

By: Eiland

H.B. No. 143

A BILL TO BE ENTITLED

1

AN ACT

2 relating to the operation of the Texas Windstorm Insurance
3 Association.

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

5 SECTION 1. Section 19, Article 21.49, Insurance Code, is
6 amended to read as follows:

7 Sec. 19. (a) If [~~, in any calendar year,~~] an occurrence or
8 series of occurrences within the defined catastrophe area results
9 in insured losses and operating expenses of the association in
10 excess of premium and other revenue of the association, any excess
11 losses shall be paid as follows:

12 (1) for each occurrence, up to 1.5% of the members'
13 written premiums as reported in the annual statement filed with the
14 department for the calendar year immediately preceding the year in
15 which the assessment is made for the following lines: fire, allied,
16 homeowners, farm owners, and commercial multi-peril [~~\$100 million~~]
17 shall be assessed to the members of the association and the Texas
18 FAIR Plan Association with the proportion of the loss allocable to
19 each insurer determined in the same manner as its participation in
20 the association has been determined for the year under Section 5(b)
21 [~~5(c)~~] of this Act;

22 (2) any losses in excess of the amounts assessed
23 pursuant to subdivision (1) [~~\$100 million~~] shall be paid from
24 proceeds from revenue bonds issued by the association prior to any

1 catastrophic event that results in insured losses in accordance
2 with Section 19(a) in accordance with Section 20 of this Article.
3 Such revenue bonds shall be issued in principal amounts not to
4 exceed \$300 million per calendar year. [~~the catastrophe reserve~~
5 trust fund established under Section 8(i) of this Act and any
6 reinsurance program established by the association,]

7 (3) for each occurrence, any losses in excess of the
8 amounts determined in [~~those paid under~~] Subdivisions (1) and (2)
9 of this subsection shall be paid from[~~, an additional \$200 million~~
10 shall be assessed to the members of the association with the
11 proportion of the loss allocable to each insurer determined in the
12 same manner as its participation in the association has been
13 determined for the year under Section 5(c) of this Act,] the
14 catastrophe reserve trust fund established under Section 8(i) of
15 this Act. Provided, however, not more than fifty percent of the
16 amount in the catastrophe reserve trust fund as of the date of the
17 occurrence, reduced by anticipated payments from prior
18 occurrences, may be so used, unless the Commissioner determines a
19 greater percentage should be applied after not less than ten (10)
20 days notice and hearing if a hearing is requested by any person
21 within the ten (10) notice period.

22 (4) any losses in excess of the amounts determined in
23 [~~those paid under~~] Subdivisions (1), (2), and (3), of this
24 subsection shall be paid from proceeds from revenue bonds issued by
25 the association subsequent to any catastrophic event that results
26 in insured losses in accordance with Section 19(a) in accordance
27 with Section 20 of this Article. Such revenue bonds shall be issued

1 in principal amounts not to exceed \$200 million per calendar year.
2 ~~[assessed against members of the association, with the proportion~~
3 ~~of the total loss allocable to each insurer determined in the same~~
4 ~~manner as its participation in the association has been determined~~
5 ~~for the year under Section 5c of this Act.]~~

6 (5) any losses in excess of the amounts determined in
7 Subdivisions (1), (2), (3), and (4) of this subsection shall be paid
8 from any reinsurance proceeds recoverable by the association.

9 (6) any losses in excess of the amounts determined in
10 Subdivisions (1), (2), (3), (4) and (5) of this subsection shall be
11 assessed against members of the association, with the proportion of
12 the total loss allocable to each insurer determined in the same
13 manner as its participation in the association has been determined
14 for the year under Section 5(b) of this Act.

15 (b) An insurer may credit any amount paid in accordance with
16 Subsection (a)(6) [~~(a)(4)~~] of this section in a calendar year
17 against its premium tax under Article 4.10 of this code. The tax
18 credit herein authorized shall be allowed at a rate not to exceed 20
19 percent per year for five or more successive years following the
20 year of payment of the claims. The balance of payments paid by the
21 insurer and not claimed as such tax credit may be reflected in the
22 books and records of the insurer as an admitted asset of the insurer
23 for all purposes, including exhibition in annual statements
24 pursuant to §862.001 [~~Article 6.12~~] of this code.

25 (c) notwithstanding any other provision of this article,
26 the Commissioner, after not less than ten (10) days notice and
27 hearing if a hearing is requested by any person within the ten (10)

1 day notice period, may authorize the association to issue bonds in
2 excess of the amounts designated in this Section 19 to provide for
3 the payment of insured losses and operating expenses not otherwise
4 funded.

5 (d) In addition to the funding described in Subsections (a)
6 (b), and (c) of this section, the Association may also borrow from,
7 or enter into other financing arrangements with, any market sources
8 at prevailing interest rates.

9 (e) The Commissioner may adopt rules necessary to implement
10 this section.

11 SECTION 2. Article 21.49, Insurance Code, is amended by
12 adding Section 20 to read as follows:

13 Sec. 20. Revenue Bond Program.

14 (a) Purpose. The legislature finds that providing the
15 authority to issue public securities to provide a method to raise
16 funds to provide windstorm, hail, and fire insurance through the
17 Association in certain designated portions of the state is for the
18 benefit of the public and in furtherance of a public purpose.

19 (b) Definitions. When used in this section:

20 (1) "Public security resolution" means the resolution
21 or order authorizing public securities to be issued under this
22 section.

23 (2) "Bond" means any debt instrument or public
24 security issued by the Texas Public Finance Authority.

25 (3) "Board" means the board of directors of the Texas
26 Public Finance Authority.

27 (4) "Insurer" means all property and casualty insurers

1 authorized to transact property and casualty insurance in this
2 State and specifically includes and makes this section applicable
3 to county mutual companies, Lloyds and reciprocal or interinsurance
4 exchanges.

5 (c) Public securities authorized; application of Texas
6 public finance authority act.

7 (1) At the request of the Association and upon
8 approval by the Commissioner, the Texas Public Finance Authority
9 shall issue public securities to:

10 (A) fund the Association, including:

11 (i) to establish and maintain reserves to
12 pay claims;

13 (ii) to pay incurred claims and operating
14 expenses; and

15 (iii) to purchase reinsurance;

16 (B) pay costs related to issuance of the public
17 securities; and

18 (C) pay other costs related to the public
19 securities as may be determined by the board.

20 (2) To the extent not inconsistent with this section,
21 Chapter 1232, Government Code, applies to public securities issued
22 under this section. In the event of a conflict, this section
23 controls.

24 (d) Applicability of other statutes. The following laws
25 apply to public securities issued under this section to the extent
26 consistent with this section:

27 (1) Chapters 1201, 1202, 1204, 1205, 1231, and 1371,

1 Government Code; and

2 (2) Subchapter A, Chapter 1206, Government Code.

3 (e) Limits. The Texas Public Finance Authority may issue,
4 on behalf of the Association, public securities in an amount
5 sufficient to fund the insured losses and operating expenses of the
6 Association as determined by the Association and approved by the
7 Commissioner after not less than ten (10) days notice and hearing if
8 a hearing is requested by any person within the ten (10) day notice
9 period.

10 (f) Conditions. (1) Public securities issued under this
11 section may be issued at public or private sale.

12 (2) Public securities may mature not more than 10
13 years after the date issued.

14 (3) Public securities must be issued in the name of the
15 Association.

16 (g) Additional covenants. In a public security resolution,
17 the board may make additional covenants with respect to the public
18 securities and the designated income and receipts of the
19 Association pledged to their payment, and may provide for the flow
20 of funds and the establishment, maintenance, and investment of
21 funds and accounts with respect to the public securities.

22 (h) Special accounts. (1) A public security resolution may
23 establish special accounts, including an interest and sinking fund
24 account, reserve account, and other accounts.

25 (2) The Association shall administer the accounts in
26 accordance with this section.

27 (i) Security. (1) Public securities are payable only from

1 the service fee established under subsection (j) of this section or
2 other amounts that the Association is authorized to levy, charge,
3 and collect.

4 (2) Public securities are obligations solely of the
5 Association. Public securities do not create a pledging, giving,
6 or lending of the faith, credit, or taxing authority of this state.

7 (3) Each public security must include a statement that
8 the state is not obligated to pay any amount on the public security
9 and that the faith, credit, and taxing authority of this state are
10 not pledged, given, or lent to those payments.

11 (4) Each public security issued under this section
12 must state on its face that the public security is payable solely
13 from the revenues pledged for that purpose and that the public
14 security does not and may not constitute a legal or moral obligation
15 of the state.

16 (j) All interest on public securities issued pursuant to
17 Section 19(a)(2) shall be paid by the Association with the existing
18 premiums of the Association. Provided however, if the Association
19 is unable to pay the interest on such public securities with
20 existing premiums, the interest on such public securities shall be
21 paid in accordance with subsection (k) of this Section.

22 (k) Service fee. (1) A fee to service public securities
23 issued by the association may be collected from policyholders of:

- 24 (A) insurers,
25 (B) the Association, and
26 (C) the FAIR Plan Association.

27 (2) Not less frequently than annually, the service fee

1 to service public securities issued pursuant to Section 19(a)(2)
2 and (4) shall be determined by the Association and approved by the
3 Commissioner, after not less than ten (10) days notice and hearing
4 if a hearing is requested by any person within the ten (10) day
5 notice period, in an amount sufficient to pay all debt service and
6 all related expenses on the public securities. The service fee
7 shall be collected by each insurer, the Association, and the FAIR
8 Plan Association from their policyholders who reside or have
9 operations in or whose insured property is located in the
10 catastrophe area in the form of a premium surcharge in accordance
11 with this subsection and remitted to the Association as required by
12 the Commissioner by rule. The premium surcharge shall apply to all
13 policies of insurance for all property and casualty lines,
14 excluding workers' compensation, accident and health, and medical
15 malpractice. The service fees collected in the form of a policy
16 surcharge under this section shall be separate charges in addition
17 to premiums collected, are not subject to the premium tax or
18 commissions, and failure to pay such surcharge by a policyholder is
19 equivalent to failure to pay premium for purposes of policy
20 cancellation.

21 (3) Not less frequently than annually, the service fee
22 to service public securities issued pursuant to Section 19(c) shall
23 be determined by the Association and approved by the Commissioner,
24 after not less than ten (10) days notice and hearing if a hearing is
25 requested by any person within the ten (10) day notice period, in an
26 amount sufficient to pay all debt service and all related expenses
27 on the public securities. The service fee shall be collected by

1 each insurer, the Association, and the FAIR Plan Association from
2 their policyholders who reside or have operations in or whose
3 insured property is located in this state in the form of a premium
4 surcharge in accordance with this subsection and remitted to the
5 Association as required by the Commissioner by rule. The premium
6 surcharge shall apply to all policies of insurance for all property
7 and casualty lines, excluding workers' compensation, accident and
8 health, and medical malpractice. The service fees collected in the
9 form of a policy surcharge under this section shall be separate
10 charges in addition to premiums collected, are not subject to the
11 premium tax or commissions, and failure to pay such surcharge by a
12 policyholder is equivalent to failure to pay premium for purposes
13 of policy cancellation.

14 (l) Tax exempt. The public securities issued under this
15 section, any interest from those public securities, and all assets
16 pledged to secure the payment of the public securities are free from
17 taxation by the state or a political subdivision of this state.

18 (m) Authorized investments. The public securities issued
19 under this section constitute authorized investments under
20 Articles 2.10 and 3.33 and Subpart A, Part I, Article 3.39 of this
21 code.

22 (n) State pledge. The state pledges to and agrees with the
23 owners of any public securities issued in accordance with this
24 section that the state will not limit or alter the rights vested in
25 the Association to fulfill the terms of any agreements made with the
26 owners of the public securities or in any way impair the rights and
27 remedies of those owners until the public securities, bond premium,

1 if any, or interest, and all costs and expenses in connection with
2 any action or proceeding by or on behalf of those owners, are fully
3 met and discharged. The Association may include this pledge and
4 agreement of the state in any agreement with the owners of the
5 public securities.

6 (o) Enforcement by mandamus. A writ of mandamus and all
7 other legal and equitable remedies are available to any party at
8 interest to require the Association and any other party to carry out
9 agreements and to perform functions and duties under this section,
10 the Texas Constitution, or a public security resolution.

11 SECTION 3. Section 941.003, Insurance Code, is amended by
12 amending Subsection (b)(5) to read as follows:

13 (b) A Lloyd's plan is subject to:

14 (5) Articles 21.21, 21.49, and 21.49-8.

15 SECTION 38. Section 942.003, Insurance Code, is amended by
16 amending Subsection (b)(5) to read as follows:

17 (b) An exchange is subject to:

18 (5) Articles 21.21, 21.49, and 21.49-8.

19 SECTION 4. EFFECTIVE DATE. This Act takes effect on June 1,
20 2006.