

Amend CSHB 1890 by striking all below the enacting clause and substituting the following:

SECTION 1. Section 4(d), Article 21.49, Insurance Code, is amended to read as follows:

(d) On dissolution of the association, all assets of the association, including the unexpended and unobligated balance of the catastrophe reserve trust fund as of the date of the dissolution, revert to this state.

SECTION 2. Section 5, Article 21.49, Insurance Code, is amended by amending Subsections (g), (h), (i), (j), and (l) and adding Subsections (n), (o), and (p) to read as follows:

(g) The board of directors of the Association is responsible and accountable to the commissioner [~~Board~~]. The board of directors is composed of nine members appointed by the commissioner as follows:

(1) two [~~five representatives of different insurers who are~~] members must be residents of first tier coastal counties, one of whom must be a licensed insurance agent [~~of the Association who shall be elected by members as provided in the plan of operation~~];

(2) four members must be representatives of insurers who are members of the Association, who may reside anywhere in this state [~~two representatives of the general public, nominated by the office of public insurance counsel, who, as of the date of the appointment, reside in a catastrophe area and who are policyholders, as of the date of the appointment, of the Association~~]; and

(3) three members must be residents of counties other than first tier coastal counties, at least one of whom must be a licensed insurance agent [~~two local recording agents licensed under this Code with demonstrated experience in the Association, and whose principal offices, as of the date of the appointment, are located in a catastrophe area~~].

(h) Members of the board of directors of the Association serve two-year [~~three-year~~] staggered terms, with the terms of three members expiring on the third Tuesday of March of each year. A member of the board of directors serves at the pleasure of the

commissioner and may be removed by the commissioner before the expiration of the member's term. [A person may hold a seat on the board of directors for not more than three consecutive full terms, not to exceed nine years.]

(i) The persons appointed as provided by Subsection (g) [~~Subsections (g)(2) and (g)(3)~~] of this section must have demonstrated business, insurance, or financial experience to be eligible for appointment [~~be from different counties~~].

(j) The board of directors of the Association shall select one member of the board of directors to serve as presiding officer of the board of directors. The presiding officer serves at the pleasure of the board of directors and is entitled to vote on all matters before the board of directors. The board of directors [~~of the Association~~] shall elect other officers of the board of directors [~~an executive committee consisting of a chairman, vice-chairman, and secretary-treasurer~~] from its membership. [~~At least one of those officers must be a member appointed under Subsection (g)(2) or Subsection (g)(3) of this section.~~]

(l) If an occurrence or series of occurrences within the defined catastrophe area results in insured losses that result in payment of losses under Section 19 of this article [~~tax credits under Section 19(4) of this article in a single calendar year~~], the Association shall immediately notify the commissioner [~~Board~~] of that fact. The commissioner [~~Board~~] on receiving notice shall immediately notify the Governor and appropriate committees of each house of the Legislature of the amount of insured losses eligible for payment under Section 19 [~~tax credits under Section 19(4)~~] of this article.

(n) The board of directors shall report annually to the governor, the lieutenant governor, and the speaker of the house of representatives regarding:

- (1) the solvency of the Association;
- (2) the sufficiency of the Association's reserves;
- (3) the sufficiency of the rates charged for insurance

coverage through the Association, including:

- (A) an analysis of any difference between rates actually being charged and actuarially sufficient rates; and

(B) if there is a difference, the reasons for that difference; and

(4) any outstanding risks to the Association and the members of the Association.

(o) As an exception to Chapter 551, Government Code, and other law, members of the board of directors may meet by telephone conference call, videoconference, or other similar telecommunication method. The board of directors may use telephone conferences or other similar telecommunication methods for purposes of establishing a quorum, for purposes of voting, and for any other meeting purpose in accordance with this subsection and Subsection (p). This subsection applies without regard to the subject matters discussed or considered by the members of the board of directors at the meeting.

(p) A meeting held by use of telephone conference call, videoconference, or other similar telecommunication method:

(1) is subject to the notice requirements applicable to other meetings;

(2) must specify in the notice of the meeting the location of the meeting;

(3) must be audible to the public at the location specified in the notice of the meeting as the location of the meeting; and

(4) must provide two-way audio communication between all members of the board of directors attending the meeting during the entire meeting, and if the two-way audio communication link with members attending the meeting is disrupted at any time so that a quorum of the board of directors is no longer participating in the meeting, the meeting may not continue until the two-way audio communication link is reestablished.

SECTION 3. Article 21.49, Insurance Code, is amended by adding Section 5C to read as follows:

Sec. 5C. GENERAL POWERS AND DUTIES OF BOARD OF DIRECTORS.

(a) The board of directors shall:

(1) recommend rates to the department in the manner provided by Section 8 of this article for insurance coverage provided by the Association; and

(2) determine:

(A) coverage limits;

(B) applicable deductibles; and

(C) any premium surcharges to be assessed for noncompliance with applicable building codes.

(b) In exercising powers and duties under this article, the primary goal of the board of directors shall be to make the Association financially sound.

SECTION 4. Section 8, Article 21.49, Insurance Code, is amended to read as follows:

Sec. 8. RATES, RATING PLANS AND RATE RULES APPLICABLE. (a) The Association shall file with the Commissioner for approval the proposed rates and supplemental rate information to be used in connection with the issuance of policies or endorsements. Rates shall be reasonable, adequate, not unfairly discriminatory, and nonconfiscatory as to any class of insurer. In determining rates, the Association and the Commissioner shall use methods based on sound actuarial principles comparable to the methods used by insurers in the voluntary market [~~every manual of classifications, rules, rates which shall include condition charges, every rating plan, and every modification of any of the foregoing which it proposes to use~~]. Every such filing shall indicate the character and the extent of the coverage contemplated and shall be accompanied by the policies and endorsements forms proposed to be used, which said forms and endorsements may be designed specifically for use by the Association and without regard to other forms filed with, approved by, or promulgated by the department [~~Board~~] for use in this State. The Association may make recommendations to the Commissioner that would result in a reduction of coverages or an increase in an applicable deductible if any resultant reduction in coverages or increase in deductibles is accompanied by proposed rate credits. After notice and a hearing, if a hearing is requested by any person not later than the 10th day after the date of the notice, the Commissioner may accept, modify, or reject a recommendation made by the Association under this subsection. Chapter 40 [~~Article 1.33B~~] of this code does not apply to an action taken under this subsection. If the Commissioner

modifies or rejects a proposed rate recommended under this subsection, the Commissioner shall make specific written findings as to how the proposed rate fails to comply with the standards of this Act.

(b) [~~(e)~~] Any filing made by the Association pursuant hereto shall be submitted to the department [~~Board~~] and as soon as reasonably possible after the filing has been made the commissioner [~~Board~~] shall, in writing, approve, modify, or disapprove the same; provided that any filing shall be determined approved unless modified or disapproved within 30 days after date of filing.

(c) [~~(d)~~] If at any time the commissioner [~~Board~~] finds that a filing so approved no longer meets the requirements of this Act, the commissioner [~~it~~] may, after 10 days' notice and a hearing if a hearing is requested by any person not later than the 10th day after the date of the notice [~~held on not less than 20 days' notice to the Association specifying the matters to be considered at such hearing~~], issue an order withdrawing [~~its~~] approval [~~thereof~~]. Said order shall specify in what respects the commissioner [~~Board~~] finds that such filing no longer meets the requirements of this Act and shall be effective not less than 30 days after its issuance.

(d) [~~(e)~~] ~~All rates shall be made in accordance with the following provisions:~~

~~[(1) Due consideration shall be given to the past and prospective loss experience within and outside the State of hazards for which insurance is made available through the plan of operation, if any, to expenses of operation including acquisition costs, to a reasonable margin for profit and contingencies, and to all other relevant factors, within and outside the State.~~

~~[(2) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in such risks on the basis of any or all of the factors mentioned in the preceding paragraph. Such rates may include rules for classification of risks insured hereunder and rate modifications thereof. All such provisions, however, as respects rates, classifications, standards and premiums shall be without~~

~~prejudice to or prohibition of provision by the Association for consent rates on individual risks if the rate and risk are acceptable to the Association and as is similarly provided for, or as is provided for, in Article 5.26(a), Texas Insurance Code, and this provision or exception on consent rates is irrespective of whether or not any such risk would otherwise be subject to or the subject of a provision of rate classification or eligibility.~~

~~[(3) Rates shall be reasonable, adequate, not unfairly discriminatory, and nonconfiscatory as to any class of insurer.]~~

[(4)] Commissions paid to agents shall be reasonable, adequate, not unfairly discriminatory and nonconfiscatory.

(e) ~~[(f)]~~ For the purpose of this Act the applicant under Section 6(a) hereof shall be considered to have consented to the appropriate rates and classifications authorized by this Act irrespective of any and all other rates or classifications.

(f) ~~[(g)]~~ All premiums written and losses paid under this Act as appropriate shall be included in applicable classifications for general rate making purposes.

(g)(1) ~~[(h)(1)]~~ Each rate established by the commissioner in accordance with this section must be uniform throughout the first tier of coastal counties.

(2) Not later than August 15 of each year, the Association shall file with the department for approval by the commissioner a proposed manual rate for all types and classes of risks written by the Association. ~~[Chapter 40 of this code does not apply to a filing made under this subsection or a department action with respect to the filing.]~~

(3) Before approving or disapproving a filing, or modifying a filing, the commissioner shall provide all interested persons a reasonable opportunity to review the filing, obtain copies of the filing on payment of any legally required copying cost, and submit to the commissioner written comments or information related to the filing.

(4) If requested, the ~~[The]~~ commissioner shall schedule an open meeting not later than the 45th day after the date on which the department receives the filing at which interested persons may present written or oral comments relating to the

filing. An open meeting under this subdivision is subject to Chapter 551, Government Code, but is not a contested case hearing under Chapter 2001, Government Code.

(5) The department shall file with the Texas Register notice that a filing has been made under Subdivision (2) of this subsection not later than the seventh day after the date the filing is received by the department. The notice must include information relating to:

(A) the availability of the filing for public inspection at the department during regular business hours and the procedures for obtaining copies of the filing;

(B) procedures for making written comments related to the filing; and

(C) the time, place, and date of the open meeting scheduled under Subdivision (4) of this subsection at which an interested person may submit either written or oral comments relating to the filing.

(6) After the conclusion of the open meeting, the commissioner shall approve or disapprove or modify the filing in writing on or before November 15 of the year in which the filing is made or the filing is deemed approved. If the commissioner disapproves a filing, the commissioner shall state in writing the reasons for the disapproval and the criteria to be met by the Association to obtain approval. The Association may file with the commissioner, not later than 30 days after the date on which the Association receives the commissioner's written disapproval, an amended filing bringing the filing into conformity with all criteria stated in the commissioner's written disapproval.

(7) Before approving or disapproving an amended filing, the commissioner shall provide all interested persons a reasonable opportunity to review the amended filing, obtain copies of the amended filing on payment of any legally required copying cost, and submit to the commissioner written comments or information related to the amended filing in the manner provided by Subdivision (3) of this subsection~~[, and may hold a hearing not later than the 20th day after the date on which the department receives the amended filing in the manner provided by Subdivision~~

~~(4) of this subsection. Not later than the 10th day after the date on which the hearing on the amended filing is concluded, the commissioner shall approve or disapprove the amended filing].~~  
Within 30 days after the amended filing is received, the commissioner shall approve without changes, approve as modified by the commissioner, or disapprove an amended filing or it is deemed approved. ~~[The requirements imposed under Subdivisions (5) and (6) of this subsection apply to a hearing conducted under this subdivision.]~~

(8) In conjunction with the review of a filing or amended filing, the commissioner may request the Association to provide additional supporting information relating to the filing or amended filing, and any interested person may file a written request with the commissioner for additional supporting information relating to the filing or amended filing. A request under this subdivision must be reasonable and must be directly related to the filing or amended filing. The commissioner shall submit to the Association all requests for additional supporting information made under this subdivision for the commissioner's use and the use of any interested person. Unless a different period is requested by the Association and approved by the commissioner, the Association shall provide the information to the commissioner not later than the fifth day after the date on which the written request for additional supporting information is delivered to the Association. The department shall notify an interested person who has requested additional information of the availability of the information not later than one business day after the date on which the commissioner receives the information from the Association.

(9) A rate established and authorized by the commissioner under this subsection may not reflect an average rate change that is more than 10 percent higher or lower than the rate for commercial or 10 percent higher or lower than the rate for noncommercial windstorm and hail insurance in effect on the date the filing is made. The rate may not reflect a rate change for an individual rating class that is 15 percent higher or lower than the rate for that individual class in effect on the date the filing is made. The commissioner may~~[, after notice and hearing,]~~ suspend



this subdivision upon a finding that a catastrophe loss or series of occurrences resulting in losses in the catastrophe area justify a need to assure rate adequacy in the catastrophe area and also justify a need to assure availability of insurance outside the catastrophe area.

(10) If valid flood or rising water insurance coverage exists and is maintained on any risk being insured in the pool, the commissioner may provide for a rate and reduction in rate of premium as may be appropriate.

~~(11) [The catastrophe element used to develop rates under this Act applicable to risks written by the Association shall be uniform throughout the seacoast territory. The catastrophe element of the rates must be developed using:~~

~~[(A) 90 percent of both the monoline extended coverage loss experience and related premium income for all insurers, other than the Association, for covered property located in the seacoast territory using not less than the most recent 30 years of experience available; and~~

~~[(B) 100 percent of both the loss experience and related premium income for the Association for covered property using not less than the most recent 30 years of experience available.~~

~~(12) The noncatastrophe element of the noncommercial rates must be developed using:~~

~~[(A) 90 percent of both the monoline extended coverage loss experience and related premium income for all insurers, other than the Association, for covered property located in the catastrophe area of the seacoast territory using the most recent 10 years of experience available; and~~

~~[(B) 100 percent of both the loss experience and related premium income for the Association for covered property using the most recent 10 years of experience available.~~

~~(13) The noncatastrophe element of the commercial rates must be developed using 100 percent of both the loss experience and related premium income for the Association for covered property using the most recent 10 years of experience available.~~

~~[(14) Surcharges collected in the past and used in the development of current rates may not be excluded from future rate development as long as those surcharges were collected during the experience period considered by the commissioner.]~~

~~[(15)]~~ Not earlier than March 31 of the year before the year in which a filing is to be made, the department shall value the loss and loss adjustment expense data to be used for the filing.

(12) ~~[(16)]~~ Not later than June 1 of each year, the department shall provide the experience data to be used in establishing the rates under this subsection in that year to the Association and other interested persons. On request from the department, an insurer shall provide the data to the department or the department may obtain the data from a designated statistical agent, as defined by Section 38.201 of this code.

(13) ~~[(17)]~~ The association may purchase ~~[shall either establish a]~~ reinsurance as part of its annual operating expenses to the extent ~~[program]~~ approved by the commissioner and may ~~[Texas Department of Insurance or]~~ make payments into the catastrophe reserve trust fund established under Subsection (h) ~~[(i)]~~ of this section. With the approval of the commissioner ~~[Texas Department of Insurance]~~, the association may use ~~[establish a]~~ reinsurance ~~[program]~~ that operates in addition to or in concert with the catastrophe reserve trust fund established under Subsection (h) ~~[(i)]~~ of this section and with assessments authorized by this Act.

(h)(1) ~~[(i)(1)]~~ The commissioner shall adopt rules under which the association relinquishes its ~~[members relinquish their]~~ net equity on an annual basis as provided by those rules by making payments to a fund known as the catastrophe reserve trust fund to fund the obligations of that fund under Section 19 ~~[19(a)]~~ of this Act and to fund the mitigation and preparedness plan established under this subsection to reduce the potential for payments by members of the association giving rise to tax credits in the event of loss or losses. Until disbursements are made as provided by this Act and rules adopted by the commissioner, all money, including investment income, deposited in the catastrophe reserve trust fund are state funds to be held by the comptroller outside the state

treasury on behalf of, and with legal title in, the department. The fund may be terminated only by law. On termination of the fund, all assets of the fund revert to the state to be used to provide funding for the annual loss mitigation and preparedness plan developed and implemented by the commissioner under Subdivision (5) of this subsection.

(2) The catastrophe reserve trust fund shall be kept and maintained by the department [~~Texas Department of Insurance~~] pursuant to this Act and rules adopted by the commissioner. The comptroller, as custodian, shall administer the funds strictly and solely as provided by this Act and the commissioner's rules.

(3) At the end of either each calendar year or policy year, the association shall pay the net gain from operations of the Association [~~equity of a member~~], including all premium and other revenue of the association in excess of incurred losses and operating expenses, including the cost of any reinsurance, to the catastrophe reserve trust fund as established under this subsection [~~or a reinsurance program approved by the commissioner~~].

(4) The commissioner's rules shall establish the procedure relating to the disbursement of money from the catastrophe reserve trust fund [~~to policyholders in the event of an occurrence or series of occurrences within the defined catastrophe area that results in a disbursement under Section 19(a) of this Act~~]. The rules may provide that money from the catastrophe reserve trust fund may be used to purchase reinsurance to protect the fund or to reimburse the Association for the payment of policyholder claims. Reinsurance purchases, if any, must be included in the reinsurance approved under Subsection (g)(13) of this section.

(5) Each state fiscal year, beginning with fiscal year 2002, the department may use from the investment income of the fund an amount equal to not less than \$1 million and not more than 10 percent of the investment income of the prior fiscal year to provide funding for an annual mitigation and preparedness plan to be developed and implemented each year by the commissioner. From that amount and as part of that plan, the department may use in each fiscal year \$1 million for the windstorm inspection program established under Section 6A of this Act. The mitigation and

preparedness plan shall provide for steps to be taken in the seacoast territory by the commissioner or by a local government, state agency, educational institution, or nonprofit organization designated by the commissioner in the plan, to implement programs intended to improve preparedness for windstorm and hail catastrophes, reduce potential losses in the event of such a catastrophe, provide research into the means to reduce those losses, educate or inform the public in determining the appropriateness of particular upgrades to structures, or protect infrastructure from potential damage from those catastrophes. Money in excess of \$1 million is not available for use under this subsection if the commissioner determines that an expenditure of investment income from the fund would jeopardize the actuarial soundness of the fund or materially impair the ability of the fund to serve the state purposes for which it was established.

SECTION 5. (a) The board of directors of the Texas Windstorm Insurance Association established under Section 5, Article 21.49, Insurance Code, as that section existed prior to amendment by this Act, is abolished effective January 1, 2006.

(b) Not later than December 31, 2005, the commissioner of insurance shall appoint the members of the board of directors of the Texas Windstorm Insurance Association under Section 5, Article 21.49, Insurance Code, as amended by this Act.

(c) The term of a person who is serving as a member of the board of directors of the Texas Windstorm Insurance Association immediately before the abolition of that board under Subsection (a) of this section expires on January 1, 2006. Such a person is eligible for appointment by the commissioner of insurance to the new board of directors of the Texas Windstorm Insurance Association under Section 5, Article 21.49, Insurance Code, as amended by this Act.

SECTION 6. This Act takes effect January 1, 2006.