

By: Eiland

H.B. No. 2616

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the operation of the Texas Windstorm Insurance
3 Association.

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

5 SECTION 1. The heading to Article 21.49, Insurance Code, is
6 amended to read as follows:

7 Article 21.49. Texas Windstorm Insurance Association
8 [~~Catastrophe Property Insurance Pool~~] Act

9 SECTION 2. Section 1, Article 21.49, Insurance Code is
10 amended to read as follows:

11 Sec. 1. It is hereby declared by the Legislature that an
12 adequate market for windstorm, hail and fire insurance is necessary
13 to the economic welfare of the State of Texas and that without such
14 insurance the orderly growth and development of the State of Texas
15 would be severely impeded. It is therefore the purpose of this
16 Article [~~Act~~] to provide a method whereby adequate windstorm, hail
17 and fire insurance may be obtained in certain designated portions
18 of the State of Texas.

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

21 Sec. 2. This Article [~~Act~~] shall be known as the "Texas
22 Windstorm Insurance Association Act."

23 SECTION 4. Section 3, Article 21.49, Insurance Code, is
24 amended by amending subsections (a), (b), (c), (d) (e), (f), (h),

1 (i), (j), (k), and (o) and adding subsection (p) to read as follows:

2 Sec. 3. In this Article [~~Act~~], unless the context clearly
3 dictates to the contrary:

4 (a) "Commissioner [~~Board~~]" means the Commissioner [~~State~~
5 ~~Board~~] of Insurance of the State of Texas.

6 (b) "Association" means the Texas Windstorm Insurance
7 Association as established pursuant to the provisions of this
8 Article [~~Act~~].

9 (c) "Plan of Operation" means the plan for providing Texas
10 windstorm and hail insurance in a catastrophe area and Texas fire
11 and explosion insurance in an inadequate fire insurance area which
12 plan has been adopted by the Commissioner [~~Board~~] for operation by
13 the Association pursuant to the provisions of this Article [~~Act~~],
14 which plan may, among other things, provide for limits of liability
15 for each structure insured, and/or the corporeal movable property
16 located therein.

17 (d) "Texas Windstorm and Hail Insurance" means deductible
18 insurance against direct loss, and indirect losses resulting from a
19 direct loss, to insurable property as a result of windstorm or hail,
20 as such terms shall be defined and limited in policies and forms
21 approved by the Commissioner [~~State Board~~] of Insurance.

22 (e) "Texas Fire and Explosion Insurance" means insurance
23 against direct loss to insurable property as a result of fire and
24 explosion as such terms shall be defined and limited in policies and
25 forms approved by the Commissioner [~~State Board~~] of Insurance.

26 (f) "Insurable Property" means immovable property at fixed
27 locations in a catastrophe area or corporeal movable property

1 located therein (as may be designated in the plan of operation)
2 which property is determined by the Association, pursuant to the
3 criteria specified in the plan of operation to be in an insurable
4 condition against windstorm, hail and/or fire and explosion as
5 appropriate, as determined by normal underwriting standards;
6 provided, however, that insofar as windstorm and hail insurance is
7 concerned, any structure located within a catastrophe area,
8 commenced on or after the 30th day following the publication of the
9 plan of operation, not built or continuing in compliance with
10 building specifications set forth in the plan of operation shall
11 not be an insurable risk under this Article [~~Act~~] except as
12 otherwise provided under this Article [~~Act~~]. A structure, or an
13 addition thereto, which is constructed in conformity with plans and
14 specifications that comply with the specifications set forth in the
15 plan of operation at the time construction commences shall not be
16 declared ineligible for windstorm and hail insurance as a result of
17 subsequent changes in the building specifications set forth in the
18 plan of operation. Except as otherwise provided by this
19 subsection, if repair of damage to a structure involves replacement
20 of items covered in the building specifications as set forth in the
21 plan of operation, such repairs must be completed in a manner to
22 comply with such specifications for the structure to continue
23 within the definition of Insurable Property for windstorm and hail
24 insurance. If repair to a structure, other than a roof repair that
25 exceeds 100 square feet, is less than five percent of the amount of
26 total property coverage on the structure, the repairs may be
27 completed in a manner that returns the structure to its condition

1 immediately before the loss without affecting the eligibility of
2 the structure to qualify as insurable property. Nothing in this
3 Article [~~Act~~] shall preclude special rating of individual risks as
4 may be provided in the plan of operation. For purposes of this
5 Article [~~Act~~], all residential structures, other than a
6 condominium, apartment, duplex, or other multifamily residence, or
7 a hotel or resort facility, which are located within those areas
8 designated as units under the federal Coastal Barrier Resources Act
9 (Public Law 97-348) [FN1] and for which a building permit or plat
10 has been filed with the municipality, the county, or the United
11 States Army Corps of Engineers before the effective date of S.B. No.
12 14, Acts of the 78th Legislature, Regular Session, 2003, are
13 insurable property.

14 (h) "Catastrophe Area" means a city or a part of a city or a
15 county or a part of a county in which it may be determined by the
16 Commissioner [~~commissioner~~], after notice of not less than ten (10)
17 days and [~~a~~] hearing if a hearing is requested by any person within
18 the ten (10) day notice period, that windstorm and hail insurance is
19 not reasonably available to a substantial number of owners of
20 insurable property within that city or a part of that city or a
21 county or a part of that county, due to such insurable property
22 being located within a city or a part of that city or a county or a
23 part of that county that is subject to unusually frequent and severe
24 damage resulting from windstorms and/or hailstorms. Such
25 designation shall be revoked by the Commissioner [~~commissioner~~] if
26 the Commissioner [~~commissioner~~] determines, after notice of not
27 less than ten (10) [~~10~~] days and [~~a~~] hearing if such hearing is

1 requested by any person within the ten (10) day notice period, that
2 windstorm and hail insurance in such catastrophe area is no longer
3 reasonably unavailable to a substantial number of owners of
4 insurable property within such designated city or a part of that
5 city or county or a part of that county. If the Association shall
6 determine that windstorm and hail insurance is no longer reasonably
7 unavailable to a substantial number of owners of insurable property
8 in any designated catastrophe area or areas, then the Association
9 may request in writing that the Commissioner [~~commissioner~~] revoke
10 the designation of any or all of such catastrophe areas and, after
11 notice of not less than ten (10) [~~10~~] days and [~~a~~] hearing if such
12 hearing is requested by any person within the ten (10) day notice
13 period, but within 30 days of the [~~such~~] hearing or expiration of
14 the notice period, the Commissioner [~~commissioner~~] shall either
15 approve or reject the Association's request and shall, if such
16 request be approved, revoke such designation or designations.

17 (i) "Inadequate Fire Insurance Area" means a city or county
18 which is, or is within an area, designated as a catastrophe area, as
19 defined in Paragraph (h), above, and in which it may be determined
20 by the Commissioner [~~Board~~], after notice of not less than ten (10)
21 [~~10~~] days and [~~a~~] hearing if such hearing is requested by any person
22 within the ten (10) day notice period, that fire and explosion
23 insurance is not reasonably available to a substantial number of
24 owners of insurable property within such city or county. Such
25 designation shall be revoked by the Commissioner [~~Board~~] if it
26 determines, after ten (10) [~~10~~] days' notice and [~~a~~] hearing if such
27 hearing is requested by any person within the ten (10) day notice

1 period, that fire and explosion insurance in such inadequate fire
2 insurance area is no longer reasonably unavailable to a substantial
3 number of owners of insurable property within such designated city
4 or county. If the Association shall determine that fire and
5 explosion insurance is no longer reasonably unavailable to a
6 substantial number of owners of insurable property in any
7 designated inadequate fire insurance area or areas, then the
8 Association may request in writing that the Commissioner [~~Board~~]
9 revoke the designation of any or all such inadequate fire insurance
10 areas, and, after notice of not less than ten (10) [~~10~~] days and [~~a~~]
11 hearing if such hearing is requested by any person within the ten
12 (10) day notice period, but within 30 days of the [~~such~~] hearing or
13 the expiration of the notice period, the Commissioner [~~Board~~] shall
14 either approve or reject the Association's request and shall, if
15 such request is approved, revoke such designation or designations.

16 (j) "Insurance" as hereinafter used in this Article [~~Act~~]
17 shall mean the types of insurance described in Subsections
18 [~~Paragraphs~~] (d) and (e) of this Section 3.

19 (k) "Insurers" means all property insurers authorized to
20 transact property insurance in this State and specifically includes
21 and makes this Article [~~Act~~] applicable to county mutual companies,
22 Lloyds and reciprocal or interinsurance exchanges, but shall not
23 include (a) farm mutual insurance companies as authorized in
24 Chapter 911 [~~16~~] of this Code; (b) county mutual fire insurance
25 companies which are writing exclusively industrial fire insurance
26 policies as defined in Article 912.310 [~~17.02~~] of this Code; and (c)
27 any companies now operating under Chapters 12 and 13 of Title 78 of

1 the Revised Civil Statutes of Texas, 1925, as amended, which have
2 heretofore been repealed.

3 (o) "New building code" means any new building standard,
4 specification, or guideline adopted by the Commissioner
5 [~~commissioner~~] after May 1, 1997, that must be met before any new
6 residential construction qualifies for a certificate of compliance
7 that is evidence of insurability of the structure by the
8 Association.

9 (p) "Department" means the Texas Department of Insurance.

10 SECTION 5. Section 4, Article 21.49, Insurance Code, is
11 amended by amending subsections (c) and (d) to read as follows:

12 (c) No part of the net earnings of the Association
13 [~~association~~] may inure to the benefit of any private shareholder
14 or individual. The assets of the Association [~~association~~] may not
15 be used for or diverted to any purpose other than to:

16 (1) satisfy, in whole or in part, the liability of the
17 Association [~~association~~] regarding a claim made on a policy
18 written by the Association [~~association~~];

19 (2) make investments authorized under applicable law;

20 (3) pay reasonable and necessary administrative
21 expenses incurred in connection with the establishment and
22 operation of the Association [~~association~~] and the processing of
23 claims against the Association [~~association~~]; or

24 (4) make remittances under the laws of this state to be
25 used by this state to:

26 (A) pay claims on policies written by the
27 Association [~~association~~];

1 (B) purchase reinsurance covering losses under
2 those policies; or

3 (C) prepare for or mitigate the effects of
4 catastrophic natural events.

5 (d) On dissolution of the Association [~~association~~], all
6 assets of the Association [~~association~~] revert to this state's
7 general revenue fund [~~state~~].

8 SECTION 6. Section 5, Article 21.49, Insurance Code, is
9 amended to read as follows:

10 Sec. 5. (a) The Association shall, pursuant to the
11 provisions of this Article [~~Act~~] and the plan of operation, and with
12 respect to insurance on insurable property, have the power on
13 behalf of its members to cause to be issued policies of insurance to
14 applicants, to assume reinsurance from its members, and to cede
15 reinsurance to its members and to purchase reinsurance on behalf of
16 its members.

17 (b) All members of the Association shall participate in the
18 assessments of the Association [~~its writings, expenses, profits and~~
19 ~~losses~~] in the proportion that the net direct premiums of such
20 member written in this State during the preceding calendar year
21 bears to the aggregate net direct premiums written in this State by
22 all members of the Association, as furnished to the Association by
23 the Commissioner [~~Board~~] after review of annual statements, other
24 reports and other statistics the Commissioner [~~Board~~] shall deem
25 necessary to provide the information herein required and which the
26 Commissioner [~~Board~~] is hereby authorized and empowered to obtain
27 from any member of the Association, provided, however, that a

1 member shall, in accordance with the plan of operation, be entitled
2 to receive credit for similar insurance voluntarily written in the
3 area designated by the Commissioner [~~Board~~] and its participation
4 in the assessments of [~~writings in~~] the Association shall be
5 reduced in accordance with the provisions of the plan of operation.
6 Each member's participation in the Association shall be determined
7 annually in the manner provided in the plan of operation. For
8 purposes of determining participation in the Association, two or
9 more members having a common ownership or operating in this State
10 under common management or control shall be treated as if they
11 constituted a single member and also shall include the net direct
12 premiums, as defined by this article, of any affiliated insurance
13 company that is under such common management or control including
14 affiliated insurance companies that are not authorized to transact
15 property insurance in this State. Any insurer authorized to write
16 and engaged in writing any insurance, the writing of which required
17 such insurer to be a member of the Association, who becomes
18 authorized to engage in writing such insurance shall become a
19 member of the Association on the 1st day of January immediately
20 following such authorization and the determination of such
21 insurer's participation in the Association shall be made as of the
22 date of such membership in the same manner as for all other members
23 of the Association.

24 (c) The plan of operation of the Association shall provide
25 for the efficient, economical, fair, and nondiscriminatory
26 administration of the Association. The plan of operation may
27 contain provisions allowing the Association to change its methods

1 and procedures for doing business in ways that allow the
2 Association to implement new technologies designed to make the
3 Association up to date and efficient in its operations. The
4 Commissioner [~~Board~~] by rule shall adopt the plan of operation with
5 the advice of the board of directors of the Association. The
6 Association may present recommended changes in the plan of
7 operation to the Commissioner [~~Board~~] [~~at periodic hearings~~
8 ~~conducted by the Board for that purpose, or at hearings relating to~~
9 ~~property and casualty insurance rates. The Association must~~
10 ~~present a proposed change to the Board]~~ in writing in the manner
11 prescribed by the Commissioner [~~Board~~]. A change proposed by the
12 Association does not take effect unless adopted by the Commissioner
13 [~~Board~~] by rule.

14 (d) The plan of operation must include:

15 (1) a plan for the equitable assessment of the members
16 of the Association to defray losses and expenses;

17 (2) underwriting standards;

18 (3) procedures for the acceptance and cession of
19 reinsurance;

20 (4) procedures for determining the amount of insurance
21 to be provided to specific risks;

22 (5) time limits and procedures for processing
23 applications for insurance; and

24 (6) other provisions as deemed necessary by the
25 Commissioner [~~Board~~] to carry out the purposes of this Article
26 [~~Act~~].

27 (e) The Commissioner [~~Board~~] may develop programs to

1 improve the efficient operation of the Association, including a
2 program designed to create incentives for insurers to write
3 windstorm and hail insurance voluntarily to cover property located
4 in a catastrophe area, especially property located on the barrier
5 islands.

6 (f) Any interested person may petition the Commissioner
7 [~~Board~~] to modify the plan of operation in accordance with the
8 Administrative Procedure [~~and Texas Register~~] Act (Government Code
9 §2001.001 et seq.). [~~(Article 6252-13a, Vernon's Texas Civil~~
10 ~~Statutes).~~][FN2]]

11 (g) The board of directors of the Association shall be [~~is~~
12 ~~responsible and accountable to the Board. The board of directors~~
13 ~~is~~] composed of nine members appointed by the Commissioner as
14 follows:

15 (1) five members who represent the interests of
16 insurers [~~representatives of different insurers who are members of~~
17 ~~the Association who shall be elected by members as provided in the~~
18 ~~plan of operation~~];

19 (2) two representatives of the general public [~~7~~
20 ~~nominated by the office of public insurance counsel,~~] who, as of the
21 date of the appointment, reside in a catastrophe area and who are
22 policyholders, as of the date of the appointment, of the
23 Association; and

24 (3) two general lines property and casualty [~~local~~
25 ~~recording~~] agents licensed under this Code with demonstrated
26 experience in the Association, and whose principal offices, as of
27 the date of the appointment, are located in a catastrophe area.

1 (h) To be eligible to serve on the board of directors as a
2 representative of insurers, a person must be a full-time employee
3 of an authorized insurer that is a member of the Association.

4 (i) Any member of the board of directors may be removed by
5 the Commissioner without cause and the Commissioner shall appoint a
6 replacement for such member subject to the board of directors
7 composition requirements set forth in Sec. 5(g) above.

8 (j) [~~(h)~~] Members of the board of directors of the
9 Association serve three-year staggered terms [~~, with the terms of~~
10 ~~three members expiring on the third Tuesday of March of each year.~~]
11 A person may hold a seat on the board of directors for not more than
12 three consecutive full terms, not to exceed nine years.

13 (k) [~~(i)~~] The persons appointed as provided by Subsections
14 (g)(2) and (g)(3) of this section must be from different counties.

15 (l) [~~(j)~~] The board of directors of the Association shall
16 elect an executive committee consisting of a chairman,
17 vice-chairman, and secretary-treasurer from its membership. At
18 least one of those officers must be a member appointed under
19 Subsection (g)(2) or Subsection (g)(3) of this section.

20 (m) [~~(k)~~] Except for an emergency meeting of the
21 Association or the board of directors of the Association, the
22 Association shall notify the Commissioner [~~Board~~] not later than
23 the 11th day before the date of each meeting of the board of
24 directors of the Association or a meeting of the members of the
25 Association. Except for closed or executive sessions authorized by
26 Government Code §551.001 et seq., [~~Section 2, Chapter 271, Acts of~~
27 ~~the 60th Legislature, Regular Session, 1967 (Article 6252-17,~~

1 ~~Vernon's Texas Civil Statutes), [FN2]]~~ meetings of the board of
2 directors of the Association and members of the Association shall
3 be open to any member of the Board or the member's designated
4 representative and to members of the public. Notice of meetings of
5 the Association or board of directors of the Association shall be
6 given as provided by Government Code §551.001 et seq. [~~Chapter 271,~~
7 ~~Acts of the 60th Legislature, Regular Session, 1967 (Article~~
8 ~~6252-17, Vernon's Texas Civil Statutes).~~]

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

22 (o) [~~(m)~~] After January 1, 2004, for geographic areas
23 specified by the Commissioner [~~commissioner~~], the Commissioner
24 [~~commissioner~~] by rule may supplement the building specifications
25 in the plan of operation with the structural provisions of the
26 International Residential Code for one- and two-family dwellings,
27 as published by the International Code Council, or by an analogous

1 entity recognized by the Department [~~department~~]. For those
2 specified geographic areas, the Commissioner [~~commissioner~~] by
3 rule may adopt subsequent editions of that code and may adopt any
4 supplements published by the International Code Council and
5 amendments to that code.

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

15 (q) A meeting held by use of telephonic conference, video
16 conference, or other similar telecommunication device:

17 (1) is subject to the notice requirements applicable
18 to other meetings;

19 (2) must specify in the notice of the meeting the
20 location of the meeting;

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

24 (4) must provide two-way audio communication between
25 all members of the board attending the meeting during the entire
26 meeting, and if the two-way audio communication link with members
27 attending the meeting is disrupted at any time so that a quorum of

1 the board is no longer participating in the meeting, the meeting may
2 not continue until the two-way audio communication link is
3 reestablished.

4 SECTION 7. The heading to Section 5A, Article 21.49,
5 Insurance Code, is amended read as follows:

6 Commissioner [~~Board~~] Orders

7 SECTION 8. Section 5A, Article 21.49, Insurance Code, is
8 amended read as follows:

9 Sec. 5A. (a) After notice and opportunity for a hearing as
10 provided in Subsection (b) of this section, the Commissioner
11 [~~Board~~] may issue any orders which he or she [~~it~~] considers
12 necessary to carry out the purposes of this Act relating
13 [~~including, but not limited~~] to[~~7~~] maximum rates, competitive
14 rates, and policy forms.

15 (b) Before an order issued pursuant to subsection 5A(a) of
16 this Article is adopted by the Commissioner [~~Board~~], he or she [~~it~~]
17 shall post notice of [~~a hearing on~~] the order at the Secretary of
18 State's office in the State Capitol and shall hold a hearing to
19 consider the proposed order if such hearing is requested by any
20 person within ten (10) days of notice. Any person may appear and
21 testify for or against the adoption of the order at such hearing.

22 SECTION 9. The heading to Section 5B, Article 21.49,
23 Insurance Code, is amended read as follows:

24 Examination of Association [~~association~~]

25 SECTION 10. Section 5B, Article 21.49, Insurance Code, is
26 amended to read as follows:

27 Sec. 5B. (a) The Association [~~association~~] is subject to

1 Articles 1.15 and 1.16 of this code.

2 (b) A final examination report of the Association resulting
3 from an examination under this section is a public record and
4 available to the public at the Commissioner's ~~[Board's]~~ offices
5 pursuant to the open records act, Government Code §552.001 et seq.
6 ~~[law, Chapter 424, Acts of the 63rd Legislature, Regular Session,~~
7 ~~1973 (Article 6252-17a, Vernon's Texas Civil Statutes). [FN3]]~~
8 ~~[(c) Repealed by Acts 1997, 75th Leg., ch. 879, § 10(2), eff. Sept.~~
9 ~~1, 1997.]~~

10 SECTION 11. Section 6, Article 21.49, Insurance Code, is
11 amended to read as follows:

12 Sec. 6. (a) Any person having an insurable interest in
13 insurable property located in an area designated by the
14 Commissioner ~~[Board]~~ shall be entitled to apply to the Association
15 for insurance provided for under the plan of operation and for an
16 inspection of the property under such rules ~~[and regulations]~~,
17 including an inspection fee, if any, as determined by the Board of
18 Directors of the Association and approved by the Commissioner
19 ~~[State Board]~~ of Insurance. The term "insurable interest" as used
20 in this subsection shall be deemed to include any lawful and
21 substantial economic interest in the safety or preservation of
22 property from loss, destruction or pecuniary damage. Application
23 shall be made on behalf of the applicant by a general lines property
24 and casualty agent ~~[Local Recording Agent]~~ and shall be submitted
25 on forms prescribed by the Association. ~~[The application shall~~
26 ~~contain a statement as to whether or not the applicant has or will~~
27 ~~submit the premium in full from personal funds, or if not, to whom a~~

1 ~~balance is or will be due.]~~

2 (b) If the Association determines that the property is
3 insurable, the Association, upon payment of the premium, shall
4 cause to be issued a policy of insurance as may be provided in the
5 plan for a term of one year.

6 In the event an agent or some other person, firm, or
7 corporation shall finance the payment of all or a portion of the
8 premium and there is a balance due for the financing of such premium
9 and such balance, or any installment thereof, is not paid within 10
10 days after the due date, the agent or other person, firm, or
11 corporation to whom such balance is due may request cancellation of
12 the insurance by returning the policy, with proof that the insured
13 was notified of such return, or by requesting the Association to
14 cancel such insurance by notice mailed to the insured and any others
15 shown in the policy as having an insurable interest in the property.
16 Upon completion of cancellation, the Association shall refund the
17 unearned premium, less any minimum retained premium set forth in
18 the plan of operation, to the person, firm, or corporation to whom
19 the unpaid balance is due. In the event an insured requests
20 cancellation of insurance, the Association shall make refund of
21 such unearned premium payable to the insured and the holder of an
22 unpaid balance. The general lines property and casualty agent
23 ~~[Local Recording Agent]~~, who submitted the application, shall
24 refund the commission on any unearned premium in the same manner.

25 (c) Any policy issued pursuant to the provisions of this
26 Article ~~[Act]~~ may be renewed annually, upon application ~~[therefor]~~,
27 so long as the property continues to meet the definition of

1 "insurable property" set forth in Section 3 of this Article [~~Act~~].

2 SECTION 12. Section 6A, Article 21.49, Insurance Code, is
3 amended read as follows:

4 Sec. 6A. (a) Except as otherwise provided by this
5 Subsection, all structures that are constructed or repaired or to
6 which additions are made on or after January 1, 1988, to be
7 considered insurable property for windstorm and hail insurance from
8 the Association, must be inspected or approved by the Department
9 [~~Board~~] for compliance with the plan of operation. After January 1,
10 2004, for geographic areas specified by the Commissioner
11 [~~commissioner~~], the Commissioner [~~commissioner~~] by rule shall
12 adopt the 2003 International Residential Code for one- and
13 two-family dwellings published by the International Code Council.
14 For those geographic areas, the Commissioner [~~commissioner~~] by rule
15 may adopt a subsequent edition of that code and may adopt any
16 supplements published by the International Code Council and
17 amendments to the code. A structure constructed, repaired, or to
18 which additions were made before January 1, 1988, that is located in
19 an area covered at the time by a building code recognized by the
20 Association shall be considered an insurable property for windstorm
21 and hail insurance from the Association without compliance with the
22 inspection or approval requirements of this Section or the plan of
23 operation. A structure constructed, repaired, or to which
24 additions were made before January 1, 1988, that is located in an
25 area not covered by a building code recognized by the Association
26 shall be considered an insurable property for windstorm and hail
27 insurance from the Association without compliance with the

1 inspection or approval requirements of this Section or the plan of
2 operation if that structure has been previously insured by a
3 licensed insurance company authorized to do business in this State
4 and the risk is in essentially the same condition as when previously
5 insured, except for normal wear and tear, and without any
6 structural change other than a change made according to code.
7 Evidence of previous insurance includes a copy of a previous
8 policy, copies of canceled checks or agent's records that show
9 payments for previous policies, and a copy of the title to the
10 structure or mortgage company records that show previous policies.
11 After January 1, 2004, a person must submit a notice of a windstorm
12 inspection to the unit responsible for certification of windstorm
13 inspections at the Department [~~department~~] before beginning to
14 construct, alter, remodel, enlarge, or repair a structure.

15 (b) The Department [~~Board~~] shall issue for each structure
16 that qualifies a certificate of compliance that is evidence of
17 insurability of the structure by the Association.

18 [~~(c) Repealed by Acts 2003, 78th Leg., ch. 206, § 9.06, eff.~~
19 ~~Jan. 1, 2004.~~]

20 (c) [~~(d)~~] A windstorm inspection may only be performed by a
21 qualified inspector. For purposes of this article, a "qualified
22 inspector" includes:

23 (1) a person determined by the Department [~~department~~]
24 to be qualified to perform building inspections because of training
25 or experience;

26 (2) a licensed professional engineer meeting the
27 requirements of the rules adopted by the Commissioner

1 ~~[commissioner]~~ for appointment to conduct windstorm inspections;
2 and

3 (3) an inspector who is certified by the International
4 Code Council, the Building Officials and Code Administrators
5 International, Inc., the International Conference of Building
6 Officials, or the Southern Building Code Congress International,
7 Inc., who has certifications as a buildings inspector and coastal
8 construction inspector, and who also complies with other
9 requirements specified by rule by the Commissioner ~~[commissioner]~~.
10 A qualified inspector must be approved and appointed or employed by
11 the Department ~~[department]~~ to perform building inspections. The
12 Department ~~[department]~~ may charge a reasonable fee for the filing
13 of applications and determining the qualifications of persons for
14 appointment as qualified inspectors.

15 ~~[(c) Repealed by Acts 2003, 78th Leg., ch. 206, § 9.06, eff.~~
16 ~~Jan. 1, 2004.]~~

17 ~~[(f) Repealed by Acts 1999, 76th Leg., ch. 592, § 2, eff.~~
18 ~~Sept. 1, 1999.]~~

19 (d) ~~[(g)]~~ The Commissioner ~~[Board]~~ may make agreements and
20 contracts as necessary to effect the provisions of this Section.

21 (e) ~~[(h)]~~ The Department ~~[department]~~ may charge a
22 reasonable fee to cover the cost of making building requirements
23 and inspection standards available to the public.

24 (f) ~~[(i)]~~ All fees collected by the Department ~~[Board]~~
25 under this Section shall be deposited in the State Treasury to the
26 credit of the Texas Department ~~[State Board]~~ of Insurance operating
27 fund.

1 (g) [~~(j)~~] After notice and opportunity for a hearing, the
2 Department [~~department~~] may cancel or revoke an appointment made
3 under this Section if the holder of the appointment is found to be
4 in violation of, or to have failed to comply with, specific
5 provisions of this Section or any rule [~~or regulation~~] of the
6 Commissioner [~~commissioner~~] made under this Section. In lieu of
7 cancellation or revocation, the Commissioner [~~commissioner~~] may
8 order sanctions and penalties pursuant to Chapter 82, Insurance
9 Code, including but not limited to one or more of the following
10 sanctions, if the Commissioner [~~commissioner~~] determines from the
11 facts that it would be fair, reasonable, or equitable:

12 (1) suspending the appointment for a specific period,
13 not to exceed one year;

14 (2) an order directing the holder of the appointment
15 to cease and desist from the specified activity determined to be in
16 violation of specific provisions of this Section or rules [~~and~~
17 ~~regulations~~] of the Commissioner [~~commissioner~~] made pursuant to
18 this Section or from failing to comply with those provisions of this
19 Section or the rules [~~and regulations~~] promulgated under this
20 Section; or

21 (3) if the appointed person is found by the
22 Commissioner [~~commissioner~~] to have knowingly, willfully
23 [~~wilfully~~], fraudulently, or with gross negligence failed to file
24 the required inspection reports or signed or caused to be prepared
25 an inspection report that contains a false, fictitious, or
26 fraudulent statement or entry, directing the appointed person to
27 remit within a specified time, not to exceed 60 days, a specified

1 monetary forfeiture not to exceed \$5,000 for the violation or
2 failure to comply.

3 (h) [~~(j-1)~~] If an appointed person is an engineer licensed
4 by the Texas Board of Professional Engineers who is found by the
5 Department [~~department~~] to have knowingly, willfully [~~wilfully~~],
6 fraudulently, or with gross negligence failed to file the required
7 inspection reports or signed or caused to be prepared an inspection
8 report that contains a false or fraudulent statement or entry, the
9 Commissioner [~~commissioner~~] may take action against the appointed
10 person in the manner provided by Subsection (g) [~~(j)~~] of this
11 Section, but may not levy any monetary fine against an appointed
12 person who is a licensed engineer.

13 (i) [~~(k)~~] A monetary forfeiture paid as a result of an order
14 issued under Subsection (g) [~~(j)~~](3) of this Section shall be
15 deposited to the credit of the general revenue fund. If it is found
16 [~~after hearing~~] that any appointed person has failed to comply with
17 an order issued under Subsection (g) [~~(j)~~] of this Section, the
18 Department [~~department~~] shall, unless the order is lawfully stayed,
19 cancel the appointment of the person. The Department [~~department~~]
20 may informally dispose of any matter under Subsection (g) [~~(j)~~] of
21 this Section by consent order or default.

22 (j) [~~(k-1)~~] The Commissioner [~~commissioner~~] shall notify
23 the Texas Board of Professional Engineers of each order issued by
24 the Commissioner [~~commissioner~~] against an appointed person who is
25 an engineer licensed by the Texas Board of Professional Engineers,
26 including an order suspending, canceling, or revoking the
27 appointment of that person.

1 SECTION 13. Section 6B, Article 21.49, Insurance Code, is
2 amended read as follows:

3 Sec. 6B. (a) The Commissioner [~~board~~] shall assess each
4 insurer who provides property insurance in a first tier coastal
5 county in accordance with this section.

6 (b) The total assessment under this section must be in the
7 amount the Commissioner [~~board~~] estimates is necessary to cover the
8 cost of administration of the windstorm inspection program in the
9 first tier coastal counties under Section 6A of this article in the
10 state fiscal year in which the assessment is made [~~, reduced by the~~
11 ~~total amount of fees the board estimates will be collected for that~~
12 ~~year under Section 6A(c) of this article]~~.

13 (c) The assessment must be based on each insurer's
14 proportionate share of the total extended coverage and other allied
15 lines premium received by all insurers for property insurance in
16 the first tier coastal counties in the calendar year preceding the
17 year in which the assessment is made. The Commissioner [~~board~~]
18 shall adopt rules to implement the assessment of insurers under
19 this section.

20 (d) For purposes of this section, "property insurance"
21 means any commercial or residential policy promulgated or approved
22 by the Commissioner [~~board~~] that provides coverage for the perils
23 of windstorm and hail, including a Texas Windstorm and Hail
24 Insurance Policy.

25 SECTION 14. Section 6C, Article 21.49, Insurance Code, is
26 amended by amending subsections (b), (c), (e) (f), (g), (h), (j),
27 (m) and (n) to read as follows:

1 (b) The Windstorm Building Code Advisory Committee on
2 Specifications and Maintenance is established as an advisory
3 committee to the Commissioner [~~commissioner~~] to advise and make
4 recommendations to the Commissioner [~~commissioner~~] on building
5 requirements and maintenance in the plan of operation.

6 (c) The advisory committee is composed of nine members
7 appointed by the Commissioner [~~commissioner~~] without regard to the
8 race, color, disability, sex, religion, age, or national origin of
9 the appointee. The Commissioner [~~commissioner~~] or the
10 Commissioner's [~~commissioner's~~] designated representative shall
11 serve as an ex officio, nonvoting member of the advisory committee.
12 The voting members of the advisory committee shall be appointed as
13 follows:

14 (1) three members must be representatives of the
15 building industry who reside in designated catastrophe areas:

16 (A) two of whom are residential builders; and

17 (B) one of whom is a representative of the
18 building supply industry;

19 (2) three members must be representatives of the
20 insurance industry:

21 (A) one of whom is a member of the board of
22 directors of the Association; and

23 (B) two of whom are full-time employees of an
24 insurance company authorized to engage in the business of property
25 and casualty insurance in this state that writes insurance in the
26 designated catastrophe area; and

27 (3) three members must be representatives of the

1 public who reside in a designated catastrophe area, one of whom is a
2 professional engineer licensed in this state.

3 (e) The advisory committee shall elect a presiding officer
4 from its members. The advisory committee shall meet at the call of
5 the presiding officer with the approval of the Commissioner
6 [~~commissioner~~], but at least two times each year. The advisory
7 committee shall publish the date and location of the meeting not
8 later than the 45th day before the date on which the meeting is
9 scheduled to occur. The Commissioner [~~commissioner~~] or the
10 Commissioner's [~~commissioner's~~] designee must be present at each
11 meeting of the advisory committee.

12 (f) The advisory committee shall analyze and make
13 recommendations for changes regarding procedures described under
14 Section 5(d) of this article that are adopted by the Commissioner
15 [~~commissioner~~] in the plan of operation. In making
16 recommendations, the advisory committee shall seek to balance the
17 concerns of all affected parties, including consumers, builders,
18 and the Association.

19 (g) Each proposal for a change in an applicable procedure
20 must be submitted to the Commissioner [~~commissioner~~]. Each
21 proposal must be submitted separately in writing and must contain:

22 (1) the name, mailing address, and telephone number of
23 the proponent, or, if the proponent is a group or organization, the
24 name of the group or organization and the mailing address and
25 telephone number of the group or organization;

26 (2) a citation of any applicable statute or rule;

27 (3) the text of the proposed change, with deletions

1 from current language struck through with a single line and new
2 language underlined; and

3 (4) a statement of the purpose of the proposed change,
4 with supporting written or printed information.

5 (h) The Commissioner [~~commissioner~~] by rule shall adopt a
6 form to be used by a person in presenting a proposal for a change in
7 an applicable procedure to the Commissioner [~~commissioner~~].

8 (j) The Department [~~department~~] shall review and organize
9 each proposal submitted and shall allow the advisory committee and
10 interested parties to view the proposals to be considered within a
11 reasonable time before the meeting of the advisory committee. If
12 requested by a majority of the advisory committee, the Department
13 [~~department~~] shall make recommendations regarding each proposal
14 submitted and provide to the advisory committee any necessary
15 technical information.

16 (m) The advisory committee shall submit its recommendation
17 on each proposal to the Commissioner [~~commissioner~~]. The
18 Commissioner [~~commissioner~~] shall notify the advisory committee of
19 the acceptance or rejection of each recommendation not later than
20 the 30th day after the date of receipt by the Commissioner
21 [~~commissioner~~]. Acceptance of a recommendation by the Commissioner
22 [~~commissioner~~] means that the Commissioner [~~commissioner~~] will
23 consider adoption of that recommendation in [~~at~~] a rulemaking
24 proceeding [~~hearing~~]. Before adopting a recommendation, the
25 Commissioner [~~commissioner~~] must determine that the proposal, if
26 adopted, will not weaken the integrity or diminish the
27 effectiveness of a procedure.

1 (n) In addition to any other rulemaking authority granted
2 under this article, the Commissioner [~~commissioner~~] may adopt rules
3 as necessary to implement this section.

4 SECTION 15. Section 6D, Article 21.49, Insurance Code, is
5 amended read as follows:

6 Sec. 6D. (a) The Commissioner [~~commissioner~~], on the
7 request of an engineer licensed by the Texas Board of Professional
8 Engineers, shall appoint the engineer under this article not later
9 than the 10th day after the date of the engineer's delivery to the
10 Commissioner [~~commissioner~~] of information demonstrating that the
11 engineer is qualified to perform windstorm inspections under this
12 article.

13 (b) The Commissioner [~~commissioner~~] shall adopt rules to
14 determine the information the Commissioner [~~commissioner~~] will
15 consider in appointing engineers under Subsection (a) of this
16 section.

17 SECTION 16. Section 7, Article 21.49, Insurance Code, is
18 amended read as follows:

19 Sec. 7. The Department [~~Board~~] shall prepare endorsements
20 and forms applicable to the standard policies which it has
21 promulgated providing for the deletion of coverages available
22 through the Association and shall promulgate the applicable
23 reduction of premiums and rates for the use of such endorsements and
24 forms.

25 SECTION 17. Section 8, Article 21.49, Insurance Code, is
26 amended by amending subsections (a), (c), (d) (e), (f), (g), (h),
27 and (i) to read as follows:

1 Sec. 8. (a) The Association shall file with the
2 Commissioner every manual of classifications, rules, rates which
3 shall include condition charges, every rating plan, and every
4 modification of any of the foregoing which it proposes to use.
5 Every such filing shall indicate the character and the extent of the
6 coverage contemplated and shall be accompanied by the policies and
7 endorsements forms proposed to be used, which said forms and
8 endorsements may be designed specifically for use by the
9 Association and without regard to other forms filed with, approved
10 by, or promulgated by the Department [~~Board~~] for use in this State.
11 The Association may make recommendations to the Commissioner that
12 would result in a reduction of coverages or an increase in an
13 applicable deductible if any resultant reduction in coverages or
14 increase in deductibles is accompanied by proposed rate credits.
15 After notice and hearing if such hearing is requested by any person
16 within ten (10) days of notice, the Commissioner may accept,
17 modify, or reject a recommendation made by the Association under
18 this subsection. Article 1.33B of this code does not apply to an
19 action taken under this subsection.

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

26 (d) If at any time the Commissioner [~~Board~~] finds that a
27 filing so approved no longer meets the requirements of this Article

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

10 (e) All rates shall be made in accordance with the following
11 provisions:

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

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

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

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

10 (4) Commissions paid to agents shall be reasonable,
11 adequate, not unfairly discriminatory and nonconfiscatory.

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

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

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

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

1 ~~subsection or a department action with respect to the filing.]~~

2 (3) Before approving or disapproving a filing, or
3 modifying a filing, the Commissioner [~~commissioner~~] shall provide
4 all interested persons a reasonable opportunity to review the
5 filing, obtain copies of the filing on payment of any legally
6 required copying cost, and submit to the Commissioner
7 [~~commissioner~~] written comments or information related to the
8 filing.

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

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

21 (A) the availability of the filing for public
22 inspection at the Department [~~department~~] during regular business
23 hours and the procedures for obtaining copies of the filing;

24 (B) procedures for making written comments
25 related to the filing; and

26 (C) the time, place, and date of the open meeting
27 scheduled under Subdivision (4) of this subsection at which an

1 interested person may submit either written or oral comments
2 relating to the filing.

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

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

1 ~~disapprove the amended filing~~]. Within 30 days after the amended
2 filing is received, the Commissioner [~~commissioner~~] shall approve
3 without changes, approve as modified by the Commissioner
4 [~~commissioner~~], or disapprove an amended filing or it is deemed
5 approved. [~~The requirements imposed under Subdivisions (5) and (6)~~
6 ~~of this subsection apply to a hearing conducted under this~~
7 ~~subdivision.~~]

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

1 ~~[commissioner]~~ receives the information from the Association.

2 (9) A rate established and authorized by the
3 Commissioner ~~[commissioner]~~ under this subsection may not reflect
4 an average rate change that is more than 10 percent higher or lower
5 than the rate for commercial or 10 percent higher or lower than the
6 rate for noncommercial windstorm and hail insurance in effect on
7 the date the filing is made. The rate may not reflect a rate change
8 for an individual rating class that is 15 percent higher or lower
9 than the rate for that individual class in effect on the date the
10 filing is made. The Commissioner ~~[commissioner]~~ may~~[, after notice~~
11 ~~and hearing,]~~ suspend this subdivision upon a finding that a
12 catastrophe loss or series of occurrences resulting in losses in
13 the catastrophe area justify a need to assure rate adequacy in the
14 catastrophe area and also justify a need to assure availability of
15 insurance outside the catastrophe area.

16 (10) If valid flood or rising water insurance coverage
17 exists and is maintained on any risk being insured in the pool, the
18 Commissioner ~~[commissioner]~~ may provide for a rate and reduction in
19 rate of premium as may be appropriate.

20 (11) The catastrophe element used to develop rates
21 under this Article ~~[Act]~~ applicable to risks written by the
22 Association shall be uniform throughout the seacoast territory. In
23 developing the ~~[The]~~ catastrophe element of the rates the following
24 must be considered ~~[developed using]~~:

25 (A) 90 percent of both the monoline extended
26 coverage loss experience and related premium income for all
27 insurers, other than the Association, for covered property located

1 in the seacoast territory using not less than the most recent 30
2 years of experience available; ~~and~~

3 (B) 100 percent of both the loss experience and
4 related premium income for the Association for covered property
5 using not less than the most recent 30 years of experience
6 available ~~[and]~~; and

7 (C) recognized catastrophe models and any other
8 relevant factors as identified under subsection (e)(1) of this
9 section.

10 (12) The noncatastrophe element of the noncommercial
11 rates must be developed using:

12 (A) 90 percent of both the monoline extended
13 coverage loss experience and related premium income for all
14 insurers, other than the Association, for covered property located
15 in the catastrophe area of the seacoast territory using the most
16 recent 10 years of experience available; and

17 (B) 100 percent of both the loss experience and
18 related premium income for the Association for covered property
19 using the most recent 10 years of experience available.

20 (13) The noncatastrophe element of the commercial
21 rates must be developed using 100 percent of both the loss
22 experience and related premium income for the Association for
23 covered property using the most recent 10 years of experience
24 available.

25 (14) Surcharges collected in the past and used in the
26 development of current rates may not be excluded from future rate
27 development as long as those surcharges were collected during the

1 experience period considered by the Commissioner [~~commissioner~~].

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

6 (16) Not later than June 1 of each year, the Department
7 [~~department~~] shall provide the experience data to be used in
8 establishing the rates under this subsection in that year to the
9 Association and other interested persons. On request from the
10 Department [~~department~~], an insurer shall provide the data to the
11 Department [~~department~~] or the Department [~~department~~] may obtain
12 the data from a designated statistical agent, as defined by Section
13 38.201 of this code.

14 (17) The Association is authorized to purchase
15 [~~association shall either establish a~~] reinsurance as part of its
16 annual operating expenses to the extent [~~program~~] approved by the
17 [~~Texas~~] Department and to [~~of Insurance or~~] make payments into the
18 catastrophe reserve trust fund established under Subsection (i) of
19 this section. With the approval of the [~~Texas~~] Department [~~of~~
20 ~~Insurance~~], the Association [~~association~~] may use [~~establish a~~]
21 reinsurance [~~program~~] that operates in addition to or in concert
22 with the catastrophe reserve trust fund established under
23 Subsection (i) of this section and with assessments authorized by
24 this Act.

25 (i)(1) The Commissioner [~~commissioner~~] shall adopt rules
26 under which the Association relinquishes its [~~association members~~
27 ~~relinquish their~~] net equity on an annual basis as provided by those

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

17 (2) The catastrophe reserve trust fund shall be kept
18 and maintained by the [~~Texas~~] Department [~~of Insurance~~] pursuant to
19 this Article [~~Act~~] and rules adopted by the Commissioner
20 [~~commissioner~~]. The comptroller, as custodian, shall administer
21 the funds strictly and solely as provided by this Article [~~Act~~] and
22 the Commissioner's [~~commissioner's~~] rules.

23 (3) At the end of either each calendar year or policy
24 year, the Association [~~association~~] shall pay the net gain from
25 operations [~~equity~~] of the Association [~~a member~~], including all
26 premium and other revenue of the Association [~~association~~] in
27 excess of incurred losses and operating expenses (including the

1 cost of any reinsurance) to the catastrophe reserve trust fund as
2 established under Section 8(i)(2) of this Article [~~or a reinsurance~~
3 ~~program approved by the commissioner~~].

4 (4) The Commissioner's [~~commissioner's~~] rules shall
5 establish the procedure relating to the disbursement of money from
6 the catastrophe reserve trust fund [~~to policyholders in the event~~
7 ~~of an occurrence or series of occurrences within the defined~~
8 ~~catastrophe area that results in a disbursement under Section 19(a)~~
9 ~~of this Act~~]. These rules may provide that money from the
10 catastrophe reserve trust fund may be used to purchase reinsurance
11 to protect the fund or to reimburse the Association for the payment
12 of policyholder claims. Such reinsurance purchases, if any, shall
13 be included in the reinsurance approved under Section 8(h)(17) of
14 this Article.

15 (5) Each state fiscal year, beginning with fiscal year
16 2002, the Department [~~department~~] may use from the investment
17 income of the fund an amount equal to not less than \$1 million and
18 not more than 10 percent of the investment income of the prior
19 fiscal year to provide funding for an annual mitigation and
20 preparedness plan to be developed and implemented each year by the
21 Commissioner [~~commissioner~~]. From that amount and as part of that
22 plan, the Department [~~department~~] may use in each fiscal year \$1
23 million for the windstorm inspection program established under
24 Section 6A of this Article [~~Act~~]. The mitigation and preparedness
25 plan shall provide for steps to be taken in the seacoast territory
26 by the Commissioner [~~commissioner~~] or by a local government, state
27 agency, educational institution, or nonprofit organization

1 designated by the Commissioner [~~commissioner~~] in the plan, to
2 implement programs intended to improve preparedness for windstorm
3 and hail catastrophes, reduce potential losses in the event of such
4 a catastrophe, provide research into the means to reduce those
5 losses, educate or inform the public in determining the
6 appropriateness of particular upgrades to structures, or protect
7 infrastructure from potential damage from those catastrophes.
8 Money in excess of \$1 million is not available for use under this
9 subsection if the Commissioner [~~commissioner~~] determines that an
10 expenditure of investment income from the fund would jeopardize the
11 actuarial soundness of the fund or materially impair the ability of
12 the fund to serve the state purposes for which it was established.

13 SECTION 18. Section 8A, Article 21.49, Insurance Code, is
14 amended by amending subsections (b), (c), (d), and (e) to read as
15 follows:

16 (b) If, at the time of loss, the total amount of insurance
17 applicable to the dwelling is equal to 80 percent or more of the
18 full replacement cost of the dwelling or equal to the maximum amount
19 of insurance otherwise available through the Association, coverage
20 applicable to the dwelling under the policy is extended to include
21 the full cost of repair or replacement, without a deduction for
22 depreciation. If, at the time of loss, the total amount of
23 insurance applicable to the dwelling is equal to less than 80
24 percent of the full replacement cost of the dwelling and less than
25 the maximum amount of insurance available through the Association,
26 liability for loss under the policy may not exceed the replacement
27 cost of that part of the dwelling damaged or destroyed, less

1 depreciation. Notwithstanding any other provision of this Article
2 [~~Act~~] or other law, the Commissioner [~~commissioner, after notice~~
3 ~~and hearing,~~] may adopt rules to:

4 (1) authorize the Association to provide actual cash
5 value coverage instead of replacement cost coverage on the roof
6 covering of a building insured by the Association; and

7 (2) determine:

8 (A) the conditions under which the Association
9 may provide that actual cash value coverage;

10 (B) the appropriate premium reductions when
11 coverage for the roof covering is provided on an actual cash value
12 basis; and

13 (C) the disclosure that must be provided to the
14 policyholder, prominently displayed on the face of the windstorm
15 and hail insurance policy.

16 (c) The Commissioner may promulgate such rules [~~and~~
17 ~~regulations~~] as necessary to implement this section.

18 [~~(d) Notwithstanding Article 1.33B of this code, a hearing~~
19 ~~under Subsection (b) of this section shall be held before the~~
20 ~~commissioner or the commissioner's designee.~~]

21 (d) [~~(e)~~] For purposes of this section, "roof covering"
22 means:

23 (1) the roofing material exposed to the weather;

24 (2) the underlayments applied for moisture
25 protection; and

26 (3) all flashings required in the replacement of a
27 roof covering.

1 SECTION 19. Section 8B, Article 21.49, Insurance Code, is
2 amended to read as follows:

3 Sec. 8B. (a) Except as provided by Subsections (b) and (c)
4 of this section, a policy of windstorm and hail insurance issued by
5 the Association [~~association~~] for a dwelling, as that term is
6 defined by the Commissioner [~~Texas Department of Insurance~~] or its
7 successor, must include coverage for wind-driven rain damage,
8 regardless of whether an opening is made by the wind, loss of use,
9 and consequential losses, according to forms approved by the
10 Department [~~commissioner~~] and for a premium paid by the insured
11 based on rates established by rule adopted by the Commissioner
12 [~~commissioner~~]. A policy of windstorm and hail insurance issued by
13 the Association [~~association~~] for tenant contents of a dwelling or
14 other residential building must include coverage for loss of use
15 and consequential losses, according to forms approved by the board
16 and for a premium paid by the insured based on rates established by
17 rule adopted by the Commissioner [~~commissioner~~]. The Association
18 [~~association~~] shall provide coverage under this section as directed
19 by rule of the Commissioner [~~commissioner~~].

20 (b) The Association [~~association~~] is not required to offer
21 coverage for indirect losses as provided by Subsection (a) of this
22 section unless that coverage was excluded from a companion policy
23 in the voluntary market.

24 (c) The Association [~~association~~] is not required to
25 provide coverage for (1) "loss of use" if such "loss of use" is loss
26 of rents or loss of rental value; or (2) "additional living
27 expenses" when the property insured is a secondary or a non-primary

1 residence.

2 SECTION 20. Section 8D, Article 21.49, Insurance Code, is
3 amended by amending subsections (a), (d), (e), (g) and (i) to read as
4 follows:

5 Sec. 8D. (a) The maximum limits of liability under a policy
6 of windstorm and hail insurance issued by the Association under
7 this Article [~~Act~~] shall be proposed by the board of directors of
8 the Association and must be approved by the Commissioner. The
9 maximum limits of liability for coverage on any one insurable
10 property may not be less than:

11 (1) \$350,000 for a dwelling, including an individually
12 owned townhouse unit, and the corporeal movable property located in
13 or about the dwelling, and as an extension of coverage, away from
14 those premises, as provided under the policy;

15 (2) \$2,192,000 for a building and the corporeal
16 movable property located in the building that is owned by, and at
17 least 75 percent of which is occupied by, a governmental entity, or
18 that is not owned by, but is wholly and exclusively occupied by, a
19 governmental entity;

20 (3) \$125,000 for individually owned corporeal movable
21 property located in an apartment unit, residential condominium
22 unit, or townhouse unit that is occupied by the owner of that
23 property, and as an extension of coverage, away from those
24 premises, as provided under the policy; and

25 (4) \$1,500,000 for a structure other than a dwelling
26 or a public building and the corporeal movable property located in
27 that structure and, as an extension of coverage, away from those

1 premises, as provided under the policy.

2 (d) Not later than September 30 of each year, the board of
3 directors of the Association shall propose adjustments to the
4 liability limits for inflation. The proposed adjustments shall be
5 made in increments of \$1,000, rounded to the nearest \$1,000,
6 considering the limits set by Subsection (a) of this section, at a
7 rate that reflects any change in the BOECKH Index. If the BOECKH
8 Index ceases to exist, the board of directors of the Association
9 shall propose adjustments to the nearest \$1,000 in round numbers to
10 the liability limits for inflation based on any other index that the
11 Association [~~board~~] determines accurately reflects changes in the
12 cost of construction or residential values in the catastrophe area.
13 An adjustment to the liability limits that is approved by the
14 Commissioner applies to each policy of windstorm and hail insurance
15 delivered, issued for delivery, or renewed on or after January 1 of
16 the year following the approval by the Commissioner of the
17 adjustment to the liability limits. The indexing of the liability
18 limits shall adjust for changes occurring on and after January 1,
19 1997.

20 (e) The board of directors of the Association may propose
21 additional increases in the liability limits as it determines
22 necessary to implement the purposes of this Article [~~Act~~].

23 (g) Not later than the 60th day after the date of receipt of
24 the filing made under Subsection (f) of this section, [~~and after~~
25 ~~notice and hearing,~~] the Commissioner by order shall approve,
26 disapprove, or modify the proposed adjustments to the liability
27 limits.

1 ~~[(i) Article 1.33B of this code does not apply to an action~~
2 ~~taken under this section.]~~

3 SECTION 21. Section 8E, Article 21.49, Insurance Code, is
4 amended by amending subsection (a) to read as follows:

5 Sec. 8E. (a) Notwithstanding any other law, the
6 Association may issue a policy of windstorm and hail insurance that
7 includes coverage for an amount in excess of a liability limit
8 proposed by the Association and approved by the Commissioner under
9 Section 8D of this Article ~~[Act]~~ if the Association first obtains,
10 from a reinsurer approved by the Commissioner, reinsurance for the
11 full amount of policy exposure above the limits approved by the
12 Commissioner for any given type of risk.

13 SECTION 22. Subsections (d) and(e), Section 8E, Article
14 21.49, Insurance Code, are repealed.

15 SECTION 23. Section 9, Article 21.49, Insurance Code, is
16 amended to read as follows:

17 Sec. 9. Any person insured pursuant to this Article ~~[Act]~~,
18 or his duly authorized representative, or any affected insurer who
19 may be aggrieved by an act, ruling or decision of the Association,
20 may, within 30 days after such act, ruling or decision, appeal to
21 the Commissioner ~~[commissioner]~~. In the event the Association is
22 aggrieved by the action of the Commissioner ~~[commissioner]~~ with
23 respect to any ruling, order, or determination of the Commissioner
24 ~~[commissioner]~~, it may, within 30 days after such action, make a
25 written request to the Commissioner ~~[commissioner]~~, for a hearing
26 thereon. The Commissioner ~~[commissioner]~~ shall hear the
27 Association, or the appeal from an act, ruling or decision of the

1 Association, within 30 days after receipt of such request or appeal
2 and shall give not less than 10 days' written notice of the time and
3 place of hearing to the Association making such request or the
4 person, or his duly authorized representative, appealing from the
5 act, ruling or decision of the Association. A hearing on an act,
6 ruling or decision of the Association relating to the payment of,
7 the amount of, or the denial of a particular claim shall be held, at
8 the request of the claimant, in either the county in which the
9 covered property is located or Travis County. Within 30 days after
10 the hearing, the Commissioner [~~commissioner~~] shall affirm, reverse
11 or modify its previous action or the act, ruling or decision
12 appealed to the Commissioner [~~commissioner~~]. Pending such hearing
13 and decision thereon, the Commissioner [~~commissioner~~] may suspend
14 or postpone the effective date of its previous rule or of the act,
15 ruling or decision appealed to the Commissioner [~~commissioner~~].
16 The Association, or the person aggrieved by any order or decision of
17 the Commissioner [~~commissioner~~], may thereafter appeal to either a
18 District Court of Travis County, Texas, or a District Court in the
19 county in which the covered property is located. An action brought
20 under this section is subject to the procedures established under
21 §36.201 et seq. [~~Article 1.04~~] of this code.

22 SECTION 24. Section 9A, Article 21.49, Insurance Code, is
23 amended to read as follows:

24 Sec. 9A. (a) Except as provided by Section 10 of this
25 Article, any person insured under this Article [~~Act~~] who is
26 aggrieved by an act, ruling, or decision of the Association
27 relating to the payment of, the amount of, or the denial of a claim

1 may elect to bring an action, including an action under Article
2 21.21 of this code, against the Association in a court of competent
3 jurisdiction or to appeal the act, ruling, or decision under
4 Section 9 of this Article. A person may not proceed under both
5 Section 9 of this Article and this section for the same act, ruling,
6 or decision.

7 (b) Except as otherwise provided by this subsection, venue
8 in a proceeding action against the Association under this section,
9 including an action under Article 21.21 of this code, is in the
10 county in which the covered property is located or in a District
11 Court of Travis County. Venue is only in the District Court of
12 Travis County if the claimant joins the Commissioner [~~State Board~~
13 ~~of Insurance~~] as a party to the action.

14 SECTION 25. Section 10, Article 21.49, Insurance Code, is
15 amended by amending subsection (c) to read as follows:

16 (c) There shall be no liability on the part of and no cause
17 of action of any nature shall arise against a director of the
18 Association [~~association~~], the Board or any of its staff, the
19 Association or its agents or employees, or against any
20 participating insurer or its agents or employees, for any
21 inspections made under the plan of operation or any statements made
22 in good faith by them in any reports or communications concerning
23 risks submitted to the Association, or at any administrative
24 hearings conducted in connection therewith under the provisions of
25 this Article [~~Act~~].

26 SECTION 26. Section 11, Article 21.49, Insurance Code, is
27 amended to read as follows:

1 Sec. 11. Each person serving as a director of the
2 Association, each member of the Association, and each officer and
3 employee of the Association shall be indemnified by the Association
4 against all costs and expenses actually and necessarily incurred by
5 him or it in connection with the defense of any action, suit, or
6 proceeding in which he or it is made a party by reason of his or its
7 being or having been a director or member of the Association, or an
8 officer or employee of the Association except in relation to
9 matters as to which he or it has been judged in such action, suit or
10 proceeding to be liable by reason of misconduct in the performance
11 of his or its duties as a director of the Association or a member or
12 officer or employee of the Association, provided, however, that
13 this indemnification shall in no way indemnify a member of the
14 Association from participating in the assessments made by
15 [~~writings, expenses, profits, and losses of~~] the Association in the
16 manner set out in this Article [~~Act~~]. Indemnification hereunder
17 shall not be exclusive of other rights to which such member or
18 officer may be entitled as a matter of law.

19 SECTION 27. Section 12, Article 21.49, Insurance Code, is
20 amended to read as follows:

21 Sec. 12. The Association shall file in the office of the
22 Commissioner [~~Board~~] annually a statement which shall summarize the
23 transactions, conditions, operations and affairs of the
24 Association during the preceding year at such times and covering
25 such periods as may be designated by the Commissioner [~~Board~~]. Such
26 statement shall contain such matters and information as are
27 prescribed by the Commissioner [~~Board~~] and shall be in such form as

1 is required by it.

2 SECTION 28. Section 12A, Article 21.49, Insurance Code, is
3 amended to read as follows:

4 Sec. 12A. The Association [~~association~~] shall establish a
5 plan in its plan of operation under which the Association's
6 [~~association's~~] legal representation before the Commissioner
7 [~~State Board of Insurance~~], the [~~Texas~~] Department [~~of Insurance~~],
8 and the Texas legislature is without conflict of interest or the
9 appearance of a conflict of interest as defined in the Texas
10 Disciplinary Rules of Professional Conduct. The Association
11 [~~association~~] shall also adopt separate and distinct procedures for
12 legal counsel in the handling of disputes involving policyholder
13 claims against the Association [~~association~~].

14 SECTION 29. Section 13, Article 21.49, Insurance Code, is
15 amended to read as follows:

16 Sec. 13. This Article [~~Act~~] shall become effective from and
17 after passage.

18 SECTION 30. Section 14, Article 21.49, Insurance Code, is
19 amended to read as follows:

20 Sec. 14. All laws or parts of laws in conflict herewith are
21 hereby repealed to the extent necessary to accomplish the purposes
22 of this Article [~~Act~~].

23 SECTION 31. Section 15, Article 21.49, Insurance Code, is
24 amended to read as follows:

25 Sec. 15. If any provision of this Article [~~Act~~] or the
26 application thereof to any person or circumstance is held to be
27 invalid, such invalidity shall not affect other provisions or

1 applications of this Article [~~Act~~] which can be given effect
2 without the invalid provision or application, and to this end the
3 provisions of this Article [~~Act~~] are declared to be severable.

4 SECTION 32. Section 17, Article 21.49, Insurance Code, is
5 amended to read as follows:

6 Sec. 17. This Article [~~Act~~] is hereby codified as Article
7 21.49 of the Texas Insurance Code.

8 SECTION 33. Section 18, Article 21.49, Insurance Code, is
9 amended to read as follows:

10 Sec. 18. This Article [~~Act~~] does not apply to farm mutual
11 insurance companies, as defined in Chapter 911 [~~Article 16.01~~] of
12 this code [~~the Insurance Code~~], nor does it apply to any existing
13 company chartered under old Chapter 12, Title 78, Revised Civil
14 Statutes of Texas, 1925, repealed by Chapter 40, Acts of the 41st
15 Legislature, 1st Called Session, 1929, Chapter 40.

16 SECTION 34. The heading to Section 19, Article 21.49,
17 Insurance Code, is amended read as follows:

18 Payment of losses [~~, premium tax credit~~]

19 SECTION 35. Section 19, Article 21.49, Insurance Code, is
20 amended read as follows:

21 Sec. 19. (a) If [~~, in any calendar year,~~] an occurrence or
22 series of occurrences, as defined in the plan of operation, within
23 the defined catastrophe area results in insured losses and
24 operating expenses of the Association [~~association~~] in excess of
25 premium and other revenue of the Association [~~association~~], any
26 excess losses shall be paid as follows:

27 (1) up to \$100 million per occurrence shall be

1 assessed to the members of the Association [~~association~~] and the
 2 Texas FAIR Plan Association. The loss allocable to the Texas FAIR
 3 Plan Association shall be based on the proportion that the net
 4 direct premiums written by the Texas FAIR Plan Association during
 5 the preceding calendar year bears to the total net direct premiums
 6 written in this State by all members of the Association for the same
 7 period determined pursuant to Section 5(b) of this Article. The
 8 remainder of the assessments shall be allocated [~~with the~~
 9 ~~proportion of the loss allocable~~] to each member insurer
 10 [~~determined~~] in the same manner as its participation in the
 11 Association [~~association~~] has been determined for the year under
 12 Section 5(b) [~~5(c)~~] of this Article [~~Act~~]. Assessments made under
 13 this subdivision are not reimbursable under subsection (b) of this
 14 Section;

15 (2) for each occurrence, any losses in excess of \$100
 16 million shall be paid from the catastrophe reserve trust fund
 17 established under Section 8(i) of this Article [~~Act~~]. Provided,
 18 however, only up to fifty percent of the amount in the catastrophe
 19 reserve trust fund as of the date of the occurrence, reduced by
 20 anticipated payments from prior occurrences, may be so used, unless
 21 the Commissioner determines a greater percentage should be applied
 22 after not less than ten (10) days notice and hearing if a hearing is
 23 requested by any person within the ten (10) notice period; [~~and any~~
 24 ~~reinsurance program established by the association;~~]

25 (3) [~~for~~] any losses in excess of the amounts
 26 determined in [~~those paid under~~] Subdivisions (1) and (2) of this
 27 subsection shall be paid in accordance with a plan developed by the

1 Association, and approved by the Commissioner after not less than
2 ten (10) days notice and hearing if a hearing is requested by any
3 person within the ten (10) notice period, from any or a combination
4 of the following sources:~~[, an additional \$200 million shall be~~
5 ~~assessed to the members of the association with the proportion of~~
6 ~~the loss allocable to each insurer determined in the same manner as~~
7 ~~its participation in the association has been determined for the~~
8 ~~year under Section 5(c) of this Act,]~~

9 (A) additional assessments to the members of the
10 Association and the Texas FAIR Plan Association not to exceed \$300
11 million per calendar year, which shall be based on the proportion of
12 the member's or the Texas FAIR Plan Association's net direct
13 premiums for the lines of insurance used to calculate member
14 participation in the Association's assessments pursuant to Section
15 5(b) of this Article as reported in its annual statement filed with
16 the Department for the calendar year immediately preceding the year
17 in which the assessment is made to the total reported net direct
18 premiums for such lines of insurance in Texas. The assessments
19 under this paragraph shall be reimbursable in accordance with
20 subsection(b) of this Section;

21 (B) any reinsurance proceeds recoverable by the
22 Association; and

23 (C) any revenue bond proceeds received by the
24 Association in accordance with Section 20 of this Article.

25 (4) any losses of the Association that are not paid by
26 the assessments and catastrophe reserve trust fund provided for in
27 ~~[excess of those paid under]~~ Subdivisions (1) [7] and (2) [7] of this

1 subsection or that are not paid by the plan approved by the
2 Commissioner in accordance with Subdivision ~~[and]~~ (3) of this
3 subsection shall be derived from revenue bond proceeds received by
4 the Association in accordance with Section 20 of this Article.
5 ~~[assessed against members of the association, with the proportion~~
6 ~~of the total loss allocable to each insurer determined in the same~~
7 ~~manner as its participation in the association has been determined~~
8 ~~for the year under Section 5c of this Act.]~~

9 (b) Any insurer, including the Texas FAIR Plan Association,
10 that has been assessed and paid the assessments under Subsection
11 (a)(3) of this Section is eligible to charge a premium surcharge for
12 reimbursement of the assessment. The premium surcharge, which
13 shall be a separate charge in addition to premiums collected,
14 applies to every insurance policy for the lines used to calculate
15 the assessment issued by such insurer in this state, the effective
16 date of which policy is within the five year period commencing 90
17 days after the date of assessment. The amount of the surcharge
18 shall be calculated on the basis of a uniform percentage of the
19 premium on such policies not to exceed twenty percent per year of
20 the amount of such insurer's assessment, such that over the period
21 of five years the aggregate of all such surcharges by such insurer
22 shall be equal to, and not exceed, the amount of the assessment of
23 such insurer. The amount of any assessment paid and recoverable
24 under this Section may be carried by such insurer ~~[An insurer may~~
25 ~~credit any amount paid in accordance with Subsection (a)(4) of this~~
26 ~~section in a calendar year against its premium tax under Article~~
27 ~~4.10 of this code. The tax credit herein authorized shall be~~

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

8 (c) If losses are paid by the procedures set forth in
9 Subsection (a)(3) of this section, then the Association shall
10 develop and implement a plan for collection of a premium surcharge,
11 which shall be a separate charge in addition to premiums collected,
12 from policyholders of the Association. The Association shall
13 establish a premium surcharge in an amount at least 100 percent and
14 no more than 150 percent of the amount of the average per policy
15 surcharge percentage established under subsection (b) of this
16 Section on any policy issued or renewed by the Association. The
17 period for collection of the premium surcharge under this
18 subsection may not exceed five years. All surcharges collected
19 under this subsection will be paid into the catastrophe reserve
20 trust fund.

21 (d) In addition to the funding described in Subsections (a)
22 - (c) of this section, the Association may also borrow from, or
23 enter into other financing arrangements with, any market sources at
24 prevailing interest rates.

25 (e) The Commissioner may adopt rules necessary to implement
26 this section.

27 SECTION 36. Article 21.49, Insurance Code, is amended by

1 adding Section 20 to read as follows:

2 Sec. 20. Revenue Bond Program. (a) Purpose. The
3 legislature finds that providing the authority to issue public
4 securities to provide a method to raise funds to provide windstorm,
5 hail, and fire insurance through the Association in certain
6 designated portions of the state is for the benefit of the public
7 and in furtherance of a public purpose.

8 (b) Definitions. When used in this section:

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

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

14 (3) "Board" means the board of directors of the Texas
15 Public Finance Authority.

16 (4) "Insurer" means all property and casualty insurers
17 authorized to transact property and casualty insurance in this
18 State and specifically includes and makes this section applicable
19 to county mutual companies, Lloyds and reciprocal or interinsurance
20 exchanges, but shall not include county mutual fire insurance
21 companies which are writing exclusively industrial fire insurance
22 policies as defined in Section 912.151 of this code.

23 (c) Public securities authorized; application of Texas
24 public finance authority act.

25 (1) At the request of the Association and upon
26 approval by the Commissioner, the Texas Public Finance Authority
27 shall issue public securities to:

1 (A) fund the Association, including:

2 (i) to establish and maintain reserves to
3 pay claims;

4 (ii) to pay incurred claims and operating
5 expenses; and

6 (iii) to purchase reinsurance;

7 (B) pay costs related to issuance of the public
8 securities; and

9 (C) pay other costs related to the public
10 securities as may be determined by the board.

11 (2) To the extent not inconsistent with this section,
12 Chapter 1232, Government Code, applies to public securities issued
13 under this section. In the event of a conflict, this section
14 controls.

15 (d) Applicability of other statutes. The following laws
16 apply to public securities issued under this section to the extent
17 consistent with this section:

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

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

21 (e) Limits. The Texas Public Finance Authority may issue,
22 on behalf of the Association, public securities in an amount
23 sufficient to fund the losses of the Association as determined by
24 the Association and approved by the Commissioner after not less
25 than ten (10) days notice and hearing if a hearing is requested by
26 any person within the ten (10) day notice period.

27 (f) Conditions. (1) Public securities issued under this

1 section may be issued at public or private sale.

2 (2) Public securities may mature not more than 10
3 years after the date issued.

4 (3) Public securities must be issued in the name of the
5 Association.

6 (g) Additional covenants. In a public security resolution,
7 the board may make additional covenants with respect to the public
8 securities and the designated income and receipts of the
9 Association pledged to their payment, and may provide for the flow
10 of funds and the establishment, maintenance, and investment of
11 funds and accounts with respect to the public securities.

12 (h) Special accounts. (1) A public security resolution may
13 establish special accounts, including an interest and sinking fund
14 account, reserve account, and other accounts.

15 (2) The Association shall administer the accounts in
16 accordance with this section.

17 (i) Security. (1) Public securities are payable only from
18 the service fee established under subsection (j) of this section or
19 other amounts that the Association is authorized to levy, charge,
20 and collect.

21 (2) Public securities are obligations solely of the
22 Association. Public securities do not create a pledging, giving,
23 or lending of the faith, credit, or taxing authority of this state.

24 (3) Each public security must include a statement that
25 the state is not obligated to pay any amount on the public security
26 and that the faith, credit, and taxing authority of this state are
27 not pledged, given, or lent to those payments.

1 (4) Each public security issued under this section
2 must state on its face that the public security is payable solely
3 from the revenues pledged for that purpose and that the public
4 security does not and may not constitute a legal or moral obligation
5 of the state.

6 (j) Service fee. (1) A service fee may be collected from
7 policyholders of:

8 (A) insurers,

9 (B) the Association, and

10 (C) the FAIR Plan Association.

11 (2) Not less frequently than annually, the service fee
12 shall be determined by the Association and approved by the
13 Commissioner, after not less than ten (10) days notice and hearing
14 if a hearing is requested by any person within the ten (10) day
15 notice period, in an amount sufficient to pay all debt service and
16 all related expenses on the public securities. The service fee
17 shall be collected by each insurer, the Association, and the FAIR
18 Plan Association from their policyholders in the form of a premium
19 surcharge in accordance with this subsection and remitted to the
20 Association as required by the Commissioner by rule. The amount of
21 the service fee shall be based on the amount of the insurer's gross
22 written premiums for all property and casualty lines, excluding
23 workers' compensation, accident and health, and medical
24 malpractice, as reported in the annual statement filed with the
25 department for the calendar year immediately preceding the year in
26 which the assessment is made. A premium surcharge, which shall be a
27 separate charge in addition to premiums collected, shall be

1 collected by the insurer, the Association, and the FAIR Plan
2 Association and remitted to the Association on every property and
3 casualty insurance policy, except workers' compensation, accident
4 and health, and medical malpractice insurance, issued or renewed by
5 such insurer, the Association, or the FAIR Plan Association, within
6 the 12-month period commencing 90 days after the date the amount of
7 the service fee is determined by the Commissioner. The amount of
8 the premium surcharge shall be calculated on the basis of a uniform
9 percentage of the premium on such policies, such that the aggregate
10 of all such surcharges by the insurer, the Association, and the FAIR
11 Plan Association shall be equal to and not exceed the amount of the
12 service fee determined by the Commissioner. The service fees
13 collected in the form of a policy surcharge under this section are
14 not subject to the premium tax or commissions and failure to pay
15 such surcharge by a policyholder is equivalent to failure to pay
16 premium for purposes of policy cancellation.

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

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

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

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

9 (n) Enforcement by mandamus. A writ of mandamus and all
10 other legal and equitable remedies are available to any party at
11 interest to require the Association and any other party to carry out
12 agreements and to perform functions and duties under this section,
13 the Texas Constitution, or a public security resolution.

14 SECTION 37. Section 941.003, Insurance Code, is amended by
15 amending Subsection (b)(5) to read as follows:

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

17 (5) Articles 21.21, 21.49, and 21.49-8.

18 SECTION 38. Section 942.003, Insurance Code, is amended by
19 amending Subsection (b)(5) to read as follows:

20 (b) An exchange is subject to:

21 (5) Articles 21.21, 21.49, and 21.49-8.

22 SECTION 35. EFFECTIVE DATE. This Act takes effect on
23 January 1, 2006.