

By: Smithee, Escobar

H.B. No. 1890

Substitute the following for H.B. No. 1890:

By: Smithee

C.S.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 Subsection (n) to read as follows:

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

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

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

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

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

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

26 (j) The governor shall designate one member of the board of
27 directors of the Association to serve as presiding officer of the

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

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

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

- 22 (1) the solvency of the association;
23 (2) the sufficiency of the association's reserves;
24 (3) the sufficiency of the rates charged for insurance
25 coverage through the association, including an analysis of any
26 difference between rates actually being charged and actuarially
27 sufficient rates; and

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

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

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

6 (a) The board of directors shall:

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

10 (2) determine:

11 (A) coverage limits;

12 (B) applicable deductibles; and

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

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

18 SECTION 4. Section 8(h)(2), Article 21.49, Insurance Code,
19 is amended to read as follows:

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

26 SECTION 5. Section 8(i)(1), Article 21.49, Insurance Code,
27 is amended to read as follows:

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

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

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

26 (b) After application of available revenue to losses,
27 [~~follows: (1)~~] \$100 million shall be assessed to the members of the

1 association with the proportion of the loss allocable to each
2 insurer determined in the same manner as its participation in the
3 association has been determined for the year under Section 5(b)
4 ~~[5(c)]~~ of this Act.

5 (c) Any ~~[(2) any]~~ losses in excess of \$100 million shall be
6 paid from the catastrophe reserve trust fund established under
7 Section 8(i) of this Act, not to exceed an amount equal to 50
8 percent of the balance of that fund.

9 (d) If the amount available under Subsection (c) of this
10 section is insufficient to pay the excess losses, an additional
11 amount not to exceed \$500 million shall be funded through the
12 issuance of public securities under the revenue bond program
13 established under Section 20 of this Act.

14 (e) If the amount available under Subsection (d) of this
15 section is insufficient to pay the excess losses, reinsurance
16 proceeds recoverable by the association and available under ~~[and]~~
17 any reinsurance program established by the association shall be
18 used to pay the losses.

19 (f) For ~~[(3) for]~~ losses in excess of those paid under
20 Subsections (b)-(e) ~~[Subdivisions (1) and (2)]~~ of this section
21 ~~[subsection]~~, an additional \$500 ~~[\$200]~~ million shall be funded
22 through the issuance of public securities under the revenue bond
23 program established under Section 20 of this Act.

24 (g) Any ~~[assessed to the members of the association with the~~
25 ~~proportion of the loss allocable to each insurer determined in the~~
26 ~~same manner as its participation in the association has been~~
27 ~~determined for the year under Section 5(c) of this Act, (4) any]~~

1 losses in excess of those paid under Subsections (b)-(f)
2 [~~Subdivisions (1), (2), and (3)~~] of this section [~~subsection~~] shall
3 be assessed against members of the association, with the proportion
4 of the total loss allocable to each insurer determined in the same
5 manner as its participation in the association has been determined
6 for the year under Section 5(c) of this Act.

7 (h) [~~(b)~~] An insurer may credit any amount paid in
8 accordance with Subsection (g) [~~(a)(4)~~] of this section in a
9 calendar year against its premium tax under Section 221.002
10 [~~Article 4.10~~] of this code. The tax credit herein authorized shall
11 be allowed at a rate not to exceed 20 percent per year for five or
12 more successive years following the year of payment of the claims.
13 The balance of payments paid by the insurer and not claimed as such
14 tax credit may be reflected in the books and records of the insurer
15 as an admitted asset of the insurer for all purposes, including
16 exhibition in annual statements pursuant to Section 862.001
17 [~~Article 6.12~~] of this code.

18 (i) The commissioner may adopt rules as necessary to
19 implement this section.

20 SECTION 7. Article 21.49, Insurance Code, is amended by
21 adding Section 20 to read as follows:

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

24 (1) "Board" means the board of directors of the Texas
25 Public Finance Authority.

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

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

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

9 (c) At the request of the association and with the approval
10 of the commissioner, the Texas Public Finance Authority shall
11 issue, on behalf of the association, public securities, in a total
12 amount not to exceed \$2 billion, to:

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

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

17 (B) pay incurred claims and operating expenses;

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

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

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

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

5 (2) must:

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

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

9 (f) In a public security resolution, the board may:

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

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

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

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

25 (i) Public securities are payable only from the premium
26 surcharges established under Subsection (j) of this section or from
27 other amounts that the association is authorized to levy, charge,

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

12 (j) The public securities and all debt service on the public
13 securities shall be paid by premium surcharges applied to each
14 property and casualty insurance policy written by an insurer in
15 this state or by the FAIR Plan Association, other than a workers'
16 compensation insurance policy, an accident and health insurance
17 policy, or a medical malpractice insurance policy, as follows:

18 (1) 20 percent of the necessary amount shall be
19 charged on insurance policies written on property located in first
20 tier coastal counties, including policies issued through the
21 association and otherwise; and

22 (2) 80 percent of the necessary amount shall be
23 charged on policies written on property located in counties that
24 are not first tier coastal counties.

25 (k) As a condition of engaging in the business of insurance
26 in this state, an insurer that engages in the business of property
27 insurance in this state agrees that if the insurer leaves the

1 insurance market in this state the insurer remains obligated to
2 pay, until the public securities are retired, the insurer's share
3 of the premium surcharges assessed under Subsection (j) of this
4 section in an amount proportionate to that insurer's share of the
5 insurance market in this state, as of the last complete reporting
6 period before the date on which the insurer ceases to engage in that
7 insurance business in this state. The proportion assessed against
8 the insurer shall be based on the insurer's gross written premiums
9 for insurance for the insurer's last reporting period.

10 (1) The association shall deposit all premium surcharges
11 collected under Subsection (j) of this section in a fund to be held
12 outside the state treasury in the custody of the comptroller. Money
13 deposited in the fund may be invested as permitted by general law.
14 Money in the fund required to be used to pay bond obligations and
15 bond administrative expenses shall be transferred to the Texas
16 Public Finance Authority or used by the comptroller in the manner
17 and at the time specified in the resolution adopted in connection
18 with the bond issue to ensure timely payment of obligations and
19 expenses, or as otherwise provided by the bond documents. For bonds
20 issued by the Texas Public Finance Authority for the association,
21 the association shall provide for the payment of the bond
22 obligations and the bond administrative expenses by irrevocably
23 pledging revenues received from the premium surcharges and amounts
24 on deposit in the fund, together with any bond reserve fund, as
25 provided in the proceedings authorizing the bonds and related
26 credit agreements.

27 (m) Revenue collected from the premium surcharges assessed

1 under Subsection (j) of this section in any year that exceeds the
2 amount of the bond obligations and bond administrative expenses
3 payable in that year and interest earned on the premium surcharges
4 may, in the discretion of the association and with the approval of
5 the commissioner, be used to:

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

9 (2) redeem or purchase outstanding bonds.

10 (n) The public securities issued under this section, any
11 interest from those public securities, and all assets pledged to
12 secure the payment of the public securities are free from taxation
13 by this state or a political subdivision of this state.

14 (o) The public securities issued under this section
15 constitute authorized investments under Articles 2.10 and 3.33 and
16 Subpart A, Part I, Article 3.39 of this code.

17 (p) The state pledges to and agrees with the owners of any
18 public securities issued in accordance with this section that the
19 state will not limit or alter the rights vested in the association
20 to fulfill the terms of any agreements made with the owners of the
21 public securities or in any way impair the rights and remedies of
22 those owners until the public securities, bond premium, if any, or
23 interest, and all costs and expenses in connection with any action
24 or proceeding by or on behalf of those owners, are fully met and
25 discharged. The association may include this pledge and agreement
26 of the state in any agreement with the owners of the public
27 securities.

1 (g) A party at interest may use mandamus and all other legal
2 and equitable remedies to require the association and any other
3 party to carry out agreements and to perform functions and duties
4 established under this section, the Texas Constitution, or a public
5 security resolution.

6 SECTION 8. Section 941.003(b), Insurance Code, is amended
7 to read as follows:

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

- 9 (1) Section 5, Article 1.10;
10 (2) Article 1.15A;
11 (3) Subchapters A, [~~Q~~] T, and U, Chapter 5;
12 (4) Chapters 251, 252, and 541;
13 (5) Articles 5.35, 5.38, 5.39, 5.40, 21.49, [~~and 5.49,~~
14 [~~(5) Articles 21.21]~~ and 21.49-8;
15 (6) Sections 822.203, 822.205, 822.210, and 822.212;

16 and

- 17 (7) Article 5.13-2, as provided by that article.

18 SECTION 9. Section 942.003(b), Insurance Code, is amended
19 to read as follows:

20 (b) An exchange is subject to:

- 21 (1) Section 5, Article 1.10;
22 (2) Articles 1.15, 1.15A, and 1.16;
23 (3) Subchapters A, [~~Q~~] T, and U, Chapter 5;
24 (4) Articles 5.35, 5.37, 5.38, 5.39, and 5.40;
25 (5) Articles 21.49 [~~21.21]~~ and 21.49-8;
26 (6) Chapter 541;
27 (7) Sections 822.203, 822.205, 822.210, 822.212,

1 861.254(a)-(f), 861.255, 862.001(b), and 862.003; and

2 (8) [~~(7)~~] Article 5.13-2, as provided by that article.

3 SECTION 10. (a) The board of directors of the Texas
4 Windstorm Insurance Association established under Section 5,
5 Article 21.49, Insurance Code, as that section existed prior to
6 amendment by this Act, is abolished effective January 1, 2006.

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

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

18 SECTION 11. (a) Except as provided by Subsection (b) of
19 this section, this Act takes effect September 1, 2005.

20 (b) Section 20, Article 21.49, Insurance Code, as added by
21 this Act, takes effect immediately if this Act receives a vote of
22 two-thirds of all the members elected to each house, as provided by
23 Section 39, Article III, Texas Constitution. If this Act does not
24 receive the vote necessary for immediate effect, Section 20,
25 Article 21.49, Insurance Code, as added by this Act, takes effect
26 September 1, 2005.