

By: Smithee

H.B. No. 1890

A BILL TO BE ENTITLED

AN ACT

relating to the operation and funding of the Texas Windstorm Insurance Association, including funding of coverage for certain catastrophic events and for reinsurance through the establishment of revenue bond programs.

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

SECTION 1. Section 5, Article 21.49, Insurance Code, is amended by amending Subsections (g), (h), (j), and (l) to read as follows:

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

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

~~[(2) 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) 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 six-year ~~[three-year]~~ staggered terms, with the terms of three members expiring on the third Tuesday of March of each year. ~~[A person may hold a seat on the board of directors for not more than three consecutive full terms, not to exceed nine years.]~~

(j) The governor shall designate one member of the board of directors of the Association to serve as presiding officer of the board of directors. The presiding officer serves at the pleasure of the governor 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 assessments, payments from the catastrophe reserve trust fund established under Section 8(i) of this article, claims under a reinsurance contract under this article, or issuance of revenue bonds under Section 20 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 payments

1 using assessment funds, reinsurance proceeds, or bond proceeds [~~tax~~
2 ~~credits under Section 19(4) of this article~~].

3 SECTION 2. Section 8(i)(1), Article 21.49, Insurance Code,
4 is amended to read as follows:

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

22 SECTION 3. Section 19, Article 21.49, Insurance Code, is
23 amended to read as follows:

24 Sec. 19. PAYMENT OF LOSSES; PREMIUM TAX CREDIT. (a) If[~~7~~
25 ~~in any calendar year~~], an occurrence or series of occurrences, as
26 defined by the plan of operation, within the defined catastrophe
27 area results in insured losses and operating expenses of the

1 association in excess of premium and other revenue of the
2 association, any excess losses shall be paid as provided by this
3 section.

4 (b) An amount not to exceed ~~[follows:]~~

5 [(1)] \$100 million for each occurrence shall be
6 assessed to the members of the association with the proportion of
7 the loss allocable to each insurer determined in the same manner as
8 its participation in the association has been determined for the
9 year under Section 5(b) ~~[5(c)]~~ of this Act. Except as otherwise
10 provided by this subsection, for each occurrence, any losses in
11 excess of \$100 million shall be paid from the catastrophe reserve
12 trust fund established under Section 8(i) of this Act. Unless the
13 commissioner determines a greater percentage should be applied, not
14 more than 50 percent of the amount in the catastrophe reserve trust
15 fund as of the date of the occurrence, reduced by anticipated
16 payments from prior occurrences, may be used for the purposes
17 described by this subsection.

18 (c) Any ~~[(2) any]~~ losses in excess of the amounts
19 determined under Subsection (b) of this section ~~[\$100 million]~~
20 shall be paid in accordance with a plan developed by the association
21 and approved by the commissioner from one or more of the following
22 sources until those sources are exhausted:

23 (1) additional assessments to the members of the
24 association that:

25 (A) do not exceed \$300 million per calendar year;
26 and

27 (B) are based on the proportion that the member's

1 gross written premiums for property insurance, as reported in the
2 member's annual statement filed with the department for the
3 calendar year preceding the year in which the assessment is made
4 bears to the total reported gross written premiums for property
5 insurance in this state;

6 (2) any reinsurance proceeds recoverable by the
7 association; or

8 (3) any revenue bond proceeds received by the
9 association in accordance with Section 20 of this Act.

10 (d) Any losses of the association that are not paid by the
11 assessments and catastrophe reserve trust fund as provided by
12 Subsection (b) of this section or that are not paid under the plan
13 approved by the commissioner in accordance with Subsection (c) of
14 this section shall be assessed to all property and casualty
15 insurers authorized to write property and casualty insurance in
16 this state, including the FAIR Plan Association. The amount of the
17 assessment under this subsection shall be based on the
18 proportionate amount of the insurer's or FAIR Plan Association's
19 share of the property and casualty insurance market in this state.
20 The proportion assessed against the insurer or FAIR Plan
21 Association shall be based on the amount of the insurer's or FAIR
22 Plan Association's gross written premiums for all property and
23 casualty lines, as reported in the insurer's or FAIR Plan
24 Association's annual statement filed with the department for the
25 calendar year preceding the year in which the assessment is made
26 ~~[from the catastrophe reserve trust fund established under Section~~
27 ~~8(i) of this Act and any reinsurance program established by the~~

association;

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

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

(e) [(b)] An insurer, including the FAIR Plan Association, that has been assessed and has paid the assessment under Subsection (c) or (d) of this section may charge a premium surcharge for reimbursement of the assessment. The premium surcharge applies to each property and casualty insurance policy that is issued by the insurer or the FAIR Plan Association in this state, the effective date of which is within the five-year period beginning on the 90th day after the date of the assessment. The amount of the surcharge shall be computed on the basis of a uniform percentage of the premium on those policies, not to exceed 20 percent per year, of the amount of the assessment, such that over the five-year period the aggregate of all surcharges by the insurer or the FAIR Plan Association equals but does not exceed the amount of the assessment. The amount of any assessment paid and recoverable

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

12 (f) An assessment made under Subsection (b) of this section
13 is not reimbursable under Subsection (e) of this section. The
14 assessments under Subsection (c) and (d) of this section are
15 reimbursable in accordance with Subsection (e) of this section.

16 (g) When losses are paid by procedures described under
17 Subsection (c) or (d) of this section, the association shall submit
18 to the department for approval by the commissioner a plan for
19 collection of a premium surcharge from policyholders of the
20 association. The association shall establish the premium surcharge
21 in an amount that is twice the amount of the average per policy
22 surcharge percentage established under Subsection (e) of this
23 section on any policy issued or renewed by the association. The
24 period for collection of the premium surcharge under this
25 subsection may not exceed five years. Each surcharge collected
26 under this subsection shall be deposited in the catastrophe reserve
27 trust fund.

1 (h) In addition to the funding described by Subsections
2 (a)-(g) of this section, the association may also borrow from, or
3 enter into other financing arrangements with, any market sources at
4 prevailing interest rates.

5 (i) For purposes of Subsections (d) and (e) of this section,
6 "property and casualty insurance" does not include workers'
7 compensation insurance, accident and health insurance, or medical
8 malpractice insurance.

9 (j) The commissioner may adopt rules as necessary to
10 implement this section.

11 SECTION 4. Article 21.49, Insurance Code, is amended by
12 adding Sections 20-23 to read as follows:

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

15 (1) "Board" means the board of directors of the Texas
16 Public Finance Authority.

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

19 (3) "Insurer" means each property and casualty insurer
20 authorized to engage in the business of property and casualty
21 insurance in this state. The term includes a county mutual
22 insurance company, a Lloyd's plan, and a reciprocal or
23 interinsurance exchange.

24 (4) "Property and casualty insurance" does not include
25 workers' compensation insurance, accident and health insurance, or
26 medical malpractice insurance.

27 (5) "Public security resolution" means the resolution

1 or order authorizing public securities to be issued under this
2 section.

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

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

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

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

16 (B) pay incurred claims and operating expenses;

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

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

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

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

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

2 (e) Public securities issued under this section:

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

4 (2) must:

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

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

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

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

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

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

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

24 (i) Public securities are payable only from the service fee
25 established under Subsection (j) of this section or from other
26 amounts that the association is authorized to levy, charge, and
27 collect. Public securities are obligations solely of the

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

11 (j) A service fee may be assessed against insurers, the
12 association, and the FAIR Plan Association. The commissioner shall
13 set the service fee annually in an amount sufficient to pay all debt
14 service on the public securities. Each insurer, the association,
15 and the FAIR Plan Association shall pay the service fee as required
16 by the commissioner by rule. The amount of the insurer's service
17 fee shall be based on the amount of the insurer's gross written
18 premiums for all property and casualty insurance lines, as reported
19 in the annual statement filed with the department for the calendar
20 year preceding the year in which the assessment is made. The
21 association shall collect the service fee and report collection of
22 the service fee to the department. The department may audit payment
23 and collection of the service fee.

24 (k) As a condition of engaging in the business of insurance
25 in this state, an insurer agrees that if the insurer leaves the
26 property and casualty insurance market in this state the insurer
27 remains obligated to pay, until the public securities are retired,

1 the insurer's share of the service fee assessed under Subsection
 2 (j) of this section in an amount proportionate to that insurer's
 3 share of the property and casualty insurance market in this state,
 4 as of the last complete reporting period before the date on which
 5 the insurer ceases to engage in that insurance business in this
 6 state. The proportion assessed against the insurer shall be based
 7 on the insurer's gross written premiums for property and casualty
 8 insurance for the insurer's last reporting period.

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

26 (m) Revenue collected from the service fee in any year that
 27 exceeds the amount of the bond obligations and bond administrative

1 expenses payable in that year and interest earned on the service fee
2 may, in the discretion of the association and with the approval of
3 the commissioner, be used to:

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

7 (2) redeem or purchase outstanding bonds.

8 (n) The insurers in this state, including the FAIR Plan
9 Association, that have paid a service fee under this section may
10 charge a premium surcharge on each property and casualty insurance
11 policy issued by that insurer, the effective date of which is within
12 the one-year period beginning on the 90th day after the date the
13 service fee is paid. The amount of the premium surcharge shall be
14 computed on the basis of a uniform percentage of the premium on
15 those policies, such that the aggregate of all those surcharges by
16 the insurer is equal to and does not exceed the amount of the
17 service fee paid by the insurer. The association shall submit to
18 the department for approval by the commissioner a plan for
19 collection of a premium surcharge from policyholders of the
20 association.

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

25 (p) The public securities issued under this section
26 constitute authorized investments under Articles 2.10 and 3.33 and
27 Subpart A, Part I, Article 3.39 of this code.

1 (g) The state pledges to and agrees with the owners of any
2 public securities issued in accordance with this section that the
3 state will not limit or alter the rights vested in the association
4 to fulfill the terms of any agreements made with the owners of the
5 public securities or in any way impair the rights and remedies of
6 those owners until the public securities, bond premium, if any, or
7 interest, and all costs and expenses in connection with any action
8 or proceeding by or on behalf of those owners, are fully met and
9 discharged. The association may include this pledge and agreement
10 of the state in any agreement with the owners of the public
11 securities.

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

17 Sec. 21. WINDSTORM REINSURANCE FACILITY. (a) In this
18 section:

19 (1) "Reinsurance facility" means the windstorm
20 reinsurance facility.

21 (2) "Residential property insurance" means insurance
22 coverage against loss to residential real property at a fixed
23 location, or tangible personal property, that is provided in a
24 homeowners policy, including a tenants policy, a condominium owners
25 policy, or a residential fire and allied lines policy.

26 (3) "Retention" means the amount of losses below which
27 an insurer is not entitled to reimbursement from the reinsurance

1 facility.

2 (b) The windstorm reinsurance facility is established to
3 provide a stable and ongoing source of reinsurance to insurers, the
4 association, and the FAIR Plan Association for a portion of the
5 losses incurred by those entities caused by hurricane damage. The
6 goal of the reinsurance facility is to create additional insurance
7 capacity sufficient to protect the state's economy, public health,
8 safety, and welfare. The reinsurance facility shall be structured
9 to operate:

10 (1) exclusively to protect and advance the state's
11 interest in maintaining insurance capacity in this state; and

12 (2) in a manner that makes the reinsurance facility's
13 revenues exempt from federal taxation.

14 (c) The association shall establish the reinsurance
15 facility. The reinsurance facility shall assume reinsurance from
16 association members, the association, and the FAIR Plan
17 Association, and shall purchase reinsurance as set forth in a plan
18 of operation. Reinsurance under this article may only be provided
19 for policies of residential property insurance for property located
20 in the catastrophe area, unless the commissioner designates a more
21 specific area within the catastrophe area. As a condition of
22 engaging in the business of insurance in this state, each member of
23 the association shall participate in the reinsurance facility by
24 purchasing reinsurance in the manner established by the association
25 in the plan of operation adopted under Subsection (d) of this
26 section.

27 (d) The association shall administer the windstorm

1 reinsurance facility under a plan of operation developed by the
2 association and adopted by the commissioner by rule. The plan of
3 operation must provide for the efficient, economical, fair, and
4 nondiscriminatory administration of the reinsurance facility. The
5 plan of operation must contain general provisions to provide
6 reasonable flexibility to accommodate member insurers in
7 situations of an unusual nature or in which undue hardship may
8 result, including providing for the exemption of certain member
9 insurers. Provisions adopted under this subsection may not in any
10 way impair, override, supersede, or constrain the public purpose of
11 the association and must be consistent with sound insurance
12 practices. The plan of operation shall provide for various levels
13 of reinsurance participation; however, reinsurance ceded to the
14 reinsurance facility may not be less than 45 percent, and may not
15 exceed 90 percent, of the losses from each covered event in excess
16 of each participating insurer's retention. The association may, on
17 its own initiative or at the request of the commissioner, amend the
18 plan of operation. Any amendments to the plan of operation must be
19 adopted by the commissioner by rule.

20 (e) The reinsurance facility shall enter into a contract
21 with each insurer writing residential property insurance policies
22 in this state, as set forth in the plan of operation, to provide
23 reimbursement to the insurer in the manner provided by the
24 reinsurance contract for covered events in exchange for the
25 reinsurance premium paid to the reinsurance facility as specified
26 by the plan of operation. The reinsurance facility may enter into
27 reinsurance contracts with the FAIR Plan Association. Each

1 reinsurance contract must contain:

2 (1) a promise to pay the participating insurer for the
3 insurer's losses from each covered event in excess of the insurer's
4 retention;

5 (2) a provision that amounts due may not be reduced by
6 reinsurance paid or payable to the participating insurer from other
7 sources;

8 (3) a provision that all contracts covering a
9 particular contract year may not exceed the actual claims paying
10 capacity of the reinsurance facility, up to a limit as defined in
11 the plan of operation;

12 (4) a requirement of interim quarterly reporting from
13 each participating insurer of losses from each covered event; and

14 (5) a provision that, in the event of the insolvency of
15 the insurer, the reinsurance facility shall pay the net amount owed
16 to the insurer directly to the conservator, receiver, or other
17 statutory successor for the benefit of the insurer's policyholders
18 in this state.

19 (f) The association may enter into reinsurance contracts
20 with the reinsurance facility. A reinsurance contract entered into
21 under this subsection must contain the provisions required for a
22 contract with a member insurer under Subsection (e) of this
23 section.

24 (g) In lieu of purchasing reinsurance from the commercial
25 insurance market, the association may cede or transfer risk to the
26 reinsurance facility in exchange for payment of a reinsurance
27 premium.

1 (h) A premium paid to the reinsurance facility under a
2 reinsurance contract shall be treated as a premium for approved
3 reinsurance for all accounting and regulatory purposes.

4 (i) An insurer that ceases to be a member of the association
5 remains liable for any unpaid premiums or other contractual
6 obligations on reinsurance contracts entered into by the insurer
7 during the insurer's membership in the association to the same
8 extent and effect as if the insurer's membership had not
9 terminated.

10 (j) The reinsurance facility shall relinquish its net
11 equity on an annual basis as provided by rules adopted by the
12 commissioner by making payments to the windstorm reinsurance trust
13 fund to fund the obligations of that fund under Section 22 of this
14 article.

15 (k) Moneys of the reinsurance facility may not be spent,
16 loaned, or appropriated except to pay:

17 (1) obligations of the reinsurance facility arising
18 out of reinsurance contracts entered into under this section;

19 (2) debt service on revenue bonds issued under Section
20 23 of this article;

21 (3) costs of procuring reinsurance; and

22 (4) costs of administration of the reinsurance
23 facility.

24 Sec. 22. WINDSTORM REINSURANCE TRUST FUND. (a) In this
25 section, "reinsurance trust fund" means the windstorm reinsurance
26 trust fund established under this section.

27 (b) The windstorm reinsurance trust fund is established to

1 increase insurance capacity for catastrophic hurricane losses, and
2 protect the state's economy, public health, safety, and welfare.
3 It is the intent of the legislature that the reinsurance trust fund
4 be operated:

5 (1) exclusively to protect and advance the state's
6 interest in maintaining insurance capacity in this state; and

7 (2) in a manner that makes the reinsurance trust fund
8 exempt from federal taxation.

9 (c) Until disbursements are made as provided by this article
10 and rules adopted by the commissioner, all money, including
11 investment income, deposited in the reinsurance trust fund are
12 state funds, to be held by the comptroller outside the state
13 treasury on behalf of, and with legal title in, the department.

14 (d) The reinsurance trust fund may be terminated only by
15 law. On termination of the reinsurance trust fund, all assets of
16 the reinsurance trust fund revert to the catastrophe reserve trust
17 fund under Section 8(i) of this article.

18 (e) The reinsurance trust fund shall be kept and maintained
19 by the department under this article and rules adopted by the
20 commissioner. The comptroller, as custodian, shall administer the
21 reinsurance trust fund strictly and solely as provided by this
22 article and the commissioner's rules.

23 (f) The commissioner by rule shall establish the procedures
24 relating to the disbursement of money from the reinsurance trust
25 fund to the reinsurance facility in the event of an occurrence or
26 series of occurrences within the defined catastrophe area that
27 results in a reimbursement under Section 21 of this article.

1 Sec. 23. WINDSTORM REINSURANCE REVENUE BOND PROGRAM. (a)

2 In this section:

3 (1) "Board" means the board of directors of the Texas
4 Public Finance Authority.

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

7 (3) "Insurer" means each property and casualty insurer
8 authorized to engage in the business of property and casualty
9 insurance in this state. The term includes a county mutual
10 insurance company, a Lloyd's plan, and a reciprocal or
11 interinsurance exchange.

12 (4) "Property and casualty insurance" does not include
13 workers' compensation insurance, accident and health insurance, or
14 medical malpractice insurance.

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

18 (b) The legislature finds that the issuance of public
19 securities to provide a method to raise funds to provide payment for
20 reimbursable losses to the extent that funds collected as
21 reinsurance premiums and investment income on those funds are
22 insufficient to meet the windstorm reinsurance facility's
23 obligations for reinsurance for losses reinsured through the
24 windstorm reinsurance facility in certain designated portions of
25 the state is for the benefit of the public and in furtherance of a
26 public purpose.

27 (c) At the request of the association and with the approval

1 of the commissioner, the Texas Public Finance Authority shall
2 issue, on behalf of the association, public securities, in a total
3 amount not to exceed \$7 billion, to:

4 (1) fund the reinsurance facility, including funding
5 necessary to:

6 (A) pay member insurers and the association as
7 provided by reinsurance contracts;

8 (B) pay operating expenses; and

9 (C) purchase reinsurance;

10 (2) pay costs related to the issuance of the public
11 securities; and

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

14 (d) To the extent consistent with this section, Chapter
15 1232, Government Code, applies to public securities issued under
16 this section. In the event of a conflict, this section controls.
17 The following laws also apply to public securities issued under
18 this section to the extent consistent with this section:

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

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

22 (e) Public securities issued under this section:

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

24 (2) must:

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

26 (B) mature not more than 10 years after the date
27 issued.

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

2 (1) make additional covenants with respect to the
3 public securities and the designated income and receipts of the
4 association pledged to the payment of the public securities; and

5 (2) provide for the flow of funds and the
6 establishment, maintenance, and investment of funds and accounts
7 with respect to the public securities.

8 (g) Funds generated through the issuance of public
9 securities shall be held outside the state treasury in the custody
10 of the comptroller. The association may request disbursement of
11 the funds for the purposes set forth in Subsection (c) of this
12 section.

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

17 (i) Public securities are payable only from the service fee
18 established under Subsection (j) of this section or from other
19 amounts that the association is authorized to levy, charge, and
20 collect. Public securities are obligations solely of the
21 association, and do not create a pledging, giving, or lending of the
22 faith, credit, or taxing authority of this state. Each public
23 security must include a statement that this state is not obligated
24 to pay any amount on the public security and that the faith, credit,
25 and taxing authority of this state are not pledged, given, or lent
26 to those payments. Each public security issued under this section
27 must state on its face that the public security is payable solely

1 from the revenues pledged for that purpose and that the public
2 security does not and may not constitute a legal or moral obligation
3 of the state.

4 (j) A service fee may be assessed against insurers, the
5 association, and the FAIR Plan Association. The commissioner shall
6 set the service fee annually in an amount sufficient to pay all debt
7 service on the public securities. Each insurer, the association,
8 and the FAIR Plan Association shall pay the service fee as required
9 by the commissioner by rule. The amount of the insurer's service
10 fee shall be based on the amount of the insurer's gross written
11 premiums for all property and casualty insurance lines, as reported
12 in the annual statement filed with the department for the calendar
13 year preceding the year in which the assessment is made. The
14 association shall collect the service fee and report collection of
15 the service fee to the department. The department may audit payment
16 and collection of the service fee.

17 (k) As a condition of engaging in the business of insurance
18 in this state, an insurer agrees that if the insurer leaves the
19 property and casualty insurance market in this state the insurer
20 remains obligated to pay, until the public securities are retired,
21 the insurer's share of the service fee assessed under Subsection
22 (j) of this section in an amount proportionate to that insurer's
23 share of the property and casualty insurance market in this state,
24 as of the last complete reporting period before the date on which
25 the insurer ceases to engage in that insurance business in this
26 state. The proportion assessed against the insurer shall be based
27 on the insurer's gross written premiums for property and casualty

1 insurance for the insurer's last reporting period.

2 (1) The association shall deposit all service fees
3 collected from insurers, the FAIR Plan Association, and the
4 association in the reinsurance trust fund established under Section
5 22 of this article. Money deposited in the reinsurance trust fund
6 may be invested as permitted by general law. Money in the
7 reinsurance trust fund required to be used to pay bond obligations
8 and bond administrative expenses shall be transferred to the Texas
9 Public Finance Authority or used by the comptroller in the manner
10 and at the time specified in the resolution adopted in connection
11 with the bond issue to ensure timely payment of obligations and
12 expenses, or as otherwise provided by the bond documents. For bonds
13 issued by the Texas Public Finance Authority for the association,
14 the association shall provide for the payment of the bond
15 obligations and the bond administrative expenses by irrevocably
16 pledging revenues received from the service fee and amounts on
17 deposit in the reinsurance trust fund, together with any bond
18 reserve fund, as provided in the proceedings authorizing the bonds
19 and related credit agreements.

20 (m) Revenue collected from the service fee in any year that
21 exceeds the amount of the bond obligations and bond administrative
22 expenses payable in that year and interest earned on the service fee
23 may, in the discretion of the association and with the approval of
24 the commissioner, be used to:

25 (1) pay bond obligations payable in the subsequent
26 year, offsetting the amount of the service fee that would otherwise
27 have to be levied for the year under this section; or

1 (2) redeem or purchase outstanding bonds.

2 (n) The insurers in this state, including the FAIR Plan
3 Association, that have paid a service fee under this section may
4 charge a premium surcharge on each property and casualty insurance
5 policy issued by that insurer, the effective date of which is within
6 the one-year period beginning on the 90th day after the date the
7 service fee is paid. Except as provided by Subsection (o) of this
8 section, the amount of the premium surcharge shall be computed on
9 the basis of a uniform percentage of the premium on those policies,
10 such that the aggregate of all those surcharges by the insurer is
11 equal to and does not exceed the amount of the service fee paid by
12 the insurer.

13 (o) For policies written on property eligible to be
14 reinsured by the reinsurance facility, the insurer shall charge a
15 premium surcharge equal to twice the uniform percentage described
16 by Subsection (n) of this section.

17 (p) The association shall submit to the department for
18 approval by the commissioner a plan for collection of a premium
19 surcharge from policyholders of the association. The association
20 shall establish the premium surcharge in an amount equal to twice
21 the amount of the average per policy surcharge percentage
22 established under Subsection (n) or (o) of this section on any
23 policy issued or renewed by the association. The period for
24 collection of the premium surcharge under this subsection may not
25 exceed one year. The premium surcharges collected under this
26 subsection shall be applied to the association's service fee. Any
27 amounts collected in excess of the service fee shall be paid into

1 the reinsurance trust fund.

2 (g) The public securities issued under this section, any
3 interest from those public securities, and all assets pledged to
4 secure the payment of the public securities are free from taxation
5 by this state or a political subdivision of this state.

6 (r) The public securities issued under this section
7 constitute authorized investments under Articles 2.10 and 3.33 and
8 Subpart A, Part I, Article 3.39 of this code.

9 (s) The state pledges to and agrees with the owners of any
10 public securities issued in accordance with this section that the
11 state will not limit or alter the rights vested in the association
12 to fulfill the terms of any agreements made with the owners of the
13 public securities or in any way impair the rights and remedies of
14 those owners until the public securities, bond premium, if any, or
15 interest, and all costs and expenses in connection with any action
16 or proceeding by or on behalf of those owners, are fully met and
17 discharged. The association may include this pledge and agreement
18 of the state in any agreement with the owners of the public
19 securities.

20 (t) A party at interest may use mandamus and all other legal
21 and equitable remedies to require the association and any other
22 party to carry out agreements and to perform functions and duties
23 established under this section, the Texas Constitution, or a public
24 security resolution.

25 SECTION 5. Section 941.003(b), Insurance Code, is amended
26 to read as follows:

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

- (1) Section 5, Article 1.10;
 - (2) Article 1.15A;
 - (3) Subchapters A, [~~Q~~] T, and U, Chapter 5;
 - (4) Chapters 251, 252, and 541;
 - (5) Articles 5.35, 5.38, 5.39, 5.40, 21.49, [~~and 5.49,~~
~~[(5) Articles 21.21]~~ and 21.49-8;
 - (6) Sections 822.203, 822.205, 822.210, and 822.212;
- and
- (7) Article 5.13-2, as provided by that article.

SECTION 6. Section 942.003(b), Insurance Code, is amended to read as follows:

- (b) An exchange is subject to:
- (1) Section 5, Article 1.10;
 - (2) Articles 1.15, 1.15A, and 1.16;
 - (3) Subchapters A, [~~Q~~] T, and U, Chapter 5;
 - (4) Articles 5.35, 5.37, 5.38, 5.39, and 5.40;
 - (5) Articles 21.49 [~~21.21~~] and 21.49-8;
 - (6) Chapter 541;
 - (7) Sections 822.203, 822.205, 822.210, 822.212, 861.254(a)-(f), 861.255, 862.001(b), and 862.003; and
 - (8) [~~(7)~~] Article 5.13-2, as provided by that article.

SECTION 7. Section 5(i), Article 21.49, Insurance Code, is repealed.

SECTION 8. (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.

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

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

12 SECTION 9. (a) Except as provided by Subsection (b) of this
13 section, this Act takes effect September 1, 2005.

14 (b) Sections 20-23, Article 21.49, Insurance Code, as added
15 by this Act, take effect January 1, 2006.