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S.B. No. 1087

A BILL TO BE ENTITLED

AN ACT

relating to reinsurance for insurance written by the Texas
Windstorm Insurance Association.

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

SECTION 1. Article 21.49, Insurance Code, is amended by
adding Sections 21, 22, and 23 to read as follows:

Sec. 21. WINDSTORM REINSURANCE FACILITY. (a) In this
section:

(1) "Reinsurance facility" means the windstorm
reinsurance facility.

(2) "Residential property insurance" means insurance
coverage against loss to residential real property at a fixed
location, or tangible personal property, that is provided in a
homeowners policy, including a tenants policy, a condominium owners
policy, or a residential fire and allied lines policy.

(3) "Retention" means the amount of losses below which
an insurer is not entitled to reimbursement from the reinsurance
facility.

(b) The windstorm reinsurance facility is established to
provide a stable and ongoing source of reinsurance to insurers, the
association, and the FAIR Plan Association for a portion of the
losses incurred by those entities caused by hurricane damage. The
goal of the reinsurance facility is to create additional insurance
capacity sufficient to protect the state's economy, public health,

1 safety, and welfare. The reinsurance facility shall be structured
2 to operate:

3 (1) exclusively to protect and advance the state's
4 interest in maintaining insurance capacity in this state; and

5 (2) in a manner that makes the reinsurance facility's
6 revenues exempt from federal taxation.

7 (c) The association shall establish the reinsurance
8 facility. The reinsurance facility shall assume reinsurance from
9 association members, the association, and the FAIR Plan
10 Association, and shall purchase reinsurance as set forth in a plan
11 of operation. Reinsurance under this article may only be provided
12 for policies of residential property insurance for property located
13 in the catastrophe area, unless the commissioner designates a more
14 specific area within the catastrophe area. As a condition of
15 engaging in the business of insurance in this state, each member of
16 the association shall participate in the reinsurance facility by
17 purchasing reinsurance in the manner established by the association
18 in the plan of operation adopted under Subsection (d) of this
19 section.

20 (d) The association shall administer the windstorm
21 reinsurance facility under a plan of operation developed by the
22 association and adopted by the commissioner by rule. The plan of
23 operation must provide for the efficient, economical, fair, and
24 nondiscriminatory administration of the reinsurance facility. The
25 plan of operation must contain general provisions to provide
26 reasonable flexibility to accommodate member insurers in
27 situations of an unusual nature or in which undue hardship may

1 result, including providing for the exemption of certain member
2 insurers. Provisions adopted under this subsection may not in any
3 way impair, override, supersede, or constrain the public purpose of
4 the association and must be consistent with sound insurance
5 practices. The plan of operation shall provide for various levels
6 of reinsurance participation; however, reinsurance ceded to the
7 reinsurance facility may not be less than 45 percent, and may not
8 exceed 90 percent, of the losses from each covered event in excess
9 of each participating insurer's retention. The association may, on
10 its own initiative or at the request of the commissioner, amend the
11 plan of operation. Any amendments to the plan of operation must be
12 adopted by the commissioner by rule.

13 (e) The reinsurance facility shall enter into a contract
14 with each insurer writing residential property insurance policies
15 in this state, as set forth in the plan of operation, to provide
16 reimbursement to the insurer in the manner provided by the
17 reinsurance contract for covered events in exchange for the
18 reinsurance premium paid to the reinsurance facility as specified
19 by the plan of operation. The reinsurance facility may enter into
20 reinsurance contracts with the FAIR Plan Association. Each
21 reinsurance contract must contain:

22 (1) a promise to pay the participating insurer for the
23 insurer's losses from each covered event in excess of the insurer's
24 retention;

25 (2) a provision that amounts due may not be reduced by
26 reinsurance paid or payable to the participating insurer from other
27 sources;

1 (3) a provision that all contracts covering a
2 particular contract year may not exceed the actual claims paying
3 capacity of the reinsurance facility, up to a limit as defined in
4 the plan of operation;

5 (4) a requirement of interim quarterly reporting from
6 each participating insurer of losses from each covered event; and

7 (5) a provision that, in the event of the insolvency of
8 the insurer, the reinsurance facility shall pay the net amount owed
9 to the insurer directly to the conservator, receiver, or other
10 statutory successor for the benefit of the insurer's policyholders
11 in this state.

12 (f) The association may enter into reinsurance contracts
13 with the reinsurance facility. A reinsurance contract entered into
14 under this subsection must contain the provisions required for a
15 contract with a member insurer under Subsection (e) of this
16 section.

17 (g) In lieu of purchasing reinsurance from the commercial
18 insurance market, the association may cede or transfer risk to the
19 reinsurance facility in exchange for payment of a reinsurance
20 premium.

21 (h) A premium paid to the reinsurance facility under a
22 reinsurance contract shall be treated as a premium for approved
23 reinsurance for all accounting and regulatory purposes.

24 (i) An insurer that ceases to be a member of the association
25 remains liable for any unpaid premiums or other contractual
26 obligations on reinsurance contracts entered into by the insurer
27 during the insurer's membership in the association to the same

1 extent and effect as if the insurer's membership had not
2 terminated.

3 (j) The reinsurance facility shall relinquish its net
4 equity on an annual basis as provided by rules adopted by the
5 commissioner by making payments to the windstorm reinsurance trust
6 fund to fund the obligations of that fund under Section 22 of this
7 article.

8 (k) Moneys of the reinsurance facility may not be spent,
9 loaned, or appropriated except to pay:

10 (1) obligations of the reinsurance facility arising
11 out of reinsurance contracts entered into under this section;

12 (2) debt service on revenue bonds issued under Section
13 23 of this article;

14 (3) costs of procuring reinsurance; and

15 (4) costs of administration of the reinsurance
16 facility.

17 Sec. 22. WINDSTORM REINSURANCE TRUST FUND. (a) In this
18 section, "reinsurance trust fund" means the windstorm reinsurance
19 trust fund established under this section.

20 (b) The windstorm reinsurance trust fund is established to
21 increase insurance capacity for catastrophic hurricane losses, and
22 protect the state's economy, public health, safety, and welfare.
23 It is the intent of the legislature that the reinsurance trust fund
24 be operated:

25 (1) exclusively to protect and advance the state's
26 interest in maintaining insurance capacity in this state; and

27 (2) in a manner that makes the reinsurance trust fund

1 exempt from federal taxation.

2 (c) Until disbursements are made as provided by this article
3 and rules adopted by the commissioner, all money, including
4 investment income, deposited in the reinsurance trust fund are
5 state funds, to be held by the comptroller outside the state
6 treasury on behalf of, and with legal title in, the department.

7 (d) The reinsurance trust fund may be terminated only by
8 law. On termination of the reinsurance trust fund, all assets of
9 the reinsurance trust fund revert to the catastrophe reserve trust
10 fund under Section 8(i) of this article.

11 (e) The reinsurance trust fund shall be kept and maintained
12 by the department under this article and rules adopted by the
13 commissioner. The comptroller, as custodian, shall administer the
14 reinsurance trust fund strictly and solely as provided by this
15 article and the commissioner's rules.

16 (f) The commissioner by rule shall establish the procedures
17 relating to the disbursement of money from the reinsurance trust
18 fund to the reinsurance facility in the event of an occurrence or
19 series of occurrences within the defined catastrophe area that
20 results in a reimbursement under Section 21 of this article.

21 Sec. 23. WINDSTORM REINSURANCE REVENUE BOND PROGRAM. (a)
22 In this section:

23 (1) "Board" means the board of directors of the Texas
24 Public Finance Authority.

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

27 (3) "Insurer" means each property and casualty insurer

1 authorized to engage in the business of property and casualty
2 insurance in this state. The term includes a county mutual
3 insurance company, a Lloyd's plan, and a reciprocal or
4 interinsurance exchange.

5 (4) "Property and casualty insurance" does not include
6 workers' compensation insurance, accident and health insurance, or
7 medical malpractice insurance.

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

11 (b) The legislature finds that the issuance of public
12 securities to provide a method to raise funds to provide payment for
13 reimbursable losses to the extent that funds collected as
14 reinsurance premiums and investment income on those funds are
15 insufficient to meet the windstorm reinsurance facility's
16 obligations for reinsurance for losses reinsured through the
17 windstorm reinsurance facility in certain designated portions of
18 the state is for the benefit of the public and in furtherance of a
19 public purpose.

20 (c) At the request of the association and with the approval
21 of the commissioner, the Texas Public Finance Authority shall
22 issue, on behalf of the association, public securities, in a total
23 amount not to exceed \$7 billion, to:

24 (1) fund the reinsurance facility, including funding
25 necessary to:

26 (A) pay member insurers and the association as
27 provided by reinsurance contracts;

1 (B) pay operating expenses; and

2 (C) purchase reinsurance;

3 (2) pay costs related to the issuance of the public
4 securities; and

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

7 (d) To the extent consistent with this section, Chapter
8 1232, Government Code, applies to public securities issued under
9 this section. In the event of a conflict, this section controls.
10 The following laws also apply to public securities issued under
11 this section to the extent consistent with this section:

12 (1) Chapters 1201, 1202, 1204, 1205, 1231, and 1371,
13 Government Code; and

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

15 (e) Public securities issued under this section:

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

17 (2) must:

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

19 (B) mature not more than 10 years after the date
20 issued.

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

22 (1) make additional covenants with respect to the
23 public securities and the designated income and receipts of the
24 association pledged to the payment of the public securities; and

25 (2) provide for the flow of funds and the
26 establishment, maintenance, and investment of funds and accounts
27 with respect to the public securities.

1 (g) Funds generated through the issuance of public
2 securities shall be held outside the state treasury in the custody
3 of the comptroller. The association may request disbursement of
4 the funds for the purposes set forth in Subsection (c) of this
5 section.

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

10 (i) Public securities are payable only from the service fee
11 established under Subsection (j) of this section or from other
12 amounts that the association is authorized to levy, charge, and
13 collect. Public securities are obligations solely of the
14 association, and do not create a pledging, giving, or lending of the
15 faith, credit, or taxing authority of this state. Each public
16 security must include a statement that this state is not obligated
17 to pay any amount on the public security and that the faith, credit,
18 and taxing authority of this state are not pledged, given, or lent
19 to those payments. Each public security issued under this section
20 must state on its face that the public security is payable solely
21 from the revenues pledged for that purpose and that the public
22 security does not and may not constitute a legal or moral obligation
23 of the state.

24 (j) A service fee may be assessed against insurers, the
25 association, and the FAIR Plan Association. The commissioner shall
26 set the service fee annually in an amount sufficient to pay all debt
27 service on the public securities. Each insurer, the association,

1 and the FAIR Plan Association shall pay the service fee as required
2 by the commissioner by rule. The amount of the insurer's service
3 fee shall be based on the amount of the insurer's gross written
4 premiums for all property and casualty insurance lines, as reported
5 in the annual statement filed with the department for the calendar
6 year preceding the year in which the assessment is made. The
7 association shall collect the service fee and report collection of
8 the service fee to the department. The department may audit payment
9 and collection of the service fee.

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

22 (l) The association shall deposit all service fees
23 collected from insurers, the FAIR Plan Association, and the
24 association in the reinsurance trust fund established under Section
25 22 of this article. Money deposited in the reinsurance trust fund
26 may be invested as permitted by general law. Money in the
27 reinsurance trust fund required to be used to pay bond obligations

1 and bond administrative expenses shall be transferred to the Texas
2 Public Finance Authority or used by the comptroller in the manner
3 and at the time specified in the resolution adopted in connection
4 with the bond issue to ensure timely payment of obligations and
5 expenses, or as otherwise provided by the bond documents. For bonds
6 issued by the Texas Public Finance Authority for the association,
7 the association shall provide for the payment of the bond
8 obligations and the bond administrative expenses by irrevocably
9 pledging revenues received from the service fee and amounts on
10 deposit in the reinsurance trust fund, together with any bond
11 reserve fund, as provided in the proceedings authorizing the bonds
12 and related credit agreements.

13 (m) Revenue collected from the service fee in any year that
14 exceeds the amount of the bond obligations and bond administrative
15 expenses payable in that year and interest earned on the service fee
16 may, in the discretion of the association and with the approval of
17 the commissioner, be used to:

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

21 (2) redeem or purchase outstanding bonds.

22 (n) The insurers in this state, including the FAIR Plan
23 Association, that have paid a service fee under this section may
24 charge a premium surcharge on each property and casualty insurance
25 policy issued by that insurer, the effective date of which is within
26 the one-year period beginning on the 90th day after the date the
27 service fee is paid. Except as provided by Subsection (o) of this

1 section, the amount of the premium surcharge shall be computed on
2 the basis of a uniform percentage of the premium on those policies,
3 such that the aggregate of all those surcharges by the insurer is
4 equal to and does not exceed the amount of the service fee paid by
5 the insurer.

6 (o) For policies written on property eligible to be
7 reinsured by the reinsurance facility, the insurer shall charge a
8 premium surcharge equal to twice the uniform percentage described
9 by Subsection (n) of this section.

10 (p) The association shall submit to the department for
11 approval by the commissioner a plan for collection of a premium
12 surcharge from policyholders of the association. The association
13 shall establish the premium surcharge in an amount equal to twice
14 the amount of the average per policy surcharge percentage
15 established under Subsection (n) or (o) of this section on any
16 policy issued or renewed by the association. The period for
17 collection of the premium surcharge under this subsection may not
18 exceed one year. The premium surcharges collected under this
19 subsection shall be applied to the association's service fee. Any
20 amounts collected in excess of the service fee shall be paid into
21 the reinsurance trust fund.

22 (q) The public securities issued under this section, any
23 interest from those public securities, and all assets pledged to
24 secure the payment of the public securities are free from taxation
25 by this state or a political subdivision of this state.

26 (r) The public securities issued under this section
27 constitute authorized investments under Articles 2.10 and 3.33 and

1 Subpart A, Part I, Article 3.39 of this code.

2 (s) The state pledges to and agrees with the owners of any
3 public securities issued in accordance with this section that the
4 state will not limit or alter the rights vested in the association
5 to fulfill the terms of any agreements made with the owners of the
6 public securities or in any way impair the rights and remedies of
7 those owners until the public securities, bond premium, if any, or
8 interest, and all costs and expenses in connection with any action
9 or proceeding by or on behalf of those owners, are fully met and
10 discharged. The association may include this pledge and agreement
11 of the state in any agreement with the owners of the public
12 securities.

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

18 SECTION 2. Section 941.003(b), Insurance Code, is amended
19 to read as follows:

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

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

1 and

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

3 SECTION 3. Section 942.003(b), Insurance Code, is amended
4 to read as follows:

5 (b) An exchange is subject to:

6 (1) Section 5, Article 1.10;

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

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

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

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

11 (6) Chapter 541;

12 (7) Sections 822.203, 822.205, 822.210, 822.212,
13 861.254(a)-(f), 861.255, 862.001(b), and 862.003; and

14 (8) [~~(7)~~] Article 5.13-2, as provided by that article.

15 SECTION 4. This Act takes effect January 1, 2006.