

1-1 By: Smithee, Escobar (Senate Sponsor - Jackson) H.B. No. 1890
1-2 (In the Senate - Received from the House May 16, 2005;
1-3 May 17, 2005, read first time and referred to Committee on Business
1-4 and Commerce; May 20, 2005, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 7, Nays 0;
1-6 May 20, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1890 By: Estes

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the operation and funding of the Texas Windstorm
1-11 Insurance Association, including funding of coverage for certain
1-12 catastrophic events through the establishment of a revenue bond
1-13 program.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. Section 4(d), Article 21.49, Insurance Code, is
1-16 amended to read as follows:

1-17 (d) On dissolution of the association, all assets of the
1-18 association, including the unexpended and unobligated balance of
1-19 the catastrophe reserve trust fund as of the date of the
1-20 dissolution, revert to this state.

1-21 SECTION 2. Section 5, Article 21.49, Insurance Code, is
1-22 amended by amending Subsections (g), (h), (i), (j), and (l) and
1-23 adding Subsections (n) and (o) to read as follows:

1-24 (g) The board of directors of the Association is responsible
1-25 and accountable to the commissioner [Board]. The board of
1-26 directors is composed of nine members appointed by the commissioner
1-27 as follows:

1-28 (1) five representatives of different insurers who are
1-29 members of the Association [~~who shall be elected by members as~~
1-30 ~~provided in the plan of operation];~~

1-31 (2) two representatives of the general public, one of
1-32 whom is a resident of a first tier coastal county and one of whom is
1-33 a resident of a county other than a first tier coastal county
1-34 [~~nominated by the office of public insurance counsel, who, as of the~~
1-35 ~~date of the appointment, reside in a catastrophe area and who are~~
1-36 ~~policyholders, as of the date of the appointment, of the~~
1-37 ~~Association]; and~~

1-38 (3) two insurance [local recording] agents licensed
1-39 under this Code, one with a [demonstrated experience in the
1-40 Association, and whose] principal office [offices], as of the date
1-41 of the appointment, [are] located in a first tier coastal county and
1-42 one with a principal office located in a county other than a first
1-43 tier coastal county [catastrophe area].

1-44 (h) Members of the board of directors of the Association
1-45 serve three-year staggered terms, with the terms of three members
1-46 expiring on the third Tuesday of March of each year. A member of the
1-47 board of directors serves at the pleasure of the commissioner and
1-48 may be removed by the commissioner before the expiration of the
1-49 member's term. [A person may hold a seat on the board of directors
1-50 for not more than three consecutive full terms, not to exceed nine
1-51 years.]

1-52 (i) The persons appointed as provided by Subsection (g)
1-53 [~~Subsections (g)(2) and (g)(3)]~~ of this section must have
1-54 demonstrated business, insurance, or financial experience to be
1-55 eligible for appointment [be from different counties].

1-56 (j) The board of directors of the Association shall select
1-57 one member of the board of directors to serve as presiding officer
1-58 of the board of directors. The presiding officer serves at the
1-59 pleasure of the board of directors and is entitled to vote on all
1-60 matters before the board of directors. The board of directors [of
1-61 the Association] shall elect other officers of the board of
1-62 directors [an executive committee consisting of a chairman,
1-63 vice-chairman, and secretary-treasurer] from its membership. [At

2-1 ~~least one of those officers must be a member appointed under~~
2-2 ~~Subsection (g)(2) or Subsection (g)(3) of this section.]~~

2-3 (1) If an occurrence or series of occurrences within the
2-4 defined catastrophe area results in insured losses that result in
2-5 payment of losses under Section 19 of this article [~~tax credits~~
2-6 ~~under Section 19(4) of this article in a single calendar year~~], the
2-7 Association shall immediately notify the commissioner [~~Board~~] of
2-8 that fact. The commissioner [~~Board~~] on receiving notice shall
2-9 immediately notify the Governor and appropriate committees of each
2-10 house of the Legislature of the amount of insured losses eligible
2-11 for payment under Section 19 [~~tax credits under Section 19(4)~~] of
2-12 this article.

2-13 (n) As an exception to Chapter 551, Government Code, and
2-14 other law, members of the board of directors may meet by telephone
2-15 conference call, videoconference, or other similar
2-16 telecommunication method. The board of directors may use telephone
2-17 conferences or other similar telecommunication methods for
2-18 purposes of establishing a quorum, for purposes of voting, and for
2-19 any other meeting purpose in accordance with this subsection and
2-20 Subsection (o). This subsection applies without regard to the
2-21 subject matters discussed or considered by the members of the board
2-22 of directors at the meeting.

2-23 (o) A meeting held by use of telephone conference call,
2-24 videoconference, or other similar telecommunication method:

2-25 (1) is subject to the notice requirements applicable
2-26 to other meetings;

2-27 (2) must specify in the notice of the meeting the
2-28 location of the meeting;

2-29 (3) must be audible to the public at the location
2-30 specified in the notice of the meeting as the location of the
2-31 meeting; and

2-32 (4) must provide two-way audio communication between
2-33 all members of the board of directors attending the meeting during
2-34 the entire meeting, and if the two-way audio communication link
2-35 with members attending the meeting is disrupted at any time so that
2-36 a quorum of the board of directors is no longer participating in the
2-37 meeting, the meeting may not continue until the two-way audio
2-38 communication link is reestablished.

2-39 SECTION 3. Section 19, Article 21.49, Insurance Code, is
2-40 amended to read as follows:

2-41 Sec. 19. PAYMENT OF LOSSES; PREMIUM TAX CREDIT. (a) If, in
2-42 any calendar year, an occurrence or series of occurrences within
2-43 the defined catastrophe area results in insured losses and
2-44 operating expenses of the association in excess of premium and
2-45 other revenue of the association, any excess losses shall be paid as
2-46 provided by this section.

2-47 (b) After application of available revenue to losses,
2-48 [follows:

2-49 ~~[(1)]~~ \$100 million, per catastrophic event, shall be
2-50 assessed to the members of the association with the proportion of
2-51 the loss allocable to each insurer determined in the same manner as
2-52 its participation in the association has been determined for the
2-53 year under Section 5(b) [5(c)] of this Act. A member of the
2-54 association may not directly or indirectly recover the amount of
2-55 any assessment made under this subsection from additional premium
2-56 charges on any insurance policy written on property that is not
2-57 located within the first tier coastal counties.]

2-58 (c) Any [~~(2) any~~] losses in excess of the amounts
2-59 authorized under Subsection (b) of this section [~~\$100 million~~]
2-60 shall be paid from the catastrophe reserve trust fund established
2-61 under Section 8(i) of this Act, not to exceed an amount equal to 50
2-62 percent of the balance of that fund as of the date of the
2-63 occurrence, reduced by anticipated payments from prior
2-64 occurrences.

2-65 (d) Any losses that exceed the amounts available under
2-66 Subsections (b) and (c) of this section, not to exceed an additional
2-67 \$300 million per calendar year, shall be funded through additional
2-68 assessments to the members of the association, with the proportion
2-69 of the total loss allocable to each insurer determined in the same

3-1 manner as the insurer's participation in the association has been
 3-2 determined for the year under Section 5(b) of this Act. An insurer
 3-3 that has been assessed and has paid the assessments under this
 3-4 subsection may charge the insurer's policyholders a premium
 3-5 surcharge for reimbursement of the assessment. The premium
 3-6 surcharge, which must be a separate charge in addition to premiums
 3-7 collected, applies to every insurance policy insuring real property
 3-8 located in the catastrophe area, including policies issued by the
 3-9 association, the effective date of which is within the five-year
 3-10 period beginning on the 90th day after the date of the assessment.
 3-11 The amount of the surcharge collected by the members of the
 3-12 association from policyholders under this subsection shall be
 3-13 computed on the basis of a uniform percentage of the premium on
 3-14 those policies, not to exceed 20 percent per year of the amount of
 3-15 the insurer's assessment, such that over the period of five years
 3-16 the aggregate of all the surcharges by the insurer shall be equal
 3-17 to, and not exceed, the amount of the assessment of the insurer. The
 3-18 amount of any assessment paid and recoverable under this section
 3-19 may be carried by the insurer as an admitted asset of the insurer
 3-20 for all purposes, including exhibition in annual statements under
 3-21 Section 862.001 of this code. The association shall collect a
 3-22 premium surcharge, which must be a separate charge in addition to
 3-23 premiums collected, from the association's policyholders in an
 3-24 amount approved by the commissioner.

3-25 (e) If the amount available under Subsections (b)-(d) of
 3-26 this section is insufficient to pay the excess losses, the excess
 3-27 losses shall be paid in accordance with a plan developed by the
 3-28 association, and approved by the commissioner after at least 10
 3-29 days' notice and a hearing if a hearing is requested by any person
 3-30 within the 10-day notice period, from any or a combination of the
 3-31 following sources:

3-32 (1) any reinsurance proceeds recoverable by the
 3-33 association; and

3-34 (2) any revenue bond proceeds, in an amount not to
 3-35 exceed \$2 billion per year, received by the association in
 3-36 accordance with Section 20 of this Act.

3-37 (f) Any ~~+~~
 3-38 ~~[(3) for losses in excess of those paid under~~
 3-39 ~~Subdivisions (1) and (2) of this subsection, an additional \$200~~
 3-40 ~~million shall be assessed to the members of the association with the~~
 3-41 ~~proportion of the loss allocable to each insurer determined in the~~
 3-42 ~~same manner as its participation in the association has been~~
 3-43 ~~determined for the year under Section 5(c) of this Act,~~

3-44 ~~[(4) any]~~ losses in excess of those paid under
 3-45 Subsections (b)-(e) ~~[Subdivisions (1), (2), and (3)]~~ of this
 3-46 section ~~[subsection]~~ shall be assessed against members of the
 3-47 association, with the proportion of the total loss allocable to
 3-48 each insurer determined in the same manner as its participation in
 3-49 the association has been determined for the year under Section 5(b)
 3-50 ~~[5(c)]~~ of this Act.

3-51 (g) ~~[(b)]~~ An insurer may credit any amount paid in
 3-52 accordance with Subsection (f) ~~[(a)(4)]~~ of this section in a
 3-53 calendar year against its premium tax under Section 221.002
 3-54 ~~[Article 4.10]~~ of this code. The tax credit herein authorized shall
 3-55 be allowed at a rate not to exceed 20 percent per year for five or
 3-56 more successive years following the year of payment of the claims.
 3-57 The balance of payments paid by the insurer and not claimed as such
 3-58 tax credit may be reflected in the books and records of the insurer
 3-59 as an admitted asset of the insurer for all purposes, including
 3-60 exhibition in annual statements pursuant to Section 862.001
 3-61 ~~[Article 6.12]~~ of this code.

3-62 (h) The commissioner may adopt rules as necessary to
 3-63 implement this section.

3-64 SECTION 4. Article 21.49, Insurance Code, is amended by
 3-65 adding Section 20 to read as follows:

3-66 Sec. 20. REVENUE BOND PROGRAM FOR OPERATIONS AND PAYMENT OF
 3-67 CLAIMS. (a) In this section:

3-68 (1) "Board" means the board of directors of the Texas
 3-69 Public Finance Authority.

4-1 (2) "Bond" means any debt instrument or public
4-2 security issued by the Texas Public Finance Authority.

4-3 (3) "Public security resolution" means the resolution
4-4 or order authorizing public securities to be issued under this
4-5 section.

4-6 (b) The legislature finds that the issuance of public
4-7 securities to provide a method to raise funds to provide windstorm,
4-8 hail, and fire insurance through the Texas Windstorm Insurance
4-9 Association in certain designated portions of the state is for the
4-10 benefit of the public and in furtherance of a public purpose.

4-11 (c) At the request of the association and with the approval
4-12 of the commissioner, the Texas Public Finance Authority shall
4-13 issue, on behalf of the association, public securities in a total
4-14 amount not to exceed \$2 billion in accordance with Subsection (d) of
4-15 this section.

4-16 (d) After an occurrence or series of occurrences within the
4-17 defined catastrophe area has occurred, the board shall issue public
4-18 securities in an amount not to exceed the amount specified under
4-19 Section 19(d) of this Act as necessary to fund the payment of excess
4-20 losses under that subsection.

4-21 (e) To the extent consistent with this section, Chapter
4-22 1232, Government Code, applies to public securities issued under
4-23 this section. In the event of a conflict, this section controls.
4-24 The following laws also apply to public securities issued under
4-25 this section to the extent consistent with this section:

4-26 (1) Chapters 1201, 1202, 1204, 1205, 1231, and 1371,
4-27 Government Code; and

4-28 (2) Subchapter A, Chapter 1206, Government Code.

4-29 (f) Public securities issued under this section:

4-30 (1) may be issued at public or private sale; and

4-31 (2) must:

4-32 (A) be issued in the name of the association; and

4-33 (B) mature not more than 10 years after the date
4-34 issued.

4-35 (g) In a public security resolution, the board may:

4-36 (1) make additional covenants with respect to the
4-37 public securities and the designated income and receipts of the
4-38 association pledged to the payment of the public securities; and

4-39 (2) provide for the flow of funds and the
4-40 establishment, maintenance, and investment of funds and accounts
4-41 with respect to the public securities.

4-42 (h) Funds generated through the issuance of public
4-43 securities shall be held outside the state treasury in the custody
4-44 of the comptroller. The association may request disbursement of
4-45 the funds for the purposes set forth in this section.

4-46 (i) A public security resolution may establish special
4-47 accounts, including an interest and sinking fund account, reserve
4-48 account, and other accounts. The association shall administer the
4-49 accounts in accordance with this section.

4-50 (j) Public securities are payable only from the premium
4-51 surcharges established under Subsection (k) of this section or from
4-52 other amounts that the association is authorized to levy, charge,
4-53 and collect. Public securities are obligations solely of the
4-54 association and do not create a pledging, giving, or lending of the
4-55 faith, credit, or taxing authority of this state. Each public
4-56 security must include a statement that this state is not obligated
4-57 to pay any amount on the public security and that the faith, credit,
4-58 and taxing authority of this state are not pledged, given, or lent
4-59 to those payments. Each public security issued under this section
4-60 must state on its face that the public security is payable solely
4-61 from the revenues pledged for that purpose and that the public
4-62 security does not and may not constitute a legal or moral obligation
4-63 of the state.

4-64 (k) The public securities and all debt service on the public
4-65 securities issued in accordance with Subsection (d) of this section
4-66 shall be paid by premium surcharges in amounts approved by the
4-67 commissioner and applied to each property and casualty insurance
4-68 policy written by an insurer in this state or by the FAIR Plan
4-69 Association. The premium surcharges applicable under this

5-1 subsection to insurance policies written on property located in the
 5-2 catastrophe area, including policies issued through the
 5-3 association must be equal to two times the premium surcharges
 5-4 applicable to insurance policies written on property located in
 5-5 counties that are not in the catastrophe area. A premium surcharge
 5-6 under this subsection may not be applied to a workers' compensation
 5-7 insurance policy, an accident and health insurance policy, or a
 5-8 medical malpractice insurance policy.

5-9 (l) As a condition of engaging in the business of insurance
 5-10 in this state, an insurer that engages in the business of property
 5-11 insurance in this state agrees that if the insurer leaves the
 5-12 insurance market in this state the insurer remains obligated to
 5-13 pay, until the public securities are retired, the insurer's share
 5-14 of the premium surcharges assessed under Subsection (k) of this
 5-15 section in an amount proportionate to that insurer's share of the
 5-16 insurance market in this state, as of the last complete reporting
 5-17 period before the date on which the insurer ceases to engage in that
 5-18 insurance business in this state. The proportion assessed against
 5-19 the insurer shall be based on the insurer's gross written premiums
 5-20 for insurance for the insurer's last reporting period.

5-21 (m) The association shall deposit all premium surcharges
 5-22 collected under Subsection (k) of this section in a fund to be held
 5-23 outside the state treasury in the custody of the comptroller. Money
 5-24 deposited in the fund may be invested as permitted by general law.
 5-25 Money in the fund required to be used to pay bond obligations and
 5-26 bond administrative expenses shall be transferred to the Texas
 5-27 Public Finance Authority or used by the comptroller in the manner
 5-28 and at the time specified in the resolution adopted in connection
 5-29 with the bond issue to ensure timely payment of obligations and
 5-30 expenses, or as otherwise provided by the bond documents. For bonds
 5-31 issued by the Texas Public Finance Authority for the association,
 5-32 the association shall provide for the payment of the bond
 5-33 obligations and the bond administrative expenses by irrevocably
 5-34 pledging revenues received from the premium surcharges and amounts
 5-35 on deposit in the fund, together with any bond reserve fund, as
 5-36 provided in the proceedings authorizing the bonds and related
 5-37 credit agreements.

5-38 (n) Revenue collected from the premium surcharges assessed
 5-39 under Subsection (k) of this section in any year that exceeds the
 5-40 amount of the bond obligations and bond administrative expenses
 5-41 payable in that year and interest earned on the premium surcharges
 5-42 may, in the discretion of the association and with the approval of
 5-43 the commissioner, be used to:

5-44 (1) pay bond obligations payable in the subsequent
 5-45 year, offsetting the amount that would otherwise have to be levied
 5-46 for the year under this section; or

5-47 (2) redeem or purchase outstanding bonds.

5-48 (o) The public securities issued under this section, any
 5-49 interest from those public securities, and all assets pledged to
 5-50 secure the payment of the public securities are free from taxation
 5-51 by this state or a political subdivision of this state.

5-52 (p) The public securities issued under this section
 5-53 constitute authorized investments under Articles 2.10 and 3.33 and
 5-54 Subpart A, Part I, Article 3.39, of this code.

5-55 (q) The state pledges to and agrees with the owners of any
 5-56 public securities issued in accordance with this section that the
 5-57 state will not limit or alter the rights vested in the association
 5-58 to fulfill the terms of any agreements made with the owners of the
 5-59 public securities or in any way impair the rights and remedies of
 5-60 those owners until the public securities, bond premium, if any, or
 5-61 interest, and all costs and expenses in connection with any action
 5-62 or proceeding by or on behalf of those owners, are fully met and
 5-63 discharged. The association may include this pledge and agreement
 5-64 of the state in any agreement with the owners of the public
 5-65 securities.

5-66 (r) A party at interest may use mandamus and all other legal
 5-67 and equitable remedies to require the association and any other
 5-68 party to carry out agreements and to perform functions and duties
 5-69 established under this section, the Texas Constitution, or a public

6-1 security resolution.

6-2 SECTION 5. (a) The board of directors of the Texas
6-3 Windstorm Insurance Association established under Section 5,
6-4 Article 21.49, Insurance Code, as that section existed prior to
6-5 amendment by this Act, is abolished effective January 1, 2006.

6-6 (b) Not later than December 31, 2005, the commissioner of
6-7 insurance shall appoint the members of the board of directors of the
6-8 Texas Windstorm Insurance Association under Section 5, Article
6-9 21.49, Insurance Code, as amended by this Act.

6-10 (c) The term of a person who is serving as a member of the
6-11 board of directors of the Texas Windstorm Insurance Association
6-12 immediately before the abolition of that board under Subsection (a)
6-13 of this section expires on January 1, 2006. Such a person is
6-14 eligible for appointment by the commissioner of insurance to the
6-15 new board of directors of the Texas Windstorm Insurance Association
6-16 under Section 5, Article 21.49, Insurance Code, as amended by this
6-17 Act.

6-18 SECTION 6. This Act takes effect January 1, 2006.

6-19 * * * * *