments not

1 to exceed \$250 million plus an adjustment equal to the Consumer
2 Price Index for that catastrophe year.

3 SECTION 7. Subchapter B-1, Chapter 2210, Insurance Code, is
4 amended by adding Section 2210.076 to read as follows:

5 Sec. 2210.076. PAYMENT FROM ASSESSMENTS IN EXCESS OF
6 REINSURANCE. (a) Losses in a catastrophe year not paid under
7 Sections 2210.0715, 2210.072, 2210.0725, 2210.073, 2210.074,
8 2210.0741, 2210.0742, 2210.4522, and 2210.453 shall be paid as
9 provided by this section from member assessments.

10 (b) The association, with the approval of the commissioner,
11 shall notify each member of the amount of the member's assessment
12 under this section. The proportion of the losses allocable to each
13 insurer under this section shall be determined in the manner used to
14 determine each insurer's participation in the association for the
15 year under Section 2210.052.

16 (c) A member of the association may not recoup an assessment
17 paid under this section through a premium surcharge or tax credit.

18 SECTION 8. Section 2210.102, Insurance Code, is amended to
19 read as follows:

20 Sec. 2210.102. COMPOSITION. (a) The board of directors is
21 composed of nine members appointed by the commissioner in
22 accordance with this section.

23 (b) Three members must be property and casualty agents who
24 are licensed under this code, are not captive agents, and
25 reside~~[representatives of the insurance industry who actively~~
26 ~~write and renew windstorm and hail insurance]~~ in the first tier
27 coastal counties.

1 (c) Three members must, as of the date of the appointment,
2 reside in the first tier coastal counties. Each of the following
3 regions must be represented by a member residing in the region and
4 appointed under this subsection:

5 (1) the region consisting of Cameron, Kenedy, Kleberg,
6 and Willacy Counties;

7 (2) the region consisting of Aransas, Calhoun, Nueces,
8 Refugio, and San Patricio Counties; and

9 (3) the region consisting of Brazoria, Chambers,
10 Galveston, Jefferson, and Matagorda Counties and any part of Harris
11 County designated as a catastrophe area under Section 2210.005.

12 ~~[(c-1) One of the members appointed under Subsection (c)~~
13 ~~must be a property and casualty agent who is licensed under this~~
14 ~~code and is not a captive agent.]~~

15 (d) Three members must reside in an area of this state that
16 is located outside the first tier coastal counties~~[more than 100~~
17 ~~miles from the Texas coastline]~~.

18 (d-1) One of the members appointed under Subsection (d) must
19 be the public counsel of the Office of Public Insurance Counsel or
20 their designated appointee.

21 (e) All members must have demonstrated experience in
22 insurance, general business, or actuarial principles and the
23 member's area of expertise, if any, sufficient to make the success
24 of the association probable.

25 (f) No member may be an active employee of an insurer who is
26 a member of the association. ~~[Insurers who are members of the~~
27 ~~association shall nominate, from among those members, persons to~~

1 ~~fill any vacancy in the three board of director seats reserved for~~
2 ~~representatives of the insurance industry. The board of directors~~
3 ~~shall solicit nominations from the members and submit the~~
4 ~~nominations to the commissioner. The nominee slate submitted to~~
5 ~~the commissioner under this subsection must include at least three~~
6 ~~more names than the number of vacancies. The commissioner may~~
7 ~~appoint replacement insurance industry representatives from the~~
8 ~~nominee slate.]~~

9 (g) Members appointed to the board of directors under
10 Subsections (c) and (d) [~~, other than the member appointed under~~
11 ~~Subsection (c-1),~~] must represent the general public in the regions
12 described by those subsections. A person may not be appointed to
13 represent the general public under Subsection (c) or (d) if the
14 person or the person's spouse:

15 (1) is employed by or participates in the management
16 of a business entity or other organization:

17 (A) operating in the property and casualty
18 insurance industry in this state;

19 (B) receiving money from the association, other
20 than insurance claim payments; or

21 (C) receiving money from association
22 policyholders with respect to the policyholders' claims;

23 (2) owns or controls, directly or indirectly, more
24 than a 10 percent interest in a business entity or other
25 organization:

26 (A) operating in the property and casualty
27 insurance industry in this state;

1 (B) receiving money from the association, other
2 than insurance claim payments; or

3 (C) receiving money from association
4 policyholders with respect to the policyholders' claims; or

5 (3) uses or receives a substantial amount of tangible
6 goods, services, or money from the association, other than:

7 (A) insurance claim payments; or

8 (B) compensation or reimbursement authorized by
9 law for the board members' membership, attendance, or expenses.

10 SECTION 9. Section 2210.103, Insurance Code, is amended to
11 read as follows:

12 Sec. 2210.103. TERMS. (a) Members of the board of
13 directors serve three-year staggered terms, with the terms of three
14 members expiring on the third Tuesday of March of each year.

15 (b) A person may serve on the board of directors for not more
16 than three consecutive full terms, not to exceed nine years.

17 (c) A member of the board of directors may be removed by the
18 commissioner with cause stated in writing and posted on the
19 association's website. The commissioner shall appoint a
20 replacement in accordance with Section 2210.102 for a member who
21 leaves or is removed from the board of directors.

22 (d) A member of the board of directors shall be removed by
23 the commissioner if the board member fails to make a reasonable
24 effort to attend the board meeting to set the annual rate, described
25 by Section 2210.352.

26 SECTION 10. Section 2210.105, Insurance Code, is amended by
27 amending (d) and adding (b-2) to read as follows:

1 (d) Except for an emergency meeting, a meeting of the board
2 of directors shall be held at a location in a first tier coastal
3 county or second tier coastal county~~[as determined by the board of~~
4 ~~directors]~~.

5 (b-2) A legislator or a legislator's designated
6 representative may attend a meeting of the board of directors or the
7 members of the association, including a closed meeting authorized
8 by Subchapter D, Chapter 551, Government Code.

9 SECTION 11. Subchapter G, Insurance Code, is amended by
10 adding Section 2210.211 to read as follows:

11 Sec. 2210.211. CERTAIN ADJUSTMENTS PROHIBITED. (a) The
12 association may not automatically adjust the amount of coverage to
13 be purchased by a policyholder.

14 (b) The association may not require the use of any one
15 replacement cost calculator.

16 (c) The association may not adjust premiums, fees, or any
17 other costs to policyholders for inflation without a vote by the
18 board of directors.

19 SECTION 12. Section 2210.352, Insurance Code, is amended to
20 read as follows:

21 Sec. 2210.352. MANUAL RATE FILINGS: ANNUAL FILING. (a) Not
22 later than September~~[August]~~ 15 of each year, the association shall
23 file with the department a proposed manual rate for all types and
24 classes of risks written by the association.

25 SECTION 13. Section 2210.453(b), Insurance Code, is amended
26 to read as follows:

27 (b) The association shall maintain total available loss

1 funding in an amount not less than the probable maximum loss for the
2 association for a catastrophe year with a probability of one in
3 50~~[100]~~. If necessary, the required funding level shall be achieved
4 through the purchase of reinsurance or the use of alternative
5 financing mechanisms, or both, to operate in addition to or in
6 concert with the trust fund, public securities, financial
7 instruments, and assessments authorized by this chapter.

8 SECTION 14. Section 2210.453, Insurance Code, is amended by
9 adding Subsections (b-1) and (b-2) to read as follows:

10 (b-1) In determining the probable maximum loss under
11 Subsection (b), the association:

12 (1) may not consider the cost of providing loss
13 adjustments;

14 (2) shall, to the extent possible, contract with any
15 disinterested third parties necessary to execute any catastrophe
16 models that were executed in the preceding storm season;

17 (3) shall, if the association is unable to contract
18 for the execution of a catastrophe model described by Subdivision
19 (2), contract with any disinterested third party necessary to
20 execute a catastrophe model that is substantially similar to the
21 model for which the association is unable to contract under
22 Subdivision (2);

23 (4) may contract with any disinterested third parties
24 to execute catastrophe models in addition to the models required by
25 Subdivisions (2) and (3);

26 (5) shall provide to a third party executing a
27 catastrophe model any information necessary to comply with this

1 subsection;

2 (6) may not use a combination of catastrophe models to
3 determine the probable maximum loss; and

4 (7) may use only the catastrophe model that produces
5 the lowest probable maximum loss.

6 (b-2) Any information produced in compliance with
7 Subsection (b-1) shall be made publicly available on the Internet
8 website of the association.

9 (b-3) The amount of loss adjustment expense, as adopted by
10 the board of directors for a catastrophe year and used for the
11 association's rate indication for purposes of filing a rate under
12 this Chapter, must be considered above the probable maximum loss.

13 SECTION 15. Section 2210.618, Insurance Code, is amended to
14 read as follows:

15 Sec. 2210.618. EXEMPTION FROM TAXATION. (a) A public
16 security issued under this subchapter, any transaction relating to
17 the public security, and profits made from the sale of the public
18 security are exempt from taxation by this state or by a municipality
19 or other political subdivision of this state.

20 (b) The association is not subject to any insurance premium
21 tax or insurance maintenance tax or fee.

22 SECTION 16. Section 2210.063, Insurance Code, as added by
23 this Act, applies to the Texas Windstorm Insurance Association
24 beginning on January 1, 2025.

25 SECTION 17. This Act takes effect immediately if it
26 receives a vote of two-thirds of all the members elected to each
27 house, as provided by Section 39, Article III, Texas Constitution.

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1 If this Act does not receive the vote necessary for immediate
2 effect, this Act takes effect September 1, 2023.