

By: Smithee, Escobar

H.B. No. 1890

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the operation and funding of the Texas Windstorm
3 Insurance Association, including funding of coverage for certain
4 catastrophic events through the establishment of a revenue bond
5 program.

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

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

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

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

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

20 (1) five representatives of different insurers who are
21 members of the Association [~~who shall be elected by members as~~
22 ~~provided in the plan of operation~~];

23 (2) two representatives of the general public, one of
24 whom is a resident of a first tier coastal county and one of whom is

1 a resident of a county other than a first tier coastal county
2 ~~[nominated by the office of public insurance counsel, who, as of the~~
3 ~~date of the appointment, reside in a catastrophe area and who are~~
4 ~~policyholders, as of the date of the appointment, of the~~
5 ~~Association]; and~~

6 (3) two insurance ~~[local recording]~~ agents licensed
7 under this Code, one with a principal office ~~[demonstrated experience in the~~
8 ~~Association, and whose]~~ principal office ~~[offices]~~, as of the date
9 of the appointment, ~~[are]~~ located in a first tier coastal county and
10 one with a principal office located in a county other than a first
11 tier coastal county ~~[catastrophe area].~~

12 (h) Members of the board of directors of the Association
13 serve three-year staggered terms, with the terms of three members
14 expiring on the third Tuesday of March of each year. A member of the
15 board of directors serves at the pleasure of the commissioner and
16 may be removed by the commissioner before the expiration of the
17 member's term. ~~[A person may hold a seat on the board of directors~~
18 ~~for not more than three consecutive full terms, not to exceed nine~~
19 ~~years.]~~

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

24 (j) The board of directors of the Association shall select
25 one member of the board of directors to serve as presiding officer
26 of the board of directors. The presiding officer serves at the
27 pleasure of the board of directors and is entitled to vote on all

1 matters before the board of directors. The board of directors [~~of~~
2 ~~the Association~~] shall elect other officers of the board of
3 directors [~~an executive committee consisting of a chairman,~~
4 ~~vice-chairman, and secretary-treasurer~~] from its membership. [~~At~~
5 ~~least one of those officers must be a member appointed under~~
6 ~~Subsection (g)(2) or Subsection (g)(3) of this section.~~]

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

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

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

23 coverage through the Association, including:

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

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

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

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

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

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

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

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

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

1 communication link is reestablished.

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

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

5 (a) The board of directors shall:

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

9 (2) determine:

10 (A) coverage limits; and

11 (B) applicable deductibles.

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

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

17 Sec. 8. RATES, RATING PLANS AND RATE RULES APPLICABLE. (a)

18 The Association shall file with the Commissioner for approval the
19 proposed rates and supplemental rate information to be used in
20 connection with the issuance of policies or endorsements. Rates
21 shall be reasonable, adequate, not unfairly discriminatory, and
22 nonconfiscatory as to any class of insurer. In determining rates,
23 the Association and the Commissioner shall use methods based on
24 sound actuarial principles comparable to the methods used by
25 insurers in the voluntary market [~~every manual of classifications,~~
26 ~~rules, rates which shall include condition charges, every rating~~
27 ~~plan, and every modification of any of the foregoing which it~~

1 ~~proposes to use~~]. Every such filing shall indicate the character
2 and the extent of the coverage contemplated and shall be
3 accompanied by the policies and endorsements forms proposed to be
4 used, which said forms and endorsements may be designed
5 specifically for use by the Association and without regard to other
6 forms filed with, approved by, or promulgated by the department
7 ~~[Board]~~ for use in this State. The Association may make
8 recommendations to the Commissioner that would result in a
9 reduction of coverages or an increase in an applicable deductible
10 if any resultant reduction in coverages or increase in deductibles
11 is accompanied by proposed rate credits. After notice and a
12 hearing, if a hearing is requested by any person not later than the
13 10th day after the date of the notice, the Commissioner may accept,
14 modify, or reject a recommendation made by the Association under
15 this subsection. Chapter 40 [Article 1.33B] of this code does not
16 apply to an action taken under this subsection. If the Commissioner
17 modifies or rejects a proposed rate recommended under this
18 subsection, the Commissioner shall make specific written findings
19 as to how the proposed rate fails to comply with the standards of
20 this Act.

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

27 (c) [(d)] If at any time the commissioner ~~[Board]~~ finds that

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

10 (d) [~~(c) All rates shall be made in accordance with the~~
11 ~~following provisions:~~

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

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

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

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

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

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

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

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

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

27 (3) Before approving or disapproving a filing, or

1 modifying a filing, the commissioner shall provide all interested
2 persons a reasonable opportunity to review the filing, obtain
3 copies of the filing on payment of any legally required copying
4 cost, and submit to the commissioner written comments or
5 information related to the filing.

6 (4) If requested, the ~~[The]~~ commissioner shall
7 schedule an open meeting not later than the 45th day after the date
8 on which the department receives the filing at which interested
9 persons may present written or oral comments relating to the
10 filing. An open meeting under this subdivision is subject to
11 Chapter 551, Government Code, but is not a contested case hearing
12 under Chapter 2001, Government Code.

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

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

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

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

27 (6) After the conclusion of the open meeting, the

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

11 (7) Before approving or disapproving an amended
12 filing, the commissioner shall provide all interested persons a
13 reasonable opportunity to review the amended filing, obtain copies
14 of the amended filing on payment of any legally required copying
15 cost, and submit to the commissioner written comments or
16 information related to the amended filing in the manner provided by
17 Subdivision (3) of this subsection~~[, and may hold a hearing not~~
18 ~~later than the 20th day after the date on which the department~~
19 ~~receives the amended filing in the manner provided by Subdivision~~
20 ~~(4) of this subsection. Not later than the 10th day after the date~~
21 ~~on which the hearing on the amended filing is concluded, the~~
22 ~~commissioner shall approve or disapprove the amended filing].~~

23 Within 30 days after the amended filing is received, the
24 commissioner shall approve without changes, approve as modified by
25 the commissioner, or disapprove an amended filing or it is deemed
26 approved. ~~[The requirements imposed under Subdivisions (5) and (6)~~
27 ~~of this subsection apply to a hearing conducted under this~~

1 ~~subdivision.]~~

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

21 (9) A rate established and authorized by the
22 commissioner under this subsection may not reflect an average rate
23 change that is more than 10 percent higher or lower than the rate
24 for commercial or 10 percent higher or lower than the rate for
25 noncommercial windstorm and hail insurance in effect on the date
26 the filing is made. The rate may not reflect a rate change for an
27 individual rating class that is 15 percent higher or lower than the

1 rate for that individual class in effect on the date the filing is
2 made. The commissioner may~~[, after notice and hearing,]~~ suspend
3 this subdivision upon a finding that a catastrophe loss or series of
4 occurrences resulting in losses in the catastrophe area justify a
5 need to assure rate adequacy in the catastrophe area and also
6 justify a need to assure availability of insurance outside the
7 catastrophe area.

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

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

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

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

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

27 ~~[(A) 90 percent of both the monoline extended~~

1 ~~coverage loss experience and related premium income for all~~
2 ~~insurers, other than the Association, for covered property located~~
3 ~~in the catastrophe area of the seacoast territory using the most~~
4 ~~recent 10 years of experience available; and~~

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

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

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

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

20 (12) ~~[(16)]~~ Not later than June 1 of each year, the
21 department shall provide the experience data to be used in
22 establishing the rates under this subsection in that year to the
23 Association and other interested persons. On request from the
24 department, an insurer shall provide the data to the department or
25 the department may obtain the data from a designated statistical
26 agent, as defined by Section 38.201 of this code.

27 (13) ~~[(17)]~~ The association may purchase ~~[shall~~

1 ~~either establish a~~ reinsurance as part of its annual operating
2 expenses to the extent [~~program~~] approved by the commissioner and
3 may [~~Texas Department of Insurance or~~] make payments into the
4 catastrophe reserve trust fund established under Subsection (h)
5 [~~(i)~~] of this section. With the approval of the commissioner [~~Texas~~
6 ~~Department of Insurance~~], the association may use [~~establish a~~]
7 reinsurance [~~program~~] that operates in addition to or in concert
8 with the catastrophe reserve trust fund established under
9 Subsection (h) [~~(i)~~] of this section and with assessments
10 authorized by this Act.

11 (h)(1) [~~(i)(1)~~] The commissioner shall adopt rules under
12 which the association relinquishes its [~~members relinquish their~~]
13 net equity on an annual basis as provided by those rules by making
14 payments to a fund known as the catastrophe reserve trust fund to
15 fund the obligations of that fund under Section 19 [~~19(a)~~] of this
16 Act and to fund the mitigation and preparedness plan established
17 under this subsection to reduce the potential for payments by
18 members of the association giving rise to tax credits in the event
19 of loss or losses. Until disbursements are made as provided by this
20 Act and rules adopted by the commissioner, all money, including
21 investment income, deposited in the catastrophe reserve trust fund
22 are state funds to be held by the comptroller outside the state
23 treasury on behalf of, and with legal title in, the department. The
24 fund may be terminated only by law. On termination of the fund, all
25 assets of the fund revert to the state to be used to provide funding
26 for the annual loss mitigation and preparedness plan developed and
27 implemented by the commissioner under Subdivision (5) of this

1 subsection.

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

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

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

24 (5) Each state fiscal year, beginning with fiscal year
25 2002, the department may use from the investment income of the fund
26 an amount equal to not less than \$1 million and not more than 10
27 percent of the investment income of the prior fiscal year to provide

1 funding for an annual mitigation and preparedness plan to be
2 developed and implemented each year by the commissioner. From that
3 amount and as part of that plan, the department may use in each
4 fiscal year \$1 million for the windstorm inspection program
5 established under Section 6A of this Act. The mitigation and
6 preparedness plan shall provide for steps to be taken in the
7 seacoast territory by the commissioner or by a local government,
8 state agency, educational institution, or nonprofit organization
9 designated by the commissioner in the plan, to implement programs
10 intended to improve preparedness for windstorm and hail
11 catastrophes, reduce potential losses in the event of such a
12 catastrophe, provide research into the means to reduce those
13 losses, educate or inform the public in determining the
14 appropriateness of particular upgrades to structures, or protect
15 infrastructure from potential damage from those catastrophes.
16 Money in excess of \$1 million is not available for use under this
17 subsection if the commissioner determines that an expenditure of
18 investment income from the fund would jeopardize the actuarial
19 soundness of the fund or materially impair the ability of the fund
20 to serve the state purposes for which it was established.

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

23 Sec. 19. PAYMENT OF LOSSES; PREMIUM TAX CREDIT. (a) If, in
24 any calendar year, an occurrence or series of occurrences within
25 the defined catastrophe area results in insured losses and
26 operating expenses of the association in excess of premium and
27 other revenue of the association, any excess losses shall be paid as

1 provided by this section.

2 (b) After application of available revenue to losses,
3 [follows:

4 [~~(1)~~] \$100 million, per catastrophic event, shall be
5 assessed to the members of the association with the proportion of
6 the loss allocable to each insurer determined in the same manner as
7 its participation in the association has been determined for the
8 year under Section 5(b) [~~5(c)~~] of this Act. A member of the
9 association may not directly or indirectly recover the amount of
10 any assessment made under this subsection from additional premium
11 charges on any insurance policy written on property that is not
12 located within the first tier coastal counties.

13 (c) Any losses that exceed the amounts available under
14 Subsection (b) of this section, but not to exceed an additional \$300
15 million, per catastrophic event, shall be funded through public
16 securities issued, without regard to whether an occurrence or
17 series of occurrences within a defined catastrophe area has
18 occurred, under the revenue bond program established under Section
19 20 of this Act. [~~+~~]

20 (d) Any [~~(2)~~ any] losses in excess of the amounts
21 authorized under Subsections (b) and (c) of this section [~~\$100~~
22 ~~million]~~ shall be paid from the catastrophe reserve trust fund
23 established under Section 8(h) [~~8(i)~~] of this Act, not to exceed an
24 amount equal to 50 percent of the balance of that fund.

25 (e) If the amount available under Subsection (d) of this
26 section is insufficient to pay the excess losses, an additional
27 amount not to exceed \$500 million shall be funded through the

1 issuance of additional public securities under the revenue bond
2 program established under Section 20 of this Act.

3 (f) If the amount available under Subsection (e) of this
4 section is insufficient to pay the excess losses, reinsurance
5 proceeds recoverable by the association and available under ~~[and]~~
6 any reinsurance program established by the association shall be
7 used to pay the losses.

8 (g) Any ~~[+~~

9 ~~[(3) for losses in excess of those paid under~~
10 ~~Subdivisions (1) and (2) of this subsection, an additional \$200~~
11 ~~million shall be assessed to the members of the association with the~~
12 ~~proportion of the loss allocable to each insurer determined in the~~
13 ~~same manner as its participation in the association has been~~
14 ~~determined for the year under Section 5(c) of this Act,~~

15 ~~[(4) any]~~ losses in excess of those paid under
16 Subsections (b)-(f) ~~[Subdivisions (1), (2), and (3)]~~ of this
17 section ~~[subsection]~~ shall be assessed against members of the
18 association, with the proportion of the total 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 (h) ~~[(b)]~~ An insurer may credit any amount paid in
23 accordance with Subsection (g) ~~[(a)(4)]~~ of this section in a
24 calendar year against its premium tax under Section 221.002
25 ~~[Article 4.10]~~ of this code. The tax credit herein authorized shall
26 be allowed at a rate not to exceed 20 percent per year for five or
27 more successive years following the year of payment of the claims.

1 The balance of payments paid by the insurer and not claimed as such
2 tax credit may be reflected in the books and records of the insurer
3 as an admitted asset of the insurer for all purposes, including
4 exhibition in annual statements pursuant to Section 862.001
5 ~~[Article 6.12]~~ of this code.

6 (i) The commissioner may adopt rules as necessary to
7 implement this section.

8 SECTION 6. Article 21.49, Insurance Code, is amended by
9 adding Section 20 to read as follows:

10 Sec. 20. REVENUE BOND PROGRAM FOR OPERATIONS AND PAYMENT OF
11 CLAIMS. (a) In this section:

12 (1) "Board" means the board of directors of the Texas
13 Public Finance Authority.

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

16 (3) "Public security resolution" means the resolution
17 or order authorizing public securities to be issued under this
18 section.

19 (b) The legislature finds that the issuance of public
20 securities to provide a method to raise funds to provide windstorm,
21 hail, and fire insurance through the Texas Windstorm Insurance
22 Association in certain designated portions of the state is for the
23 benefit of the public and in furtherance of a public purpose.

24 (c) At the request of the association and with the approval
25 of the commissioner, the Texas Public Finance Authority shall
26 issue, on behalf of the association, public securities in a total
27 amount not to exceed \$800 million in accordance with Subsections

1 (d) and (e) of this section.

2 (d) Without regard to whether an occurrence or series of
3 occurrences within the defined catastrophe area has occurred, the
4 board shall issue public securities equal to the amount specified
5 under Section 19(c) of this Act.

6 (e) After an occurrence or series of occurrences within the
7 defined catastrophe area has occurred, the board shall issue public
8 securities in an amount not to exceed the amount specified under
9 Section 19(e) of this Act as necessary to fund the payment of excess
10 losses under that subsection.

11 (f) Public securities issued under this section shall be
12 used to:

13 (1) fund the association, including funding necessary
14 to:

15 (A) establish and maintain reserves to pay
16 claims;

17 (B) pay incurred and future claims; and

18 (C) pay operating expenses;

19 (2) pay costs related to the issuance of the public
20 securities; and

21 (3) pay other costs related to the public securities
22 as may be determined by the board.

23 (g) To the extent consistent with this section, Chapter
24 1232, Government Code, applies to public securities issued under
25 this section. In the event of a conflict, this section controls.
26 The following laws also apply to public securities issued under
27 this section to the extent consistent with this section:

1 (1) Chapters 1201, 1202, 1204, 1205, 1231, and 1371,
2 Government Code; and

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

4 (h) Public securities issued under this section:

5 (1) may be issued at public or private sale; and

6 (2) must:

7 (A) be issued in the name of the association; and

8 (B) mature not more than 10 years after the date
9 issued.

10 (i) In a public security resolution, the board may:

11 (1) make additional covenants with respect to the
12 public securities and the designated income and receipts of the
13 association pledged to the payment of the public securities; and

14 (2) provide for the flow of funds and the
15 establishment, maintenance, and investment of funds and accounts
16 with respect to the public securities.

17 (j) Funds generated through the issuance of public
18 securities shall be held outside the state treasury in the custody
19 of the comptroller. The association may request disbursement of
20 the funds for the purposes set forth in Subsection (f) of this
21 section.

22 (k) A public security resolution may establish special
23 accounts, including an interest and sinking fund account, reserve
24 account, and other accounts. The association shall administer the
25 accounts in accordance with this section.

26 (l) Public securities are payable only from the premium
27 surcharges established under Subsection (m) or (n) of this section,

1 as applicable, or from other amounts that the association is
2 authorized to levy, charge, and collect. Public securities are
3 obligations solely of the association and do not create a pledging,
4 giving, or lending of the faith, credit, or taxing authority of this
5 state. Each public security must include a statement that this
6 state is not obligated to pay any amount on the public security and
7 that the faith, credit, and taxing authority of this state are not
8 pledged, given, or lent to those payments. Each public security
9 issued under this section must state on its face that the public
10 security is payable solely from the revenues pledged for that
11 purpose and that the public security does not and may not constitute
12 a legal or moral obligation of the state.

13 (m) The public securities and all debt service on the public
14 securities issued in accordance with Subsection (d) shall be paid
15 by premium surcharges in an amount approved by the commissioner and
16 applied to insurance policies written through the association in
17 the first tier coastal counties.

18 (n) The public securities and all debt service on the public
19 securities issued in accordance with Subsection (e) shall be paid
20 by premium surcharges in amounts approved by the commissioner and
21 applied to each property and casualty insurance policy written by
22 an insurer in this state or by the FAIR Plan Association. The
23 premium surcharges applicable under this subsection to insurance
24 policies written on property located in first tier coastal
25 counties, including policies issued through the association must be
26 equal to two times the premium surcharges applicable to insurance
27 policies written on property located in counties that are not first

1 tier coastal counties. A premium surcharge under this subsection
2 may not be applied to a workers' compensation insurance policy, an
3 accident and health insurance policy, or a medical malpractice
4 insurance policy.

5 (o) As a condition of engaging in the business of insurance
6 in this state, an insurer that engages in the business of property
7 insurance in this state agrees that if the insurer leaves the
8 insurance market in this state the insurer remains obligated to
9 pay, until the public securities are retired, the insurer's share
10 of the premium surcharges assessed under Subsection (m) or (n) of
11 this section, as applicable, in an amount proportionate to that
12 insurer's share of the insurance market in this state, as of the
13 last complete reporting period before the date on which the insurer
14 ceases to engage in that insurance business in this state. The
15 proportion assessed against the insurer shall be based on the
16 insurer's gross written premiums for insurance for the insurer's
17 last reporting period.

18 (p) The association shall deposit all premium surcharges
19 collected under Subsection (m) or (n) of this section, as
20 applicable, in a fund to be held outside the state treasury in the
21 custody of the comptroller. Money deposited in the fund may be
22 invested as permitted by general law. Money in the fund required to
23 be used to pay bond obligations and bond administrative expenses
24 shall be transferred to the Texas Public Finance Authority or used
25 by the comptroller in the manner and at the time specified in the
26 resolution adopted in connection with the bond issue to ensure
27 timely payment of obligations and expenses, or as otherwise

1 provided by the bond documents. For bonds issued by the Texas
2 Public Finance Authority for the association, the association shall
3 provide for the payment of the bond obligations and the bond
4 administrative expenses by irrevocably pledging revenues received
5 from the premium surcharges and amounts on deposit in the fund,
6 together with any bond reserve fund, as provided in the proceedings
7 authorizing the bonds and related credit agreements.

8 (q) Revenue collected from the premium surcharges assessed
9 under Subsection (m) or (n) of this section, as applicable, in any
10 year that exceeds the amount of the bond obligations and bond
11 administrative expenses payable in that year and interest earned on
12 the premium surcharges may, in the discretion of the association
13 and with the approval of the commissioner, be used to:

14 (1) pay bond obligations payable in the subsequent
15 year, offsetting the amount that would otherwise have to be levied
16 for the year under this section; or

17 (2) redeem or purchase outstanding bonds.

18 (r) The public securities issued under this section, any
19 interest from those public securities, and all assets pledged to
20 secure the payment of the public securities are free from taxation
21 by this state or a political subdivision of this state.

22 (s) The public securities issued under this section
23 constitute authorized investments under Articles 2.10 and 3.33 and
24 Subpart A, Part I, Article 3.39, of this code.

25 (t) The state pledges to and agrees with the owners of any
26 public securities issued in accordance with this section that the
27 state will not limit or alter the rights vested in the association

1 to fulfill the terms of any agreements made with the owners of the
2 public securities or in any way impair the rights and remedies of
3 those owners until the public securities, bond premium, if any, or
4 interest, and all costs and expenses in connection with any action
5 or proceeding by or on behalf of those owners, are fully met and
6 discharged. The association may include this pledge and agreement
7 of the state in any agreement with the owners of the public
8 securities.

9 (u) A party at interest may use mandamus and all other legal
10 and equitable remedies to require the association and any other
11 party to carry out agreements and to perform functions and duties
12 established under this section, the Texas Constitution, or a public
13 security resolution.

14 (v) This section expires September 1, 2011.

15 SECTION 7. (a) The board of directors of the Texas
16 Windstorm Insurance Association established under Section 5,
17 Article 21.49, Insurance Code, as that section existed prior to
18 amendment by this Act, is abolished effective January 1, 2006.

19 (b) Not later than December 31, 2005, the commissioner of
20 insurance shall appoint the members of the board of directors of the
21 Texas Windstorm Insurance Association under Section 5, Article
22 21.49, Insurance Code, as amended by this Act.

23 (c) The term of a person who is serving as a member of the
24 board of directors of the Texas Windstorm Insurance Association
25 immediately before the abolition of that board under Subsection (a)
26 of this section expires on January 1, 2006. Such a person is
27 eligible for appointment by the commissioner of insurance to the

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1 new board of directors of the Texas Windstorm Insurance Association
2 under Section 5, Article 21.49, Insurance Code, as amended by this
3 Act.

4 SECTION 8. This Act takes effect January 1, 2006.