

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 1605  
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Committee Report (Substituted)

### **DIGEST AND PURPOSE**

Currently, Texas law authorizes the commissioner of insurance, under certain conditions, to establish a residual market mechanism for residential property insurance known as Fair Access to Insurance Requirements (FAIR) Plan. Current law does not provide a mechanism for the issuance of revenue bonds to implement the FAIR Plan. C.S.S.B. 1605 requires the Texas Public Finance Authority to issue public securities in an amount not to exceed \$75 million, at the request of the FAIR Plan Association, to fund the association and pay certain costs. This bill establishes the structure to govern the issuing of such public securities.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 (Article 21.49A-1, Section 10, Insurance Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter E, Chapter 21, Insurance Code, by adding Article 21.49A-1, as follows:

#### Article 21.49A-1. REVENUE BOND PROGRAM FOR FAIR PLAN ASSOCIATION

Sec. 1. PURPOSE. Sets forth findings of the legislature.

Sec. 2. DEFINITIONS. Defines “association,” “public security resolution,” “bond,” “board,” and “insurer.”

Sec. 3. PUBLIC SECURITIES AUTHORIZED; APPLICATION OF TEXAS PUBLIC FINANCE AUTHORITY ACT. (a) Requires the Texas Public Finance Authority (TPFA), at the request of the FAIR (Fair Access to Insurance Requirements) Plan Association (association), to issue public securities to fund the association and pay certain costs.

(b) Provides that to the extent not inconsistent with this article, Chapter 1232 (Texas Public Finance Authority), Government Code, applies to public securities issued under this article. Provides that in the event of a conflict, this article controls.

Sec. 4. APPLICABILITY OF OTHER STATUTES. Provides that certain laws apply to public securities issued under this article, to the extent consistent with this article.

Sec. 5. LIMITS. Authorizes TPFA to issue, on behalf of the association, public securities in a total amount not to exceed \$75 million.

Sec. 6. CONDITIONS. (a) Authorizes public securities issued under this article to be issued at public or private sale.

(b) Requires public securities to mature not more than 10 years after the date issued.

(c) Requires public securities to be issued in the name of the association.

Sec. 7. **ADDITIONAL COVENANTS.** Authorizes the TPFA board of directors (board), in a public security resolution, to make additional covenants with respect to the public securities and the designated income and receipts of the association pledged to their payment and to provide for the flow of funds and the establishment, maintenance, and investment of funds and accounts with respect to the public securities.

Sec. 8. **SPECIAL ACCOUNTS.** (a) Authorizes a public security resolution to establish special accounts, including an interest and sinking fund account, reserve account, and other accounts.

(b) Requires the association to administer the accounts in accordance with Article 21.49A (FAIR Plan (Fair Access to Insurance Requirements) Act) of this code.

Sec. 9. **SECURITY.** (a) Provides that public securities are payable only from the service fee established in Section 10 of this article or other amounts that the association is authorized to levy, charge, and collect.

(b) Provides that public securities are obligations solely of the association. Provides that public securities do not create a pledging, giving, or lending of the faith, credit, or taxing authority of this state.

(c) Requires each public security to include a statement that the state is not obligated to pay any amount on the public security and that the faith, credit, and taxing authority of this state are not pledged, given, or lent to those payments.

(d) Requires each public security issued under this article to state on its face that the public security is payable solely from the revenues pledged for that purpose and that the public security does not and may not constitute a legal or moral obligation of the state.

Sec. 10. **SERVICE FEE.** (a) Authorizes a service fee to be assessed against each insurer and the association.

(b) Requires the service fee to be set by the commissioner of insurance (commissioner) in an amount sufficient to pay all debt service on the public securities. Requires the service fee to be paid by each insurer and the association as required by the commissioner by rule.

(c) Requires the comptroller to collect the service fee and requires the Texas Department of Insurance to reimburse the comptroller in the manner described by Article 4.19 (Tax Administration Functions; Reimbursement of General Revenue Fund) of this code.

(d) Authorizes the commissioner, in consultation with the comptroller, to coordinate payment and collection of the service fee with other payments made by insurers and collected by the comptroller.

(e) Provides that as a condition of engaging in the business of insurance in this state, an insurer agrees that if the company leaves the property insurance market in this state the insurer remains obligated to pay, until the public securities are retired, the insurer's share of the service fee assessed under this section in an amount proportionate to that insurer's share of the property insurance market, including residential property insurance, in this state as of the last complete reporting period before the date on which the insurer ceases to engage in that insurance business in this state. Requires the proportion assessed against the insurer to be based on the insurer's gross premiums for property insurance, including residential property insurance, for the insurer's last reporting period.

Sec. 11. TAX EXEMPT. Provides that the public securities issued under this article, and any interest from those public securities, and all assets pledged to secure the payment of the public securities are free from taxation by the state or a political subdivision of this state.

Sec. 12. AUTHORIZED INVESTMENTS. Provides that the public securities issued under this article constitute authorized investments under Article 2.10 (Investment of Funds in Excess of Minimum Capital and Minimum Surplus), Article 3.33 (Authorized Investments and Loans for Capital Stock Domestic Life, Health and Accident Insurance Companies), and Subpart A, Part I, Article 3.39 (Authorized Investments and Loans for "Domestic" Life Insurance Companies; Authorized Investments; Any of Its Funds and Accumulations), of this code.

Sec. 13. STATE PLEDGE. Provides that the state pledges to and agrees with the owners of any public securities issued in accordance with this article that the state will not limit or alter the rights vested in the association to fulfill the terms of any agreements made with the owners of the public securities or in any way impair the rights and remedies of those owners until the public securities; bond premium, if any; or interest, and all costs and expenses in connection with any action or proceeding by or on behalf of those owners are fully met and discharged. Authorizes the association to include this pledge and agreement of the state in any agreement with the owners of the public securities.

Sec. 14. ENFORCEMENT BY MANDAMUS. Provides that a writ of mandamus and all other legal and equitable remedies are available to any party at interest to require the association and any other party to carry out agreements and to perform functions and duties under this article, the Texas Constitution, or a public security resolution.

SECTION 2. Amends Section 3(e), Article 21.49A, Insurance Code, to delete profits from the list of items in which all insurers licensed to write property insurance are required to participate.

SECTION 3. Amends Section 5(d), Article 21.49A, Insurance Code, to make a conforming change.

SECTION 4. Amends Section 11, Article 21.49A, Insurance Code, to require the association, should a deficit occur in the association, at the direction of the commissioner, to either request the issuance of public securities as authorized by Article 21.49A-1 of this code, or assess participating insurers in accordance with this section. Specifies that the three-year period commences 90 days after the date of the assessment by the association, under this section.

SECTION 5. Amends Article 21.49A, Insurance Code, by adding Section 15, as follows:

Sec. 15. RETENTION OF PROFITS. Requires the association to retain any profits of the association to be used for association purposes. Prohibits the profits from being distributed to insurers.

SECTION 6. Makes application of the changes made to Article 21.49A, Insurance Code, by this Act prospective.

SECTION 7. Effective date: upon passage or September 1, 2003.