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S.B. No. 1086

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the operations and funding of the Texas Windstorm
3 Insurance Association, including funding of coverage for certain
4 catastrophic events through the establishment of a revenue bond
5 program.

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

7 SECTION 1. Section 5(1), Article 21.49, Insurance Code, is
8 amended to read as follows:

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

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

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

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

20 Sec. 19. PAYMENT OF LOSSES; PREMIUM TAX CREDIT. (a) If[~~7~~
21 ~~in any calendar year,~~] an occurrence or series of occurrences, as
22 defined by the plan of operation, within the defined catastrophe
23 area results in insured losses and operating expenses of the
24 association in excess of premium and other revenue of the
25 association, any excess losses shall be paid as provided by this
26 section.

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

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

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

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

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

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

1 insurance in this state;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (C) purchase reinsurance;

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

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

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

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

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

26 (e) Public securities issued under this section:

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

1 (2) must:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (2) redeem or purchase outstanding bonds.

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

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

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

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

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

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

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

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

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

24 and

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

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

1 (b) An exchange is subject to:

2 (1) Section 5, Article 1.10;

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

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

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

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

7 (6) Chapter 541;

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

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

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