

A BILL TO BE ENTITLED

AN ACT

1
2 relating to a revenue bond program for the Texas Windstorm
3 Insurance Association.

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

5 SECTION 1. Article 21.49, Insurance Code, is amended by
6 adding Section 20 to read as follows:

7 Sec. 20. REVENUE BOND PROGRAM. (a) The legislature finds
8 that the issuance of public securities to provide a method to raise
9 funds to provide windstorm, hail, and fire insurance through the
10 Association in certain designated portions of the state is for the
11 benefit of the public and in furtherance of a public purpose.

12 (b) In this section:

13 (1) "Board" means the board of directors of the Texas
14 Public Finance Authority.

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

17 (3) "Insurer" means all property and casualty insurers
18 authorized to transact property and casualty insurance in this
19 state, including county mutual companies, Lloyd's plans, and
20 reciprocal or interinsurance exchanges.

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

24 (c)(1) At the request of the Association and with the

1 approval of the Commissioner, the Texas Public Finance Authority
2 shall issue public securities to:

3 (A) fund the Association, for purposes
4 including:

5 (i) to establish and maintain reserves to
6 pay claims;

7 (ii) to pay incurred claims and operating
8 expenses; and

9 (iii) to purchase reinsurance;

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

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

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

18 (d) The following laws apply to public securities issued
19 under this section to the extent consistent with this section:

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

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

23 (e) The Texas Public Finance Authority may issue, on behalf
24 of the Association, public securities in a total amount not to
25 exceed \$2 billion.

26 (f)(1) Public securities issued under this section may be
27 issued at public or private sale.

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

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

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

11 (h)(1) Funds generated through the issuance of public
12 securities shall be held outside the state treasury in the custody
13 of the comptroller.

14 (2) The Association may request disbursement of the
15 funds for the purposes set forth in Subsection (c)(1) of this
16 section.

17 (i)(1) A public security resolution may establish special
18 accounts, including an interest and sinking fund account, reserve
19 account, and other accounts.

20 (2) The Association shall administer the accounts in
21 accordance with this article.

22 (j)(1) Public securities are payable only from the service
23 fee established under Subsection (k) of this section or other
24 amounts that the Association is authorized to levy, charge, and
25 collect.

26 (2) Public securities are obligations solely of the
27 Association. Public securities do not create a pledging, giving,

1 or lending of the faith, credit, or taxing authority of this state.

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

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

11 (k)(1) A service fee may be assessed against:

12 (A) insurers;

13 (B) the Association; and

14 (C) the FAIR Plan Association.

15 (2) The service fee shall be set by the commissioner
16 annually in an amount sufficient to pay all debt service on the
17 public securities. The service fee shall be paid by each insurer,
18 the Association, and the FAIR Plan Association as required by the
19 commissioner. The amount of the insurer's service fee shall be
20 based on the amount of the insurer's gross written premiums for all
21 property and casualty lines, excluding workers' compensation,
22 accident and health, and medical malpractice, as reported in the
23 annual statement filed with the department for the calendar year
24 immediately preceding the year in which the assessment is made.

25 (3) The Association shall collect the service fee and
26 report collection of the service fee to the department.

27 (4) The department may audit payment and collection of

1 the service fee.

2 (5) As a condition of engaging in the business of
3 insurance in this state, an insurer agrees that if the company
4 leaves the property and casualty insurance market in this state the
5 insurer remains obligated to pay, until the public securities are
6 retired, the insurer's share of the service fee assessed under this
7 section in an amount proportionate to that insurer's share of the
8 property and casualty insurance market, not including workers'
9 compensation, accident and health, and medical malpractice lines of
10 insurance, in this state as of the last complete reporting period
11 before the date on which the insurer ceases to engage in that
12 insurance business in this state. The proportion assessed against
13 the insurer shall be based on the insurer's gross written premiums
14 for property and casualty insurance, not including workers'
15 compensation, accident and health, and medical malpractice lines of
16 insurance, for the insurer's last reporting period.

17 (1)(1) The Association shall deposit all service fees
18 collected from insurers, the FAIR Plan Association, and the
19 Association in a fund to be held outside the state treasury in the
20 custody of the comptroller. Money deposited in the fund may be
21 invested as permitted by general law. Money in the fund required to
22 be used to pay bond obligations and bond administrative expenses
23 shall be transferred to the Texas Public Finance Authority or used
24 by the comptroller in the manner and at the time specified in the
25 resolution adopted in connection with the bond issue to ensure
26 timely payment of obligations and expenses, or as otherwise
27 provided by the bond documents.

1 (2) For bonds issued by the Texas Public Finance
2 Authority for the Association, the Association shall provide for
3 the payment of the bond obligations and the bond administrative
4 expenses by irrevocably pledging revenues received from the service
5 fee and amounts on deposit in the fund, together with any bond
6 reserve fund, as provided in the proceedings authorizing the bonds
7 and related credit agreements.

8 (m) Revenue collected from the service fee in any year that
9 exceeds the amount of the bond obligations and bond administrative
10 expenses payable in that year and interest earned on the service fee
11 may, in the discretion of the Association with the approval of the
12 commissioner, be:

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

17 (2) used to redeem or purchase outstanding bonds.

18 (n)(1) Those insurers in this state, including the FAIR Plan
19 Association, that have paid a service fee under this section may
20 charge a premium surcharge on every property and casualty insurance
21 policy, except workers' compensation, accident and health, and
22 medical malpractice insurance, issued by such insurer or the FAIR
23 Plan Association, the effective date of which policy is within the
24 one year period commencing 90 days after the date of payment of a
25 service fee. The amount of the premium surcharge shall be
26 calculated on the basis of a uniform percentage of the premium on
27 such policies, such that the aggregate of all such surcharges by

1 such insurer shall be equal to and not exceed the amount of the
2 service fee paid by the insurer.

3 (2) The Association shall submit a plan for collection
4 of a premium surcharge from policyholders of the Association to the
5 department for approval by the commissioner.

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

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

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

24 (r) A writ of mandamus and all other legal and equitable
25 remedies are available to any party at interest to require the
26 Association and any other party to carry out agreements and to
27 perform functions and duties under this section, the Texas

1 Constitution, or a public security resolution.

2 SECTION 2. This Act takes effect September 1, 2005.