

By: Eiland

H.B. No. 2563

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the operations 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 5(1), Article 21.49, Insurance Code, is  
8 amended to read as follows:

9 (1) If an occurrence or series of occurrences within the  
10 defined catastrophe area results in insured losses that result in  
11 assessments, payments from the catastrophe reserve trust fund  
12 established under Section 8(i) of this article, claims under a  
13 reinsurance contract under Section 8(h)(17) of this article, or  
14 issuance of revenue bonds under Section 20 of this article [~~tax~~  
15 ~~credits under Section 19(4) of this article in a single calendar~~  
16 ~~year~~], the Association shall immediately notify the commissioner  
17 [~~Board~~] of that fact. The commissioner [~~Board~~] on receiving notice  
18 shall immediately notify the Governor and appropriate committees of  
19 each house of the Legislature of the amount of insured losses  
20 eligible for payments using assessment funds, reinsurance  
21 proceeds, or bond proceeds [~~tax credits under Section 19(4) of this~~  
22 ~~article~~].

23 SECTION 2. Section 8(i)(1), Article 21.49, Insurance Code,  
24 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[~~(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~~  
8 ~~to 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 3. 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[~~7~~  
21 ~~in any calendar year,~~] an occurrence or series of occurrences, as  
22 defined by the plan of operation, within the defined catastrophe  
23 area results in insured losses and operating expenses of the  
24 association in excess of premium and other revenue of the  
25 association, any excess losses shall be paid as provided by this  
26 section.

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

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

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

19           (1) additional assessments to the members of the  
20 association that:

21                   (A) do not exceed \$300 million per calendar year;  
22 and

23                   (B) are based on the proportion that the member's  
24 gross written premiums for property insurance, as reported in the  
25 member's annual statement filed with the department for the  
26 calendar year preceding the year in which the assessment is made  
27 bears to the total reported gross written premiums for property

1 insurance in this state;

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

4 (3) any revenue bond proceeds received by the  
5 association in accordance with Section 20 of this article.

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

25 ~~[(3) for losses in excess of those paid under~~  
26 ~~Subdivisions (1) and (2) of this subsection, an additional \$200~~  
27 ~~million shall be assessed to the members of the association with the~~

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

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

10 (e) [(b)] An insurer, including the FAIR Plan Association,  
11 that has been assessed and has paid the assessment under Subsection  
12 (c) or (d) of this section may charge a premium surcharge for  
13 reimbursement of the assessment. The premium surcharge applies to  
14 each property and casualty insurance policy that is issued by the  
15 insurer or the FAIR Plan Association in this state, the effective  
16 date of which is within the five-year period beginning on the 90th  
17 day after the date of the assessment. The amount of the surcharge  
18 shall be computed on the basis of a uniform percentage of the  
19 premium on those policies, not to exceed 20 percent per year, of the  
20 amount of the assessment, such that over the five-year period the  
21 aggregate of all surcharges by the insurer or the FAIR Plan  
22 Association equals but does not exceed the amount of the  
23 assessment. The amount of any assessment paid and recoverable  
24 under this subsection may be carried by the insurer or the FAIR Plan  
25 Association ~~[may credit any amount paid in accordance with~~  
26 ~~Subsection (a)(4) of this section in a calendar year against its~~  
27 ~~premium tax under Article 4.10 of this code. The tax credit herein~~

1 ~~authorized shall be allowed at a rate not to exceed 20 percent per~~  
2 ~~year for five or more successive years following the year of payment~~  
3 ~~of the claims. The balance of payments paid by the insurer and not~~  
4 ~~claimed as such tax credit may be reflected in the books and records~~  
5 ~~of the insurer]~~ as an admitted asset of the insurer for all  
6 purposes, including exhibition in annual statements under Section  
7 862.001 [~~pursuant to Article 6.12~~] of this code.

8 (f) An assessment made under Subsection (b) of this section  
9 is not reimbursable under Subsection (e) of this section. The  
10 assessments under Subsection (c) and (d) of this section are  
11 reimbursable in accordance with Subsection (e) of this section.

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

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

1       (i) For purposes of Subsections (d) and (e) of this section,  
2 "property and casualty insurance" does not include workers'  
3 compensation insurance, accident and health insurance, or medical  
4 malpractice insurance.

5       (j) The commissioner may adopt rules as necessary to  
6 implement this section.

7       SECTION 4. Article 21.49, Insurance Code, is amended by  
8 adding Section 20 to read as follows:

9       Sec. 20. REVENUE BOND PROGRAM. (a) In this section:

10       (1) "Board" means the board of directors of the Texas  
11 Public Finance Authority.

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

14       (3) "Insurer" means each property and casualty insurer  
15 authorized to engage in the business of property and casualty  
16 insurance in this state. The term includes a county mutual  
17 insurance company, a Lloyd's plan, and a reciprocal or  
18 interinsurance exchange.

19       (4) "Property and casualty insurance" does not include  
20 workers' compensation insurance, accident and health insurance, or  
21 medical malpractice insurance.

22       (5) "Public security resolution" means the resolution  
23 or order authorizing public securities to be issued under this  
24 section.

25       (b) The legislature finds that the issuance of public  
26 securities to provide a method to raise funds to provide windstorm,  
27 hail, and fire insurance through the Texas Windstorm Insurance

1 Association in certain designated portions of the state is for the  
2 benefit of the public and in furtherance of a public purpose.

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

7 (1) fund the association, including funding necessary  
8 to:

9 (A) establish and maintain reserves to pay  
10 claims;

11 (B) pay incurred claims and operating expenses;  
12 and

13 (C) purchase reinsurance;

14 (2) pay costs related to the issuance of the public  
15 securities; and

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

18 (d) To the extent consistent with this section, Chapter  
19 1232, Government Code, applies to public securities issued under  
20 this section. In the event of a conflict, this section controls.  
21 The following laws also apply to public securities issued under  
22 this section to the extent consistent with this section:

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

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

26 (e) Public securities issued under this section:

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



1           (2) must:

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

3                   (B) mature not more than 10 years after the date  
4 issued.

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

6                   (1) make additional covenants with respect to the  
7 public securities and the designated income and receipts of the  
8 association pledged to the payment of the public securities; and

9                   (2) provide for the flow of funds and the  
10 establishment, maintenance, and investment of funds and accounts  
11 with respect to the public securities.

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

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

21           (i) Public securities are payable only from the service fee  
22 established under Subsection (j) of this section or from other  
23 amounts that the association is authorized to levy, charge, and  
24 collect. Public securities are obligations solely of the  
25 association, and do not create a pledging, giving, or lending of the  
26 faith, credit, or taxing authority of this state. Each public  
27 security must include a statement that this state is not obligated

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

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

21 (k) As a condition of engaging in the business of insurance  
22 in this state, an insurer agrees that if the insurer leaves the  
23 property and casualty insurance market in this state the insurer  
24 remains obligated to pay, until the public securities are retired,  
25 the insurer's share of the service fee assessed under Subsection  
26 (j) of this section in an amount proportionate to that insurer's  
27 share of the property and casualty insurance market in this state,

1 as of the last complete reporting period before the date on which  
2 the insurer ceases to engage in that insurance business in this  
3 state. The proportion assessed against the insurer shall be based  
4 on the insurer's gross written premiums for property and casualty  
5 insurance for the insurer's last reporting period.

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

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

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

4           (2) redeem or purchase outstanding bonds.

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

18           (o) 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           (p) 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           (q) 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 (r) 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 SECTION 5. Section 941.003(b), Insurance Code, is amended  
15 to read as follows:

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

- 17 (1) Section 5, Article 1.10;
- 18 (2) Article 1.15A;
- 19 (3) Subchapters A, [~~Q~~] T, and U, Chapter 5;
- 20 (4) Chapters 251, 252, and 541;
- 21 (5) Articles 5.35, 5.38, 5.39, 5.40, 21.49, [~~and 5.49,~~  
22 [~~(5) Articles 21.21~~] and 21.49-8;
- 23 (6) Sections 822.203, 822.205, 822.210, and 822.212;

24 and

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

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

1 (b) An exchange is subject to:

2 (1) Section 5, Article 1.10;

3 (2) Articles 1.15, 1.15A, and 1.16;

4 (3) Subchapters A, [~~Q~~] T, and U, Chapter 5;

5 (4) Articles 5.35, 5.37, 5.38, 5.39, and 5.40;

6 (5) Articles 21.49 [~~21.21~~] and 21.49-8;

7 (6) Chapter 541;

8 (7) Sections 822.203, 822.205, 822.210, 822.212,  
9 861.254(a)-(f), 861.255, 862.001(b), and 862.003; and

10 (8) [~~(7)~~] Article 5.13-2, as provided by that article.

11 SECTION 7. This Act takes effect September 1, 2005.