

BILL ANALYSIS

C.S.H.B. 2960

By: Smithee

Insurance

Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Windstorm Insurance Association (TWIA), known as the Texas Catastrophe Property Insurance Association (TCPIA) until September 1, 1997, was established by the Texas Legislature in 1971 as a mechanism to provide wind and hail coverage to applicants unable to obtain insurance in the voluntary market. The Legislature's action was a response to market constrictions along the Texas Gulf Coast after several hurricanes.

Since its inception, the Legislature has made it clear that TWIA was to write limited coverage for wind and hail in order to provide for the "orderly economic growth of the coastal counties". Persons who own businesses and/or residences in the following counties are eligible for coverage through TWIA: Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kennedy, Kleberg, Matagorda, Nueces, Refugio, San Patricio, Willacy. Portions of Harris County east of Highway 146 are also eligible. TWIA is also authorized to provide coverage in other areas designated as "catastrophe areas" by the Commissioner. The term "catastrophe area" is defined in the Insurance Code to include, among other things, areas where "windstorm and hail insurance is not reasonably available to a substantial number of owners of insurable property."

TWIA operates on a daily basis as an insurance company by issuing policies, collecting premiums and paying losses. In the event TWIA is unable to cover losses from current revenues, the following funding mechanism currently applies (in order):

- \$100 million assessed to member insurers;
- Catastrophe Reserve Trust Fund (CRTF) (currently about \$365 million) and reinsurance (currently about \$417 million);
- \$200 million assessed to member insurers; and
- unlimited assessment to member insurers reimbursable from premium tax credits over five or more successive years (after the approximately \$1.039 billion provided from sources 1-3).

TWIA's exposure has been growing rapidly in recent years. It is estimated that TWIA's exposure, including miscellaneous coverages such as business interruption, will exceed \$60 billion by the end of this year. This growth increases the possible losses arising out of a given storm, placing state revenues at an ever-increasing risk. The current catastrophe funding capacity available to cover losses before the reimbursable tax credits are triggered (approximately \$1.039 billion) is estimated to cover the probable TWIA losses from a storm that would be expected to occur every 20-25 years (a 4 percent to 5 percent chance of striking in any given year). An example might be a Hurricane Rita-type storm striking Galveston.

Texas' general revenue stream would be at significant risk should a more severe storm strike the coast. For example, TWIA losses from a so-called 100- year storm (one having a 1 percent chance of striking in any given year) are estimated at about \$3.3 billion, placing about \$2.3 billion of state revenues at risk; a 250-year storm (one with a 0.4 percent chance of striking in any given year) would produce about \$5.2 billion in losses for TWIA, jeopardizing about \$4.2 billion in state revenues.

The current funding mechanism for TWIA was developed in 1993 at a time when TWIA's exposure to loss was considerably less. In that year, the combined residential and commercial exposure was \$6.5 billion, about one-tenth of today's levels. What may have been adequate then to promote the property market and protect state revenues is inadequate today.

C.S.H.B 2960 restructures the funding mechanism for TWIA and also makes other changes to the Association, with the overall goal of creating a system that does not excessively expose the

state's general revenue to hurricane losses while at the same time allowing for strong, sustainable economic growth along the coast by making necessary insurance coverage available.

RULEMAKING AUTHORITY

It is the opinion of the committee that rulemaking authority is expressly granted to the Texas Department of Insurance in SECTION 5 of the bill (Section 2210.009 of the Insurance Code), to the Commissioner of the Texas Department of Insurance in SECTION 17 of the bill (Section 2210.151 of the Insurance Code), to the Board of Directors and the Commissioner of the Texas Department of Insurance in SECTION 18 of the bill (Section 2210.202 of the Insurance Code), to the Commissioner of the Texas Department of Insurance in SECTION 19 of the bill (Section 2210.203 of the Insurance Code), to the Commissioner of the Texas Department of Insurance in SECTION 27 of the bill (Section 2210.356 of the Insurance Code), to the Commissioner of the Texas Department of Insurance in SECTION 29 of the bill (Section 2210.452 of the Insurance Code), to the Commissioner of the Texas Department of Insurance in SECTION 33 of the bill (Sections 2210.611 and 2210.612 of the Insurance Code) and to the Commissioner of the Texas Department of Insurance in SECTION 37 of the bill (as required by Section 2210.356 of the Insurance Code).

ANALYSIS

SECTION 1. Amends Section 2210.001 of the Insurance Code. States that an adequate market for windstorm and hail insurance in the seacoast territory is necessary to the economic welfare of this state, and without that insurance, the orderly growth and development of this state would be severely impeded. States that this chapter provides a method by which adequate windstorm and hail insurance may be obtained in certain designated portions of the seacoast territory of this state. Deletes references to fire insurance. Provides that the purpose of the Texas Windstorm Insurance Association is to serve as a residual insurer of last resort for windstorm and hail insurance in the seacoast territory. States that the association shall function in such a manner as to not be a direct competitor in the private market and shall provide insurance coverage to persons who are unable to obtain insurance coverage in the private market.

SECTION 2. Amends Section 2210.003(6) of the Insurance Code by deleting reference to Texas fire and explosion insurance.

SECTION 3. Amends Section 2210.004(a) of the Insurance Code by deleting reference to fire and explosion insurance.

SECTION 4: Amends Section 2210.005 of the Insurance Code. Deletes references to fire and explosion insurance and deletes the words "OR INADEQUATE FIRE INSURANCE AREA" from the caption. Specifies that a designated catastrophe area under this section must be in the seacoast area of the state. The language found in Subsection (b) is deleted, thus the rest of the subsections are now re-lettered appropriately.

SECTION 5: Amends Subchapter A, Chapter 2210 of the Insurance Code by adding Section 2210.009. States that the department shall maintain a list of all insurers that engage in the business of property and casualty insurance in the voluntary market in the seacoast territory and shall develop incentive programs in the manner described by Section 2210.053(b) to encourage authorized insurers to write insurance on a voluntary basis and to minimize the use of the association as a means to obtain insurance. Provides that the incentives may include rules or policy form amendments allowing an insurer to use, in adjusting windstorm claims, the method of allocation of wind and water damage provided by Section 2210.203 (a-1).

SECTION 6. Amends Sections 2210.052(a) and (d) of the Insurance Code. Requires that each member of the association shall participate in insured losses and operating expenses of the association, in excess of premium and other revenue of the association, in the proportion that the net direct premiums of that member during the preceding calendar year bears to the aggregate net direct premiums by all members of the association, as determined using the information provided under Subsection (b). Provides that notwithstanding Subsection (a), a member, in accordance with the plan of operation, is entitled to receive credit for similar insurance voluntarily written in an area designated by the commissioner. Requires that the member's participation in the insured

losses and operating expenses of the association in excess of premium and other revenue of the association shall be reduced in accordance with the plan of operation. Requires that incentives adopted under the plan of operation must include a minimum level of participation for an insurer voluntarily writing coverage in a catastrophe area, and may not include a maximum level to cap a member's actual statewide writings compared with other members. The term "writings" and the phrase "the writings, expenses, profits, and losses" are deleted.

SECTION 7. Amends Section 2210.058 of the Insurance Code. Removes the words "PREMIUM TAX CREDIT" from the caption. Provides that if, in any calendar year, an occurrence or series of occurrences in a catastrophe area results in insured losses and operating expenses of the association in excess of premium and other revenue of the association, the excess losses shall be paid as provided by this section. The association shall pay excess losses from available reserves of the association and available amounts in the catastrophe reserve trust fund established under Subchapter J. For losses in excess of those paid under Subsection (b), allows the association to issue catastrophe area public securities in the manner prescribed by Subchapter M. Provides that catastrophe area public securities issued under this subsection may be issued before or on or after the occurrence of a catastrophic event in amounts necessary to fund not more than 45 percent of the required solvency level determined under Subchapter N. All catastrophe area public securities obligations shall be paid in the manner prescribed by Section 2210.609, if applicable, and Section 2210.611.

For losses in excess of those paid under Subsections (b) and (c), the association may issue Class 1 public securities before or on or after the occurrence of a catastrophic event in the manner prescribed by Subchapter M. Requires that Class 1 post-event public securities may be issued only on or after a named storm has caused damage in the seacoast territory and the board of directors has determined that the combination of association reserves, amounts available in the catastrophe reserve trust fund, catastrophe area public securities, and Class 1 pre-event public securities, if any, are insufficient to pay the losses. Allows the board of directors to request the commissioner to authorize Class 1 public securities in an amount sufficient to pay projected losses up to an amount not to exceed 50 percent of the required solvency level determined under Subchapter N. Provides that all Class 1 public securities obligations shall be paid in the manner prescribed by Section 2210.609, if applicable, and Section 2210.612.

For losses in excess of those paid under Subsections (b)-(d), allows the board of directors of the association to request the commissioner to authorize member company public securities, in an amount not to exceed \$500 million, to be issued after a catastrophic event in the manner prescribed by Subchapter M. Provides that member company public securities obligations shall be paid in the manner prescribed by Section 2210.613.

For losses in excess of those paid under Subsections (b)-(e), allows the board of directors to request the commissioner to authorize Class 2 post-event public securities to be issued under this subsection on or after a catastrophic event in the manner prescribed by Subchapter M. Allows the commissioner to authorize Class 2 post-event public securities under this subsection to pay losses above the required solvency level determined under Subchapter N, in an amount sufficient to pay losses but not to exceed \$3 billion. Provides that all Class 2 post-event public securities obligations shall be paid in the manner prescribed by Section 2210.614.

Allows the association to pay losses in excess of premium and other revenue of the association with reinsurance proceeds from reinsurance purchased by the association to fund losses and to pay expenses of the association with other funding available as provided in any subsection of this section.

Deletes the following language in Section 2210.058: "\$100 million shall be assessed against the members of the association as provided by Subsection (b), losses in excess of \$100 million shall be paid from", "and any reinsurance program established by the association", "Subdivisions (1) and (2), an additional \$200 million shall be assessed against the members of the association, as provided by Subsection (b);", "Subdivisions (1), (2), and (3) shall be assessed against members of the association, as provided Subsection (b)". Also, the language found in Subsections (b) and (c) as found in the Insurance Code in this section are deleted.

SECTION 8. Amends Section 2210.060(c), of the Insurance Code to state that Subsection (a) does not authorize the association to indemnify a member of the association for participating in the assessments made by the association in the manner provided by this chapter. The phrase "writings, expenses, profits, and losses of" is deleted.

SECTION 9. Amends Subchapter B, Chapter 2210 of the Insurance Code by adding Section 2210.061. This section states that a surplus lines insurer may not be a member of the association and is not subject to assessment as a member of the association. States that each agent placing property insurance through a surplus lines insurer shall collect from the policyholder and shall remit to the association a surplus lines policy fee on all premiums collected after January 1, 2008, for all insurance written by the agent for a policy from a surplus lines insurer for all risks on real property and contents in first tier coastal counties. Provides that by procuring or selling insurance on property in this state through a surplus lines insurer, each agent described by this subsection agrees to be subject to the provisions of this chapter, and to collect and remit the surplus lines policy fee described by this section.

States that the surplus lines policy fee shall be five percent of the total policy premium, but the fee may not be considered premium and is not subject to premium taxes or commissions. Provides that failure to pay the surplus lines policy fee shall be treated as a failure to pay premium. For purposes of this subsection, "total policy premium" includes taxes and commissions.

States that each agent placing insurance through a surplus lines insurer shall remit directly to the association all surplus lines policy fees collected in the preceding quarter, not later than the 20th day after the last day of each calendar quarter.

SECTION 10. Amends the heading to Subchapter C, Chapter 2210 of the Insurance Code to read SUBCHAPTER C. ASSOCIATION BOARD OF DIRECTORS; GENERAL POWERS AND DUTIES OF BOARD OF DIRECTORS

SECTION 11. Amends Section 2210.101 of the Insurance Code by adding the word "GOVERNOR AND" to the caption and providing that the board of directors is responsible and accountable to the governor and the commissioner.

SECTION 12. Amends Section 2210.102 of the Insurance Code. Provides that the board of directors is composed of seven members appointed by the governor in accordance with this section. Requires that at least three members must, but not more than three members may, be employed by or affiliated with other than as agents insurers who are members of the association. Requires that at least two members must, but not more than two members may, be public representatives, one of whom, as of the date of the appointment, resides in or owns property in the seacoast territory, and one of whom, as of the date of the appointment, does not reside in or own property in the seacoast territory. Requires that at least two members must, but not more than two members may, be general property and casualty agents licensed under this code, one of whom, as of the date of the appointment, maintains the agent's principal office in the seacoast territory, and one of whom, as of the date of the appointment, does not maintain the agent's principal office in the seacoast territory. Requires all members to have demonstrated experience in insurance, general business, or actuarial principles sufficient to make the success of the association probable.

Deletes the following phrases and terms in Section 2210.101 of the Insurance Code: "the following nine", "five representatives of different", "elected by the members as provided by the plan of operation", "two", "who are nominated by the office of public insurance counsel and who", "reside", "a catastrophe area; and are policyholders of the association; and", "two", "who have", "whose principal offices, as of the date of the appointment, are located in a catastrophe area. The persons appointed under Subsections (a) (2) and (3) must be from different counties."

SECTION 13. Amends Section 2210.103 of the Insurance Code to provide that members of the board of directors serve two-year terms, and a person may serve on the board of directors for not more than three consecutive full terms. States that the governor to appoint a replacement in the manner provided by Section 2210.102 for a member who leaves or is removed from the board of directors.

Deletes "three-year staggered", ",with the terms of three members expiring on the third Tuesday of March of each year", and ", not to exceed nine years".

SECTION 14. Amends Section 2210.104 of the Insurance Code by removing the requirement that at least one of the officers must be a public representative who resides in a catastrophe area and is a policyholder of the association or a general property and casualty agent who has demonstrated experience in the association and whose principal offices are located in a catastrophe area.

Deletes the phrase "At least one of the officers must be a member appointed under Section 2210.102(a) (2) or (3)".

SECTION 15. Amends Subchapter C, Chapter 2210 of the Insurance Code by adding Section 2210.1051. Notwithstanding Chapter 551, Government Code, or any other law, allows the members of the board of directors to meet by telephone conference call, video conference, or other similar telecommunication method. The board may use telephone conference call, video conference, or other similar telecommunication method for purposes of establishing a quorum or voting or for any other meeting purpose in accordance with this subsection and Subsection (b). This subsection applies without regard to the subject matter discussed or considered by the members of the board at the meeting. Provides that a meeting held by telephone conference call, video conference, or other similar telecommunication method is subject to the notice requirements applicable to other meetings of the board of directors, may not be held unless notice of the meeting specifies the location of the meeting, must be audible to the public at the location specified in the notice under Subdivision (2); and must provide two-way audio communication between all members of the board attending the meeting during the entire meeting, and if the two-way audio communication link with members attending the meeting is disrupted so that a quorum of the board is no longer participating in the meeting, the meeting may not continue until the two-way audio communication link is reestablished.

SECTION 16. Amends Subchapter C, Chapter 2210 of the Insurance Code by adding Section 2210.107 to provide that the primary objectives of the board of directors are to ensure that the association operates in accordance with this chapter and commissioner rules, complies with sound insurance principles, and meets the solvency standards imposed under this chapter.

SECTION 17. Amends Section 2210.151 of the Insurance Code by deleting reference to fire and explosion insurance.

SECTION 18. Amends Section 2210.202(a) of the Insurance Code by deleting reference to an inspection fee and requiring that in order to be eligible for insurance through the association, an applicant must demonstrate, in the manner established in the plan of operation, inability to obtain insurance coverage from insurers authorized to engage in the business of property and casualty insurance in this state.

SECTION 19. Amends Section 2210.203 of the Insurance Code by adding Subsection (a-1) to provide that, notwithstanding Subsection (a), if all or any part of the property for which an application for new or renewal insurance coverage is made is located in Zone V or another similar zone with an additional hazard associated with storm waves, as defined by the National Flood Insurance Program, and if flood insurance under that federal program is available, the association may not issue a new or renewal insurance policy unless evidence that the property is covered by a flood insurance policy is submitted to the association. If that flood insurance is unavailable in any portion of the seacoast territory, allows the association to issue coverage only if an actuarially sound surcharge, as determined by the board, is imposed on the premium. Requires the commissioner to adopt rules under which the loss resulting from wind damage, as opposed to water damage, when otherwise undeterminable, shall be apportioned in those cases in which flood insurance was unavailable at the inception of the policy or the insured had no flood insurance or had flood insurance on the inception of the policy, but the coverage lapsed or expired prior to the loss. Requires that the association to pay claims only in accordance with the allocation rule adopted by the commissioner.

SECTION 20. Amends Sections 2210.251(a)-(f) of the Insurance Code to require inspections to be performed by TWIA rather than the TDI. Changes certain references to the department and the commissioner to refer to the association and the board. After January 1, 2004, for geographic areas specified by the commissioner, requires the board of directors to recognize for the purposes of this chapter the 2003 International Residential Code for one- and two-family dwellings published by the International Code Council. For those geographic areas, allows the board of directors to recognize a subsequent edition of that code and any supplements published by the International Code Council and amendments to that code.

Deletes "or approved", "department", "commissioner by rule", "adopt", "may adopt", "unit responsible for certification of windstorm inspections at the department", "or approval".

SECTION 21. Amends Section 2210.252 of the Insurance Code. States that after January 1, 2004, for geographic areas specified by the commissioner, the association may supplement the plan of operations building specifications with the structural provisions of the IRC for one- and two-family dwellings, as published by the International Code Council or an analogous entity recognized by the board of directors.

Deletes "commissioner by rule", "department", "adopt", "may adopt".

SECTION 22. Amends Sections 2210.254(a) and (b) of the Insurance Code to permit the board of directors rather than the TDI to determine qualified inspectors. Requires that a windstorm inspection may be performed only by a qualified inspector who is employed by or under contract with the association.

Deletes "department", and "commissioner rule".

SECTION 23. Amends Section 2210.255 of the Insurance Code, to permit the board to appoint licensed engineers as inspectors on receipt of information satisfactory to the board of directors that the engineer is qualified to perform windstorm inspections under this subchapter. Requires the board of directors to consult with the commissioner regarding the information to be considered in appointing engineers under this section.

Deletes "commissioner shall", "not than the 10th day after the date the engineer delivers to the commissioner information demonstrating", "shall adopt rules establishing".

SECTION 24. Amends Subchapter F, Chapter 2210 of the Insurance Code by adding Section 2210.258. Provides that, for purposes of this section, property is not in compliance with mandatory building codes if the property has not been inspected for compliance with the plan of operation in accordance with Section 2210.251(a), or a certificate of compliance has not been issued in accordance with Section 2210.251(f). Provides that an applicant for coverage from the association or a policyholder of the association whose property is determined to not be in compliance as provided by Subsection (a) is subject to a premium surcharge for insurance coverage obtained through the association. Requires that the surcharge shall be an amount not less than an amount equal to 10 percent of the premium, as determined by the commissioner after notice and a hearing.

SECTION 25. Amends Sections 2210.351(a), (c), and (d) of the Insurance Code to state that the association shall file with the department in the manner prescribed by Section 2251.101 each manual of classifications, rules, rates, including condition charges, and each rating plan, and each modification of those items that the association proposes to use. After the filing has been made, allows the association to use a filed rate, and provides that a filed rate is subject to disapproval by the commissioner in the manner prescribed by Subchapter C, Chapter 2251. If at any time the commissioner determines that a filing in effect under Subsection (c) no longer meets the requirements of this chapter, allows the commissioner to disapprove the filing in the manner prescribed by Section 2251.104 for disapproval of a rate.

Deletes "must", "As soon as reasonably possible after the filing has been made, the commissioner in writing shall approve, modify, or disapprove the filing. A filing is considered approved unless modified or disapproved on or before the 30th day after the date of the filing",

"approved", "after a hearing held on at least 20 days' notice to the association that specifies the matters to be considered at the hearing, issue an order withdrawing approval of", "The order must specify in what respects the commissioner determines that the filing no longer meets the requirements of this chapter. An order issued under this subsection may not take effect before the 30th day after the date of issuance of the order".

SECTION 26. Amends Section 2210.355(b) of the Insurance Code, to require that in adopting rates under this chapter, the association shall comply with the rate standards adopted under Section 2251.052, to the extent that those standards are determined by the commissioner to be applicable to the purposes of the association, ensure that the rates are actuarially sound, and include rating factors as necessary to the catastrophe reserve trust fund, pay any public securities obligations in accordance with Subchapter M, and pay all losses and expenses of the association, regardless of the ultimate source of funding for those losses and expenses.

Deletes "following must be considered:(1) the past and prospective loss experience within and outside this state of hazards for which insurance is made available through the plan of operation, if any;(2) expenses of operation, including acquisition costs;(3) a reasonable margin for profit and contingencies; and (4) all other relevant factors, within and outside this state".

SECTION 27. Amends Section 2210.356 of the Insurance Code by amending Subsection (b) and adding Subsection (b-1). Amends Subsection (b) to require that the catastrophe element used to develop rates under this subchapter must be developed using industry data, association data, and catastrophe models approved by the department for use in association filings.

Adds subsection (b-1) requiring the commissioner to adopt rules establishing the procedure for approval by the department of catastrophe models used by the association in the development of its rates, and the methodology of use for those models.

Deletes "applicable to risks written by the association must be uniform throughout the seacoast territory. The catastrophe element of the rates", "(1) 90 percent of both the monoline extended coverage loss experience and related premium income for all insurers, other than the association, for covered property located in the seacoast territory, using not less than the most recent 30 years of experience available; and (2) 100 percent of both the loss experience and related premium income for the association for covered property, using not less than the most recent 30 years of experience available".

SECTION 28. Amends Subchapter H, Chapter 2210 of the Insurance Code by adding Section 2210.364 to provide that a person who is aggrieved by a rate under this subchapter may proceed as provided by Chapter 2251.

SECTION 29. Amends Sections 2210.452(a), (c), and (d) of the Insurance Code to require the commissioner to adopt rules under which the association makes payments to the catastrophe reserve trust fund. Requires that the trust fund may be used only to fund the obligations of the trust fund under Section 2210.058. At the end of each calendar year or policy year, requires the association to pay the net gain from operations of the association including all premium and other revenue of the association in excess of incurred losses and operating expenses, to the trust fund or a reinsurance program approved by the commissioner. Requires the commissioner by rule to establish the procedure relating to the disbursement of money from the trust fund to policyholders in the event of an occurrence or series of occurrences within a catastrophe area that results in a disbursement under Section 2210.058.

Deletes "members relinquish their net equity on an annual basis as provided by those rules by making, "2210.058(a); and (2) the mitigation and preparedness plan established under Section 2210.454 to reduce the potential for payments by association members that give rise to tax credits in the event of loss", "equity", "a member", and "2210.058(a)".

SECTION 30. Amends Section 2210.453 of the Insurance Code to allow the association to make payments into the trust fund and purchase reinsurance as part of the association's annual operating expenses to the extent approved by the commissioner. With the approval of the

commissioner, allows the association to purchase reinsurance that operates in addition to or in concert with the trust fund and with public securities and assessments authorized by this chapter.

Deletes "shall", "or", "establish a", "program", "department".

SECTION 31. Amends Section 2210.454(b) of the Insurance Code to allow the department to fund the mitigation and preparedness plan using available funds each state fiscal year.

Deletes "the investment income of the trust fund in an amount not less than \$1 million and not more than 10 percent of the investment income of the prior fiscal year. From that amount and as part of that plan, the department may use in each fiscal year \$1 million for the windstorm inspection program established under Section 2210.251".

SECTION 32. Amends Section 2210.551 of the Insurance Code by adding Subsection (a-1) and amending Subsections (c) and (d). Adds subsection (a-1) to provide that this section does not apply to a matter subject to Section 2210.364. If the association or any interested party is aggrieved by the action of the commissioner with respect to a ruling, order, or determination of the commissioner, allows the association or interested party to, not later than the 30th day after the date of the action, make a written request to the commissioner for a hearing on the action. On 10 days' written notice of the time and place of the hearing, requires the commissioner to conduct a hearing on the request of the association or interested party or the appeal from an act, ruling, or decision of the association, not later than the 30th day after the date of receipt of the request or appeal.

Deletes "association's".

SECTION 33. Amends Chapter 2210 of the Insurance Code by adding Subchapters M and N:

Subchapter M. Public Securities Program

PURPOSE. The legislature finds that issuing public securities to provide a method to raise funds to provide windstorm and hail insurance through the association in certain designated areas of the state is to benefit the public and to further a public purpose.

Defines "Board", "Catastrophe area public security", "Class 1 public securities", "Class 2 public securities", "Credit agreement", "Credit agreement obligation", "Insurer", "Member company public security", "Public security", "Public security administrative expenses", "Public security obligations", "Public security obligation revenue fund", "Public security resolution".

APPLICABILITY OF OTHER LAWS. The board shall issue public securities under this subchapter in accordance with and subject to the requirements of Chapter 1232, Government Code, and other provisions of Title 9, Government Code, that apply to issuance of a public security by a state agency. In the event of a conflict, this subchapter controls.

ISSUANCE OF PUBLIC SECURITIES AUTHORIZED. At the request of the board of directors of the association and with the approval of the commissioner, the board shall issue public securities to fund the association, including funding necessary to establish and maintain reserves to pay claims; pay incurred claims; pay operating expenses; and purchase reinsurance; provide a reserve fund for the public securities; capitalize interest for the period determined by the association, not to exceed two years; pay public security administrative expenses; and pay other costs related to the public securities as may be determined by the board.

Allows the board to issue, on behalf of the association, public securities in an amount sufficient to fund the insured losses and operating expenses of the association as determined by the association and approved by the commissioner after at least 10 days' notice and a hearing if a hearing is requested by any person within the 10-day notice period.

TERMS OF ISSUANCE. The board shall determine the terms of issuance. Allows the board may enter into a credit agreement in connection with the public securities. Requires that Public securities must be issued in the name of the association.

CONTENTS OF PUBLIC SECURITY RESOLUTION; ADMINISTRATION OF ACCOUNTS.

In a public security resolution, allows the board to provide for the flow of funds and the establishment, maintenance, and investment of funds and special accounts with regard to the public securities; and make additional covenants with respect to the public securities and the designated income and receipts of the association pledged to the payment of the public securities. Requires the association to administer the accounts in accordance with this subchapter.

PUBLIC SECURITY PROCEEDS. Allows the proceeds of public securities to be deposited with a trustee selected by the association in consultation with the commissioner or if no trustee is selected, held by the comptroller in a dedicated trust fund outside the state treasury in the custody of the comptroller. Any excess public security proceeds remaining after the purposes for which the public securities were issued are satisfied may be used to pay public security obligations or administrative expenses or pay, purchase, defease, or redeem outstanding public securities. If there are no outstanding public security obligations or public security administrative expenses, the excess proceeds shall be transferred to the catastrophe reserve trust fund.

SOURCE OF PAYMENT; REVENUE FUND. Provides that public security obligations are payable only from the public security obligation revenue fund, into which the service fees on assessments established under Section 2210.611, 2210.612, 2210.613, or 2210.614, as applicable; or other amounts that the association is authorized to levy, charge, and collect are deposited. Requires the board to notify the association of the estimated amount of public security administrative expenses and the amount of the public security obligations each year in a period sufficient, as determined by the association, to permit the association to determine the availability of funds and assess a premium surcharge or other assessment if necessary. Requires the association to deposit all revenue collected under Sections 2210.611 through 2210.614 in the public security obligation revenue fund. Money deposited in the fund may be invested as permitted by general law. Money in the fund required to be used to pay public security administrative expenses and public security obligations shall be transferred to the appropriate funds in the manner and at the time specified in the public security resolution to ensure timely payment of obligations and expenses.

Requires the association to provide for the payment of the public security administrative expenses and the public security obligations by irrevocably pledging revenues received from assessments, premiums, premium surcharges, and amounts on deposit in the public security obligation revenue fund, together with any reserve fund, as provided in the public security resolution and amounts realized under related credit agreements. Revenue deposited into the public security obligation revenue fund that exceeds the amount of the public security obligations payable in that year and interest earned on the public security obligation fund may, in the discretion of the association, be used to pay public security obligations payable in the subsequent year, offsetting the amount of the premium surcharge or assessment that would otherwise be required to be levied for the year under this subchapter; used to redeem, purchase, or defease outstanding public securities; or deposited in the catastrophe reserve trust fund.

Provides that the public securities are obligations solely of the association and do not create a pledge, gift, or loan of the faith, credit, or taxing authority of this state. Each public security must include a statement that the state is not obligated to pay any amount on the security and that the faith, credit, and taxing authority of this state are not pledged, given, or lent to those payments; and state on the security's face that the security is payable solely from the revenue pledged for that purpose; and is not and may not constitute a legal or moral obligation of the state.

PAYMENT OF INTEREST; PAYMENT OF PRE-EVENT PUBLIC SECURITY

OBLIGATIONS. Except as provided by Subsection (b), requires the association to pay all interest, and allows it to pay principal, on any pre-event public security issued as described by Section 2210.058(c) or (d) from the existing premiums of the association. If the association is unable to pay the public security obligations described by Subsection (a) with existing premiums, those public security obligations shall be paid from the service fees collected in accordance with Sections 2210.611 and 2210.612.

REFINANCING PUBLIC SECURITIES. Allows the association to request the board to refinance any public securities issued in accordance with Section 2210.058, whether pre-event or

post-event public securities, with the refinanced public securities payable from the same sources as the original public securities.

CATASTROPHE AREA PUBLIC SECURITY SERVICE FEE; PREMIUM SURCHARGE AND ASSESSMENT. The catastrophe area public security obligations and administrative expenses shall be serviced as provided by this section. For public securities, the proceeds of which are used to fund excess losses under Section 2210.058(c), the public security obligations and administrative expenses shall be collected from association policyholders each year until all outstanding public security obligations and administrative expenses have been satisfied and paid. The service fee imposed on association policyholders under this section shall be determined and collected as provided by this subsection. The association shall determine the amount of a service fee imposed under this section at least annually. On approval by the commissioner of the amount of a service fee after at least 10 days' notice and a hearing, if a hearing is requested by any person within the 10-day notice period, the association shall charge the service fee to its policyholders. The service fee must be set in an amount sufficient to pay all public security obligations and administrative expenses. The service fee shall be collected in the form of a premium surcharge and shall be remitted to the association as required by the commissioner by rule. The service fees collected under this subsection are separate charges in addition to premiums collected and are not subject to premium taxes or commissions. For purposes of policy cancellation, failure by a policyholder to pay a premium surcharge imposed under this subsection is equivalent to failure to pay premium.

SERVICE FEE: CLASS 1 PUBLIC SECURITIES; PREMIUM SURCHARGE. A fee to service Class 1 public securities issued by the association in accordance with Section 2210.058(d) shall be collected by each insurer, the association, and the FAIR Plan Association from policyholders who reside or have operations in, or whose insured property is located in, a catastrophe area. The association shall determine the amount of a service fee imposed under Subsection (a) at least annually. On approval by the commissioner after at least 10 days' notice and a hearing, if a hearing is requested by any person within the 10-day notice period, each insurer, the association, and the FAIR Plan Association shall charge the service fee to the policyholders described by Subsection (a). The service fee must be set in an amount sufficient to pay all public security obligations and administrative expenses. The service fee shall be collected in the form of a premium surcharge and shall be remitted to the association as required by the commissioner by rule. The premium surcharge shall apply to all insurance policies for all property and casualty lines other than workers' compensation, accident and health, and medical malpractice. The service fees collected in the form of a premium surcharge under this section are separate charges in addition to premiums collected and are not subject to premium taxes or commissions. For purposes of policy cancellation, failure by a policyholder to pay a premium surcharge imposed under this section is equivalent to failure to pay premium.

POST-EVENT ASSESSMENT: MEMBER COMPANY PUBLIC SECURITIES. An assessment to service member company public security obligations and administrative expenses issued by the association after a catastrophic event shall be assessed to and collected from each member company. The association shall determine the amount of each member company assessment at least annually. The assessment must be set in an amount sufficient to pay all public security obligations and administrative expenses. Each member company shall be assessed with the proportion of the loss allocable to each member company determined in the same manner as its participation in the association has been determined for the year under Section 2210.052.

POST-EVENT SERVICE FEE: CLASS 2 PUBLIC SECURITIES; PREMIUM SURCHARGE. A fee to service Class 2 public securities issued by the association after a catastrophic event shall be collected by each insurer, the association, and the FAIR Plan Association from policyholders who reside or have operations in, or whose insured property is located in, this state. The association shall determine the amount of a service fee imposed under Subsection (a) at least annually. On approval by the commissioner after at least 10 days' notice and a hearing, if a hearing is requested by any person within the 10-day notice period, each insurer, the association, and the FAIR Plan Association shall charge the service fee to the policyholders described by Subsection (a). The service fee must be set in an amount sufficient to pay all public security obligations and administrative expenses. The service fee shall be collected in the form of a premium surcharge and shall be remitted to the association as required by the commissioner by rule. The service fees collected in the form of a premium surcharge under this section are

separate charges in addition to premiums collected and are not subject to premium taxes or commissions. For purposes of policy cancellation, failure by a policyholder to pay a premium surcharge imposed under this section is equivalent to failure to pay premium.

EXEMPTION FROM TAXATION. Public securities issued under this subchapter, any interest from those public securities, and all assets pledged to secure the payment of the public securities are free from taxation by the state or a political subdivision of this state.

AUTHORIZED INVESTMENTS. Public securities issued under this subchapter are authorized investments under Subchapter B, Chapter 424, and Subchapters C and D, Chapter 425.

STATE PLEDGE REGARDING PUBLIC SECURITY OWNER RIGHTS AND REMEDIES. The state pledges to and agrees with the owners of public securities issued in accordance with this subchapter that the state will not limit or alter the rights vested in the association to fulfill the terms of agreements made with the owners or in any way impair the rights and remedies of those owners until the public security obligations are fully discharged. The board may include the state's pledge and agreement under Subsection (a) in a public security resolution.

PAYMENT ENFORCEABLE BY MANDAMUS. A writ of mandamus from any Travis County district court and any other legal or equitable remedy are available to a party in interest to require the association or another party to fulfill an agreement or perform a function or duty under this subchapter; the Texas Constitution; or a public security resolution.

NO PERSONAL LIABILITY. The members of the association, association employees, the board, the employees of the Texas Public Finance Authority, the commissioner, and department employees are not personally liable as a result of exercising the rights and responsibilities granted under this subchapter.

SUBCHAPTER N. ASSOCIATION SOLVENCY REQUIREMENTS

SOLVENCY DUTIES. The board of directors shall maintain the required solvency level of the association.

REQUIRED SOLVENCY LEVEL; FUNDING SOURCES. For purposes of this chapter, the "required solvency level" is the level of available internal association funding necessary to pay 100 percent of losses for which the association is liable and that result from a probable maximum loss determined by the board of directors under Section 2210.654. The board of directors shall maintain the funding of the association at a level sufficient to achieve the required solvency level. The association shall derive the funding to maintain the required solvency level from a combination of association reserves; available funds in the catastrophe reserve trust fund; reinsurance purchased at any level; catastrophe area public securities; and Class 1 pre-event and post-event public securities, to be issued only as required in accordance with Section 2210.058(d). As prescribed by Section 2210.058(d), Class 1 pre-event and post-event public securities may not be used to achieve more than 50 percent of the required solvency level.

CERTIFICATION; ANNUAL SOLVENCY REPORT. The board of directors shall certify to the governor, the lieutenant governor, the speaker of the house of representatives, and the commissioner, not later than April 15 of each calendar year, that the required solvency level of the association is satisfied for that calendar year. The board of directors shall make the certification in the manner prescribed by commissioner rule. After calendar year 2008, in any calendar year, the association may not issue any new coverage after April 15 if the board of directors has not certified the required solvency level in the annual solvency report. This subsection does not apply to renewal of a policy issued through the association.

DETERMINATION OF PROBABLE MAXIMUM LOSS. Not later than April 1 of each calendar year, to establish the required solvency level under Section 2210.652, the board of directors shall determine the association's current probable maximum loss, based on an average of at least two recognized catastrophe models, as follows: for calendar year 2008, at not less than a one in 50 year occurrence; for calendar year 2009, at not less than a one in 75 year occurrence; and for each calendar year after calendar year 2009, at not less than a one in 100 year occurrence. The board of directors must ensure the ability of the association to generate funding sufficient to

cover the probable maximum loss without reliance on any member company public securities or Class 2 post-event public securities.

SECTION 34. Amends Section 2251.003, Insurance Code, by adding Subsection (a-1) to provide that except as otherwise provided by Chapter 2210, Subchapters B and C apply to the Texas Windstorm Insurance Association.

SECTION 35. Repeals Sections 2210.003(5) and (12), Insurance Code; Section 2210.059, Insurance Code; Section 2210.351(b), Insurance Code; Sections 2210.352, 2210.353, and 2210.354, Insurance Code; Sections 2210.355(c), (d), and (e), Insurance Code; Sections 2210.356(a), (c), and (d), Insurance Code; Section 2210.359, Insurance Code; Section 2210.360, Insurance Code; Section 2210.502(c), Insurance Code; and Subchapter I, Chapter 2210, Insurance Code.

SECTION 36. Abolishes the board of directors of the Texas Windstorm Insurance Association established under Section 2210.102, Insurance Code, as that section existed before amendment by this Act, effective December 31, 2007. Requires the governor to appoint the members of the board of directors of the Texas Windstorm Insurance Association under Section 2210.102, Insurance Code, as amended by this Act, for terms beginning on January 1, 2008. The term of a person who is serving as a member of the board of directors of the Texas Windstorm Insurance Association immediately before the abolition of that board under Subsection (a) of this section expires on December 31, 2007. Such a person is eligible for appointment by the governor to the new board of directors of the Texas Windstorm Insurance Association under Section 2210.102, Insurance Code, as amended by this Act.

SECTION 37. Requires the commissioner of insurance to adopt rules as required by Section 2210.356(b-1), Insurance Code, as added by this Act, not later than the 180th day after the effective date of this Act.

SECTION 38. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

EFFECTIVE DATE

This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

COMPARISON OF SUBSTITUTE TO ORIGINAL

C.S.H.B. 2960 makes several changes to the original house bill. First, in SECTION 1, the substitute replaces the phrase "in coastal areas of this state", as found in the original house bill, with "in the seacoast territory" as now written in the substitute. Also, C.S.H.B. 2960 now states that "insurance may be obtained in certain designated portions of the seacoast territory of this state", while the original house bill stated that "insurance may be obtained in certain coastal counties of this state". In Subsection (b) of Section 2210.001, C.S.H.B. 2960 amends the language of the original house bill. Subsection (b) now states "in the seacoast territory" as opposed to "in the first tier coastal counties" as written in the original house bill.

SECTION 2 is the same as original.

SECTION 3 is the same as original.

Next, in SECTION 4, C.S.H.B. 2960 amends the original house bill by adding the phrase "the seacoast area of" to Section 2210.005.

In SECTION 5, C.S.H.B. 2960 deletes Sections 2210.010 and 2210.011 as found in the original house bill. Also, in Section 2210.009, C.S.H.B. 2960 adds language to the original house bill which states that "The incentives may include rules or policy form amendments allowing an

C.S.H.B. 2960 80(R)

insurer to use, in adjusting windstorm claims, the method of allocation of wind and water damage provided by Section 2210.203 (a-1)".

In SECTION 6, C.S.H.B. 2960 amends Section 2210.052(a) and (d) of the Texas Insurance Code. These provisions, as now found in the substitute, were not in the original house bill. Thus, whereas in SECTION 6 of the original house bill, Section 2210.058 of the Texas Insurance Code was amended, these same provisions are now found in SECTION 7 of C.S.H.B. 2960.

However, in SECTION 7 of C.S.H.B. 2960 (SECTION 6 of the original house bill), Subsection (b) of Section 2210.058 is amended to now read "The association shall pay excess losses from available reserves of the association and available amounts in", whereas in SECTION 6 of the original house bill, Subsection (b) of Section 2210.058 read "The board of directors shall pay excess losses from available reserves of the association, available amounts in". Also, C.S.H.B. 2960 in SECTION 7 (SECTION 6 of the original house bill) deletes "and any reinsurance program established by the association" which was part of the language found in the original house bill, SECTION 6.

Also in SECTION 7 of C.S.H.B. 2960 (SECTION 6 of the original house bill), the language in Subsection (c) is amended by the substitute. Whereas the original house bill stated "For losses in excess of those paid under Subsection (b), the association may issue pre-event public securities in the manner prescribed by Subchapter M. Pre-event public securities issued under this subsection may be issued in amounts necessary to fund not more than 70 percent of the required solvency level determined under Subchapter N. All interest expenses and redemption costs of pre-event public securities shall be paid in the manner prescribed by Section 2210.609", C.S.H.B. 2960 now states that "For losses in excess of those paid under Subsection (b), the association may issue catastrophe area public securities in the manner prescribed by Subchapter M. Catastrophe area public securities issued under this subsection may be issued before or on or after the occurrence of a catastrophic event in amounts necessary to fund not more than 45 percent of the required solvency level determined under Subchapter N. All catastrophe area public securities obligations shall be paid in the manner prescribed by Section 2210.609, if applicable, and Section 2210.611".

Next, C.S.H.B. 2960, in SECTION 7, (SECTION 6 of the original house bill), amends the language written in Subsection (d) of Section 2210.058. The language found in the original house bill stated "For losses in excess of those paid under Subsections (b) and (c), the association may issue Class 1 post-event public securities in the manner prescribed by Subchapter M. Class 1 post-event public securities may be issued only after a named storm has caused damage in the seacoast territory and the board of directors has determined that the combination of association reserves, amounts available in the catastrophe reserve trust fund, and pre-event public securities are insufficient to pay the losses. On such a determination, the board of directors may request the commissioner to authorize Class 1 post-event public securities in an amount sufficient to pay projected losses up to an amount not to exceed 25 percent of the required solvency level determined under Subchapter N. All interest expenses and redemption costs of Class 1 post-event public securities shall be paid in the manner prescribed by Section 2210.610", whereas the substitute now states " For losses in excess of those paid under Subsections (b) and (c), the association may issue Class 1 public securities before or on or after the occurrence of a catastrophic event in the manner prescribed by Subchapter M. Class 1 post-event public securities may be issued only on or after a named storm has caused damage in the seacoast territory and the board of directors has determined that the combination of association reserves, amounts available in the catastrophe reserve trust fund, catastrophe area public securities, and Class 1 pre-event public securities, if any, are insufficient to pay the losses. The board of directors may request the commissioner to authorize Class 1 public securities in an amount sufficient to pay projected losses up to an amount not to exceed 50 percent of the required solvency level determined under Subchapter N. All Class 1 public securities obligations shall be paid in the manner prescribed by Section 2210.609, if applicable, and Section 2210.612".

C.S.H.B. 2960, in SECTION 7, (SECTION 6 of the original house bill), also amends the language found in Subsections (e), (f) and (g) of Section 2210.058 in the original house bill. The original bill stated that "(e) For losses in excess of those paid under Subsections (b)-(d), the board of directors may request the commissioner to authorize Class 2 post-event public

C.S.H.B. 2960 80(R)

securities. The commissioner may authorize Class 2 post-event public securities to pay losses above the required solvency level determined under Subchapter N. Class 2 post-event public securities shall be issued in the manner prescribed by Subchapter M in an amount not to exceed \$5 billion. All interest expenses and redemption costs of Class 2 post-event public securities shall be paid in the manner prescribed by Section 2210.611. (f) Losses in excess of those paid under Subsections (b)-(e) shall be assessed against members of the association, as provided by Subsection (g). (g) The proportion of the losses allocable to each insurer under Subsection (f) shall be determined in the manner used to determine each insurer's participation in the association for the year under Section 2210.052". However, C.S.H.B. 2960 now reads "(e) For losses in excess of those paid under Subsections (b)-(d), the board of directors of the association may request the commissioner to authorize member company public securities, in an amount not to exceed \$500 million, to be issued after a catastrophic event in the manner prescribed by Subchapter M. Member company public securities obligations shall be paid in the manner prescribed by Section 2210.613. (f) For losses in excess of those paid under Subsections (b)-(e), the board of directors may request the commissioner to authorize Class 2 post-event public securities to be issued under this subsection on or after a catastrophic event in the manner prescribed by Subchapter M. The commissioner may authorize Class 2 post-event public securities under this subsection to pay losses above the required solvency level determined under Subchapter N, in an amount sufficient to pay losses but not to exceed \$3 billion. All Class 2 post-event public securities obligations shall be paid in the manner prescribed by Section 2210.614. (g) The association may pay losses in excess of premium and other revenue of the association with reinsurance proceeds from reinsurance purchased by the association to fund losses and may pay expenses of the association with other funding available as provided in any subsection of this section."

The exact language found in SECTIONS 8, and 9 of C.S.H.B. 2960 are not found in the original house bill. Thus, SECTION 7 of the original house bill is moved to SECTION 10 in C.S.H.B. 2960; SECTION 8 of the original house bill is moved to SECTION 11 in C.S.H.B. 2960.

SECTION 9 of the original house bill is moved to SECTION 12 in C.S.H.B. 2960. However, the language as found in the original house bill has been amended by the substitute. Whereas the original house bill read that " The board of directors is composed of seven members appointed by the governor in accordance with this section. (b) Not more than three members may be employed by or affiliated with insurers who are members of the association. (c) Not more than two members may reside in or own property in a first tier coastal county. (d) Not more than two members may be general property and casualty agents licensed under this code. (e) All members must have demonstrated experience in insurance, general business, or actuarial principles sufficient to make the success of the association probable", the substitute now states that " The board of directors is composed of seven members appointed by the governor in accordance with this section. (b) At least three members must, but not more than three members may, be employed by or affiliated with other than as agents insurers who are members of the association. (c) At least two members must, but not more than two members may, be public representatives, one of whom as of the date of the appointment, resides in or owns property in the seacoast territory, and one of whom, as of the date of the appointment, does not reside in or own property in the seacoast territory. (d) At least two members must, but not more than two members may, be general property and casualty agents licensed under this code, one of whom, as of the date of the appointment, maintains the agent's principal office in the seacoast territory, and one of whom, as of the date of the appointment, does not maintain the agent's principal office in the seacoast territory. (e) All members must have demonstrated experience in insurance, general business, or actuarial principles sufficient to make the success of the association probable".

SECTION 10 in the original house bill is moved to SECTION 13 in C.S.H.B. 2960. SECTION 11 in the original house bill is moved to SECTION 14 in C.S.H.B. 2960.

The exact language found in SECTION 15 of C.S.H.B. 2960 is not found in the original house bill. SECTION 12 of the original house bill is moved to SECTION 16 in C.S.H.B. 2960 and SECTION 13 of the original house bill is moved to SECTION 17 in C.S.H.B. 2960.

Next, the language found in SECTION 14 of the original house bill is moved to SECTION 18 of the C.S.H.B. 2960. However, the substitute amends some the language and whereas the original stated that " A person who has an insurable interest in insurable property and who, after diligent

C.S.H.B. 2960 80(R)

effort, is unable to obtain insurance, as evidenced by two current declinations from insurers authorized to engage in the business of property and casualty insurance in this state and actually writing insurance in the first tier coastal counties, may apply to the association for insurance coverage provided under the plan of operation and an inspection of the property, subject to any rules, including any inspection fee, established by the board of directors and approved by the commissioner", the substitute now says that " A person who has an insurable interest in insurable property may apply to the association for insurance coverage provided under the plan of operation and an inspection of the property, subject to any rules established by the board of directors and approved by the commissioner. In order to be eligible for insurance through the association, an applicant must demonstrate, in the manner established in the plan of operation, inability to obtain insurance coverage from insurers authorized to engage in the business of property and casualty insurance in this state".

C.S.H.B. 2960, in SECTIONS 19, amends Section 2210.203 of the Texas Insurance Code by adding Subsection (a-1). This was not done in the original house bill.

Also, C.S.H.B. 2960, in SECTIONS 20, 21, 22 and 23, amends other sections found in the Texas Insurance Code. These sections were not amended in the original house bill.

SECTION 15 of the original house bill is moved to SECTION 24 in C.S.H.B. 2960. However, the language found in the original house bill is amended by the substitute. The words "approved or" and "by the department" as found in Section 2210.258 of the original house bill, are deleted in the substitute. Also, Subsection (b) of Section 2210.258 of the original house bill is amended by the substitute. Whereas the original house bill stated "A policyholder of the association whose property is determined to not be in compliance as provided by Subsection (a) is subject to a premium surcharge for insurance coverage obtained through the association. The surcharge shall be an amount not less than an amount equal to 25 percent of the premium, as determined by the commissioner after notice and a hearing", C.S.H.B. 2960 now states that " An applicant for coverage from the association or a policyholder of the association whose property is determined to not be in compliance as provided by Subsection (a) is subject to a premium surcharge for insurance coverage obtained through the association. The surcharge shall be an amount not less than an amount equal to 10 percent of the premium, as determined by the commissioner after notice and a hearing".

SECTION 16 of the original house bill is moved to SECTION 25 in C.S.H.B. 2960.

Next, SECTION 17 of the original house bill is moved to SECTION 26 in C.S.H.B. 2960. However, the substitute amends the language found in the original house bill. Whereas the original house bill stated that " In adopting rates under this chapter, the association shall: (1) comply with the rate standards adopted under Section 2251.052, to the extent that those standards are determined by the commissioner to be applicable to the purposes of the association; (2) ensure that the rates are actuarially sound; and (3) include rating factors as necessary to: (A) fund the catastrophe reserve trust fund; and (B) pay debt service and redemption fees on any pre-event and post-event public securities issued under Subchapter M. (c) Rates may not be less than a reasonably determined average market rate for all insurers writing similar coverage in the first tier coastal counties. The commissioner shall report annually to the board of directors on what the average market rate is, based on data collected by the department under this code. (h) The board of directors shall perform territorial rating within the first tier coastal counties as necessary to ensure that high-risk locations pay a higher rate commensurate with the risk. Ratings must be actuarially sound. In determining rating territories and territorial rates, the association shall use methods based on sound actuarial principles", the substitute simply states that " In adopting rates under this chapter, the association shall: (1) comply with the rate standards adopted under Section 2251.052, to the extent that those standards are determined by the commissioner to be applicable to the purposes of the association; (2) ensure that the rates are actuarially sound; and (3) include rating factors as necessary to: (A) fund the catastrophe reserve trust fund; (B) pay any public securities obligations in accordance with Subchapter M; and (C) pay all losses and expenses of the association, regardless of the ultimate source of funding for those losses and expenses".

C.S.H.B. 2960 80(R)

SECTION 18 of the original house bill is moved to SECTION 27 in C.S.H.B. 2960. However, some of the language, as found in the original house bill, is amended by the substitute and the substitute also adds a subsection, Subsection (b-1), to the original house bill. The phrase "and catastrophe models approved by the department for use in association filings" as found in the substitute, replaces and broadens the phrase "and models approved by the department" as found in the original house bill.

SECTION 19 of the original house bill is moved to SECTION 28 in C.S.H.B. 2960.

Next, SECTION 20 of the original house bill is moved to SECTION 29 in C.S.H.B. 2960. However, the language found in the original house bill differs from the language now found in the substitute. Whereas the original house bill stated that " The commissioner shall adopt rules under which association members relinquish their net equity on an annual basis as provided by those rules by making payments to the catastrophe reserve trust fund. The trust fund may be used only to fund: (1) the obligations of the trust fund under Section 2210.058; and (2) the mitigation and preparedness plan established under Section 2210.454 to reduce the potential for payments by association members that give rise to tax credits in the event of loss. (d) The commissioner by rule shall establish the procedure relating to the disbursement of money from the trust fund to policyholders in the event of an occurrence or series of occurrences within a catastrophe area that results in a disbursement under Section 2210.058", the substitute now states that " The commissioner shall adopt rules under which the association makes payments to the catastrophe reserve trust fund. The trust fund may be used only to fund the obligations of the trust fund under Section 2210.058. (c) At the end of each calendar year or policy year, the association shall pay the net gain from operations of the association, including all premium and other revenue of the association in excess of incurred losses and operating expenses, to the trust fund or a reinsurance program approved by the commissioner. (d) The commissioner by rule shall establish the procedure relating to the disbursement of money from the trust fund to policyholders in the event of an occurrence or series of occurrences within a catastrophe area that results in a disbursement under Section 2210.058".

The exact language and amended section found in SECTION 21 of the original house bill is not found in C.S.H.B. 2960. C.S.H.B. 2960 also amends and adds language to other sections of the Texas Insurance Code, in SECTIONS 30 and 31. These sections were not amended in the original house bill.

Next, SECTION 22 of the original house bill is moved to SECTION 32 in C.S.H.B. 2960. However, the substitute also proceeds to amend Subsections (c) and (d) of Section 2210.551. These subsections were not amended in the original house bill.

SECTION 23 of the original house bill is moved to SECTION 33 in C.S.H.B. 2960. The original house bill stated " DEFINITIONS. In this subchapter:(1) "Board" means the board of directors of the Texas Public Finance Authority. (2) "Insurer" means each property and casualty insurer authorized to engage in the business of property and casualty insurance in this state. The term specifically includes a county mutual insurance company, a Lloyd's plan, and a reciprocal or interinsurance exchange. The term does not include a county mutual insurance company described by Section 912.310. (3) "Public security" means a debt instrument or other public security issued by the Texas Public Finance Authority. (4) "Public security resolution" means the resolution or order authorizing public securities to be issued under this subchapter. Sec. 2210.603. APPLICABILITY OF OTHER LAWS. (a) To the extent consistent with this subchapter, Chapter 1232, Government Code, applies to public securities issued under this subchapter. In the event of a conflict, this subchapter controls. (b) The following laws also apply to public securities issued under this subchapter to the extent consistent with this section: (1) Chapters 1201, 1202, 1204, 1205, 1231, and 1371, Government Code; and (2) Subchapter A, Chapter 1206, Government Code. Sec. 2210.604. ISSUANCE OF PUBLIC SECURITIES AUTHORIZED. (a) At the request of the association and with the approval of the commissioner, the Texas Public Finance Authority shall issue public securities to: (1) fund the association, including funding necessary to: (A) establish and maintain reserves to pay claims; (B) pay incurred claims; (C) pay operating expenses; and (D) purchase reinsurance; (2) pay costs related to issuance of the public securities; and (3) pay other costs related to the public

C.S.H.B. 2960 80(R)

securities as may be determined by the board. (b) The Texas Public Finance Authority may issue, on behalf of the association, public securities in an amount sufficient to fund the insured losses and operating expenses of the association as determined by the association and approved by the commissioner after at least 10 days' notice and a hearing if a hearing is requested by any person within the 10-day notice period. Sec. 2210.605. TERMS OF ISSUANCE. (a) Public securities issued under this subchapter may be issued at a public or private sale. (b) Public securities must: (1) be issued in the name of the association; and (2) mature not more than 10 years after the date issued. Sec. 2210.606. CONTENTS OF PUBLIC SECURITY RESOLUTION; ADMINISTRATION OF ACCOUNTS. (a) In a public security resolution, the board may: (1) provide for the flow of funds and the establishment, maintenance, and investment of funds and special accounts with regard to the public securities, including an interest and sinking fund account, a reserve account, and other accounts; and (2) make additional covenants with respect to the public securities and the designated income and receipts of the association pledged to the payment of the public securities. (b) The association shall administer the accounts in accordance with this subchapter. Sec. 2210.607. SOURCE OF PAYMENT. (a) Public securities issued under this subchapter are payable only from: (1) the service fees established under Section 2210.609, 2210.610, or 2210.611, as applicable; or (2) other amounts that the association is authorized to levy, charge, and collect. (b) The public securities are obligations solely of the association and do not create a pledge, gift, or loan of the faith, credit, or taxing authority of this state. (c) Each public security must: (1) include a statement that the state is not obligated to pay any amount on the security and that the faith, credit, and taxing authority of this state are not pledged, given, or lent to those payments; and (2) state on the security's face that the security: (A) is payable solely from the revenue pledged for that purpose; and (B) is not and may not constitute a legal or moral obligation of the state. Sec. 2210.608. PAYMENT OF INTEREST. (a) Except as provided by Subsection (b), all interest on a public security issued as described by Section 2210.058 shall be paid by the association from the existing premiums of the association. (b) If the association is unable to pay the interest on a public security described by Subsection (a) with existing premiums, the interest on the public securities shall be paid from the service fees collected in accordance with Sections 2210.609-2210.611. Sec. 2210.609. PRE-EVENT SERVICE FEE; PREMIUM SURCHARGE. (a) A fee to service public securities issued by the association before a catastrophic event may be collected by the association from policyholders who reside or have operations in, or whose insured property is located in, the first tier coastal counties. (b) The association shall determine the amount of a service fee imposed under Subsection (a) at least annually. (c) On approval by the commissioner after at least 10 days' notice and a hearing, if a hearing is requested by any person within the 10-day notice period, the association shall charge the service fee to its policyholders. The service fee must be set in an amount sufficient to pay all debt service and all related expenses on the public securities. The service fee shall be collected in the form of a premium surcharge and shall be remitted to the association as required by the commissioner by rule. (d) The service fees collected in the form of a premium surcharge under this section are separate charges in addition to premiums collected and are not subject to premium taxes or commissions. (e) For purposes of policy cancellation, failure by a policyholder to pay a premium surcharge imposed under this section is equivalent to failure to pay premium. Sec. 2210.610. POST-EVENT SERVICE FEE: CLASS 1 PUBLIC SECURITIES; PREMIUM SURCHARGE. (a) A fee to service Class 1 public securities issued by the association after a catastrophic event shall be collected by each insurer, the association, and the FAIR Plan Association from policyholders who reside or have operations in, or whose insured property is located in, the first tier coastal counties. (b) The association shall determine the amount of a service fee imposed under Subsection (a) at least annually. (c) On approval by the commissioner after at least 10 days' notice and a hearing, if a hearing is requested by any person within the 10-day notice period, each insurer, the association, and the FAIR Plan Association shall charge the service fee to the policyholders described by Subsection (a). The service fee must be set in an amount sufficient to pay all debt service and all related expenses on the public securities. The service fee shall be collected in the form of a premium surcharge and shall be remitted to the association as required by the commissioner by rule. (d) The premium surcharge shall apply to all insurance policies for all property and casualty lines other than workers' compensation, accident and health, and medical malpractice. The service fees collected in the form of a premium surcharge under this section are separate charges in addition to premiums collected and are not subject to premium taxes or commissions. (e) For purposes of policy cancellation, failure by a policyholder to pay a premium surcharge imposed under this section is equivalent to failure to pay premium. Sec. 2210.611. POST-EVENT SERVICE FEE: CLASS 2

PUBLIC SECURITIES; PREMIUM SURCHARGE. (a) A fee to service Class 2 public securities issued by the association after a catastrophic event shall be collected by each insurer, the association, and the FAIR Plan Association from policyholders who reside or have operations in, or whose insured property is located in, this state. (b) The association shall determine the amount of a service fee imposed under Subsection (a) at least annually. (c) On approval by the commissioner after at least 10 days' notice and a hearing, if a hearing is requested by any person within the 10-day notice period, each insurer, the association, and the FAIR Plan Association shall charge the service fee to the policyholders described by Subsection (a). The service fee must be set in an amount sufficient to pay all debt service and all related expenses on the public securities. The service fee shall be collected in the form of a premium surcharge and shall be remitted to the association as required by the commissioner by rule. (d) The service fees collected in the form of a premium surcharge under this section are separate charges in addition to premiums collected and are not subject to premium taxes or commissions. (e) For purposes of policy cancellation, failure by a policyholder to pay a premium surcharge imposed under this section is equivalent to failure to pay premium. Sec. 2210.612. **EXEMPTION FROM TAXATION.** Public securities issued under this subchapter, any interest from those public securities, and all assets pledged to secure the payment of the public securities are free from taxation by the state or a political subdivision of this state. Sec. 2210.613. **AUTHORIZED INVESTMENTS.** Public securities issued under this subchapter are authorized investments under Subchapter B, Chapter 424, and Subchapters C and D, Chapter 425.

Sec. 2210.614. **STATE PLEDGE REGARDING PUBLIC SECURITY OWNER RIGHTS AND REMEDIES.** (a) The state pledges to and agrees with the owners of public securities issued in accordance with this subchapter that the state will not limit or alter the rights vested in the association to fulfill the terms of agreements made with the owners or in any way impair the rights and remedies of those owners until the following obligations are fully discharged: (1) the public securities; (2) any bond premium; (3) interest; and (4) all costs and expenses related to an action or proceeding by or on behalf of the owners. (b) The association may include the state's pledge and agreement under Subsection (a) in an agreement with the owners of the public securities. Sec. 2210.615. **PAYMENT ENFORCEABLE BY MANDAMUS.** A writ of mandamus and any other legal or equitable remedy are available to a party in interest to require the association or another party to fulfill an agreement or perform a function or duty under:

(1) this subchapter; (2) the Texas Constitution; or (3) a public security resolution.

SUBCHAPTER N. ASSOCIATION SOLVENCY REQUIREMENTS

Sec. 2210.651. **SOLVENCY DUTIES.** The board of directors shall maintain the financial solvency of the association and the ability of the association to pay claims.

Sec. 2210.652. **REQUIRED SOLVENCY LEVEL; FUNDING SOURCES.** (a) For purposes of this chapter, the "required solvency level" is the level of available internal association funding necessary to pay 100 percent of losses for which the association is liable and that result from a probable maximum loss determined by the commissioner under Section 2210.654. (b) The board of directors shall maintain the funding of the association at a level sufficient to achieve the required solvency level. (c) The association shall derive the funding to maintain the required solvency level from a combination of: (1) association reserves; (2) available funds in the catastrophe reserve trust fund; (3) reinsurance; (4) pre-event public securities; and (5) Class 1 post-event public securities to be issued only as required in accordance with Section 2210.058(d). (d) As prescribed by Section 2210.058(d), Class 1 post-event public securities may not be used to achieve more than 25 percent of the required solvency level.

Sec. 2210.653. **CERTIFICATION; ANNUAL SOLVENCY REPORT.** (a) The board of directors shall certify to the governor, the lieutenant governor, the speaker of the house of representatives, and the commissioner, not later than February 15 of each calendar year, that the required solvency level of the association is satisfied for that calendar year. (b) The board of directors shall make the certification in the manner prescribed by commissioner rule. (c) In any calendar year, the association may not issue any new coverage until the board of directors has certified the required solvency level in the annual solvency report. This subsection does not apply to renewal of a policy issued through the association. Sec. 2210.654. **DETERMINATION OF PROBABLE MAXIMUM LOSS.** (a) Not later than January 15 of each year, the commissioner shall determine the association's current probable maximum loss and shall notify the board of directors of the probable maximum loss for that year. (b) The board of directors must ensure the ability of the association to generate funding sufficient to cover the probable maximum loss without reliance on any Class 2 post-event public securities". C.S.H.B. 2960 now states that " **DEFINITIONS.** In this subchapter: (1) "Board" means the board of directors of the Texas Public Finance Authority. (2) "Catastrophe area public security" means public securities

authorized to be issued before or on or after the occurrence of a catastrophic event by Section 2210.058(c). (3) "Class 1 public securities" means public securities authorized to be issued before or on or after the occurrence of a catastrophic event by Section 2210.058(d). (4) "Class 2 public securities" means public securities authorized to be issued on or after the occurrence of a catastrophic event by Section 2210.058(f). (5) "Credit agreement" has the meaning assigned by Chapter 1371, Government Code. (6) "Credit agreement obligation" means any premium, periodic payment, termination payment, or similar obligation under a credit agreement. (7) "Insurer" means each property and casualty insurer authorized to engage in the business of property and casualty insurance in this state. The term specifically includes a county mutual insurance company, a Lloyd's plan, and a reciprocal or interinsurance exchange. (8) "Member company public security" means public securities authorized to be issued after the occurrence of a catastrophic event by Section 2210.058(e). (9) "Public security" means a debt instrument or other public security obligation issued by the Texas Public Finance Authority for the purposes described by this subchapter and any credit agreement. (10) "Public security administrative expenses" means expenses incurred in issuing and administering public securities issued under this subchapter, including insurance costs and fees for paying agents, trustees, and attorneys, and for other professional services necessary to ensure compliance with applicable state or federal law. (11) "Public security obligations" means the principal, any premium, and interest on a public security, periodic payments or termination payments, or similar obligations with respect to a public security. (12) "Public security obligation revenue fund" means the dedicated trust fund established by the association outside the state treasury under this subchapter. (13) "Public security resolution" means the resolution or order authorizing public securities to be issued under this subchapter.

Sec. 2210.603. APPLICABILITY OF OTHER LAWS. The board shall issue public securities under this subchapter in accordance with and subject to the requirements of Chapter 1232, Government Code, and other provisions of Title 9, Government Code, that apply to issuance of a public security by a state agency. In the event of a conflict, this subchapter controls.

Sec. 2210.604. ISSUANCE OF PUBLIC SECURITIES AUTHORIZED. (a) At the request of the board of directors of the association and with the approval of the commissioner, the board shall issue public securities to: (1) fund the association, including funding necessary to: (A) establish and maintain reserves to pay claims; (B) pay incurred claims; (C) pay operating expenses; and (D) purchase reinsurance; (2) provide a reserve fund for the public securities; (3) capitalize interest for the period determined by the association, not to exceed two years; (4) pay public security administrative expenses; and (5) pay other costs related to the public securities as may be determined by the board. (b) The board may issue, on behalf of the association, public securities in an amount sufficient to fund the insured losses and operating expenses of the association as determined by the association and approved by the commissioner after at least 10 days' notice and a hearing if a hearing is requested by any person within the 10-day notice period.

Sec. 2210.605. TERMS OF ISSUANCE. (a) The board shall determine the method of sale, type and form of public security, maximum interest rates, and other terms of the public securities that, in the board's judgment, best achieve the goals of the association and effect the borrowing at the lowest practicable cost. The board may enter into a credit agreement in connection with the public securities. (b) Public securities must be issued in the name of the association.

Sec. 2210.606. CONTENTS OF PUBLIC SECURITY RESOLUTION; ADMINISTRATION OF ACCOUNTS. (a) In a public security resolution, the board may: (1) provide for the flow of funds and the establishment, maintenance, and investment of funds and special accounts with regard to the public securities; and (2) make additional covenants with respect to the public securities and the designated income and receipts of the association pledged to the payment of the public securities. (b) The association shall administer the accounts in accordance with this subchapter.

Sec. 2210.607. PUBLIC SECURITY PROCEEDS. (a) The proceeds of public securities may be deposited with a trustee selected by the association in consultation with the commissioner or if no trustee is selected, held by the comptroller in a dedicated trust fund outside the state treasury in the custody of the comptroller. (b) Any excess public security proceeds remaining after the purposes for which the public securities were issued are satisfied may be used to pay public security obligations or administrative expenses or pay, purchase, defease, or redeem outstanding public securities. If there are no outstanding public security obligations or public security administrative expenses, the excess proceeds shall be transferred to the catastrophe reserve trust fund.

Sec. 2210.608. SOURCE OF PAYMENT; REVENUE FUND. (a) Public security obligations are payable only from the public security obligation revenue fund, into which the following are deposited: (1) the service fees on assessments established under Section 2210.611, 2210.612, 2210.613, or 2210.614, as applicable; or (2) other amounts that the association is authorized to levy, charge, and collect.

(b) The board shall notify the association of the estimated amount of public security administrative expenses and the amount of the public security obligations each year in a period sufficient, as determined by the association, to permit the association to determine the availability of funds and assess a premium surcharge or other assessment if necessary. (c) The association shall deposit all revenue collected under Sections 2210.611 through 2210.614 in the public security obligation revenue fund. Money deposited in the fund may be invested as permitted by general law. Money in the fund required to be used to pay public security administrative expenses and public security obligations shall be transferred to the appropriate funds in the manner and at the time specified in the public security resolution to ensure timely payment of obligations and expenses. (d) The association shall provide for the payment of the public security administrative expenses and the public security obligations by irrevocably pledging revenues received from assessments, premiums, premium surcharges, and amounts on deposit in the public security obligation revenue fund, together with any reserve fund, as provided in the public security resolution and amounts realized under related credit agreements. (e) Revenue deposited into the public security obligation revenue fund that exceeds the amount of the public security obligations payable in that year and interest earned on the public security obligation fund may, in the discretion of the association, be: (1) used to pay public security obligations payable in the subsequent year, offsetting the amount of the premium surcharge or assessment that would otherwise be required to be levied for the year under this subchapter; (2) used to redeem, purchase, or defease outstanding public securities; or (3) deposited in the catastrophe reserve trust fund. (f) The public securities are obligations solely of the association and do not create a pledge, gift, or loan of the faith, credit, or taxing authority of this state. (g) Each public security must: (1) include a statement that the state is not obligated to pay any amount on the security and that the faith, credit, and taxing authority of this state are not pledged, given, or lent to those payments; and (2) state on the security's face that the security: (A) is payable solely from the revenue pledged for that purpose; and (B) is not and may not constitute a legal or moral obligation of the state. Sec. 2210.609. PAYMENT OF INTEREST; PAYMENT OF PRE-EVENT PUBLIC SECURITY OBLIGATIONS. (a) Except as provided by Subsection (b), the association shall pay all interest, and may pay principal, on any pre-event public security issued as described by Section 2210.058(c) or (d) from the existing premiums of the association. (b) If the association is unable to pay the public security obligations described by Subsection (a) with existing premiums, those public security obligations shall be paid from the service fees collected in accordance with Sections 2210.611 and 2210.612. Sec. 2210.610. REFINANCING PUBLIC SECURITIES. The association may request the board to refinance any public securities issued in accordance with Section 2210.058, whether pre-event or post-event public securities, with the refinanced public securities payable from the same sources as the original public securities. Sec. 2210.611. CATASTROPHE AREA PUBLIC SECURITY SERVICE FEE; PREMIUM SURCHARGE AND ASSESSMENT. (a) The catastrophe area public security obligations and administrative expenses shall be serviced as provided by this section. (b) For public securities, the proceeds of which are used to fund excess losses under Section 2210.058(c), the public security obligations and administrative expenses shall be collected from association policyholders each year until all outstanding public security obligations and administrative expenses have been satisfied and paid. (c) The service fee imposed on association policyholders under this section shall be determined and collected as provided by this subsection. The association shall determine the amount of a service fee imposed under this section at least annually. On approval by the commissioner of the amount of a service fee after at least 10 days' notice and a hearing, if a hearing is requested by any person within the 10-day notice period, the association shall charge the service fee to its policyholders. The service fee must be set in an amount sufficient to pay all public security obligations and administrative expenses. The service fee shall be collected in the form of a premium surcharge and shall be remitted to the association as required by the commissioner by rule. The service fees collected under this subsection are separate charges in addition to premiums collected and are not subject to premium taxes or commissions. For purposes of policy cancellation, failure by a policyholder to pay a premium surcharge imposed under this subsection is equivalent to failure to pay premium. Sec. 2210.612. SERVICE FEE: CLASS 1 PUBLIC SECURITIES; PREMIUM SURCHARGE. (a) A fee to service Class 1 public securities issued by the association in accordance with Section 2210.058(d) shall be collected by each insurer, the association, and the FAIR Plan Association from policyholders who reside or have operations in, or whose insured property is located in, a catastrophe area. (b) The association shall determine the amount of a service fee imposed under Subsection (a) at least annually. (c) On approval by the commissioner after at least 10 days' notice and a hearing, if a hearing is requested by any

person within the 10-day notice period, each insurer, the association, and the FAIR Plan Association shall charge the service fee to the policyholders described by Subsection (a). The service fee must be set in an amount sufficient to pay all public security obligations and administrative expenses. The service fee shall be collected in the form of a premium surcharge and shall be remitted to the association as required by the commissioner by rule. (d) The premium surcharge shall apply to all insurance policies for all property and casualty lines other than workers' compensation, accident and health, and medical malpractice. The service fees collected in the form of a premium surcharge under this section are separate charges in addition to premiums collected and are not subject to premium taxes or commissions. (e) For purposes of policy cancellation, failure by a policyholder to pay a premium surcharge imposed under this section is equivalent to failure to pay premium. Sec. 2210.613. POST-EVENT ASSESSMENT: MEMBER COMPANY PUBLIC SECURITIES. (a) An assessment to service member company public security obligations and administrative expenses issued by the association after a catastrophic event shall be assessed to and collected from each member company. (b) The association shall determine the amount of each member company assessment at least annually. The assessment must be set in an amount sufficient to pay all public security obligations and administrative expenses. (c) Each member company shall be assessed with the proportion of the loss allocable to each member company determined in the same manner as its participation in the association has been determined for the year under Section 2210.052. Sec. 2210.614. POST-EVENT SERVICE FEE: CLASS 2 PUBLIC SECURITIES; PREMIUM SURCHARGE. (a) A fee to service Class 2 public securities issued by the association after a catastrophic event shall be collected by each insurer, the association, and the FAIR Plan Association from policyholders who reside or have operations in, or whose insured property is located in, this state. (b) The association shall determine the amount of a service fee imposed under Subsection (a) at least annually. (c) On approval by the commissioner after at least 10 days' notice and a hearing, if a hearing is requested by any person within the 10-day notice period, each insurer, the association, and the FAIR Plan Association shall charge the service fee to the policyholders described by Subsection (a). The service fee must be set in an amount sufficient to pay all public security obligations and administrative expenses. The service fee shall be collected in the form of a premium surcharge and shall be remitted to the association as required by the commissioner by rule. (d) The service fees collected in the form of a premium surcharge under this section are separate charges in addition to premiums collected and are not subject to premium taxes or commissions. (e) For purposes of policy cancellation, failure by a policyholder to pay a premium surcharge imposed under this section is equivalent to failure to pay premium. Sec. 2210.615. EXEMPTION FROM TAXATION. Public securities issued under this subchapter, any interest from those public securities, and all assets pledged to secure the payment of the public securities are free from taxation by the state or a political subdivision of this state. Sec. 2210.616. AUTHORIZED INVESTMENTS. Public securities issued under this subchapter are authorized investments under Subchapter B, Chapter 424, and Subchapters C and D, Chapter 425. Sec. 2210.617. STATE PLEDGE REGARDING PUBLIC SECURITY OWNER RIGHTS AND REMEDIES. (a) The state pledges to and agrees with the owners of public securities issued in accordance with this subchapter that the state will not limit or alter the rights vested in the association to fulfill the terms of agreements made with the owners or in any way impair the rights and remedies of those owners until the public security obligations are fully discharged. (b) The board may include the state's pledge and agreement under Subsection (a) in a public security resolution. Sec. 2210.618. PAYMENT ENFORCEABLE BY MANDAMUS. A writ of mandamus from any Travis County district court and any other legal or equitable remedy are available to a party in interest to require the association or another party to fulfill an agreement or perform a function or duty under: (1) this subchapter; (2) the Texas Constitution; or (3) a public security resolution. Sec. 2210.619. NO PERSONAL LIABILITY. The members of the association, association employees, the board, the employees of the Texas Public Finance Authority, the commissioner, and department employees are not personally liable as a result of exercising the rights and responsibilities granted under this subchapter. SUBCHAPTER N. ASSOCIATION SOLVENCY REQUIREMENTS. Sec. 2210.651. SOLVENCY DUTIES. The board of directors shall maintain the required solvency level of the association. Sec. 2210.652. REQUIRED SOLVENCY LEVEL; FUNDING SOURCES. (a) For purposes of this chapter, the "required solvency level" is the level of available internal association funding necessary to pay 100 percent of losses for which the association is liable and that result from a probable maximum loss determined by the board of directors under Section 2210.654. (b) The board of directors shall maintain the funding of the association at a level sufficient to achieve the required solvency level. (c) The association shall derive the funding to maintain the required

solvency level from a combination of: (1) association reserves; (2) available funds in the catastrophe reserve trust fund; (3) reinsurance purchased at any level; (4) catastrophe area public securities; and (5) Class 1 pre-event and post-event public securities, to be issued only as required in accordance with Section 2210.058(d). (d) As prescribed by Section 2210.058(d), Class 1 pre-event and post-event public securities may not be used to achieve more than 50 percent of the required solvency level. Sec. 2210.653. CERTIFICATION; ANNUAL SOLVENCY REPORT. (a) The board of directors shall certify to the governor, the lieutenant governor, the speaker of the house of representatives, and the commissioner, not later than April 15 of each calendar year, that the required solvency level of the association is satisfied for that calendar year. (b) The board of directors shall make the certification in the manner prescribed by commissioner rule. (c) After calendar year 2008, in any calendar year, the association may not issue any new coverage after April 15 if the board of directors has not certified the required solvency level in the annual solvency report. This subsection does not apply to renewal of a policy issued through the association. Sec. 2210.654. DETERMINATION OF PROBABLE MAXIMUM LOSS. (a) Not later than April 1 of each calendar year, to establish the required solvency level under Section 2210.652, the board of directors shall determine the association's current probable maximum loss, based on an average of at least two recognized catastrophe models, as follows: (1) for calendar year 2008, at not less than a one in 50 year occurrence; (2) for calendar year 2009, at not less than a one in 75 year occurrence; and (3) for each calendar year after calendar year 2009, at not less than a one in 100 year occurrence. (b) The board of directors must ensure the ability of the association to generate funding sufficient to cover the probable maximum loss without reliance on any member company public securities or Class 2 post-event public securities".

SECTION 24 of the original house bill is moved to SECTION 34 in C.S.H.B. 2960.

SECTION 25 of the original house bill is moved to SECTION 35 in C.S.H.B. 2960. However, the substitute adds "2210.355(c)" and "Section 2210.502(c), Insurance Code; and", to the original house bill.

SECTION 26 of the original house bill is moved to SECTION 36 in C.S.H.B. 2960. The substitute amends some of the language found in the original house bill. Whereas the original house bill stated " The board of directors of the Texas Windstorm Insurance Association established under Section 2210.102, Insurance Code, as that section existed before amendment by this Act, is abolished on the 30th day after the effective date of this Act. (b) The governor shall appoint the members of the board of directors of the Texas Windstorm Insurance Association under Section 2210.102, Insurance Code, as amended by this Act, for terms beginning on the 31st day after the effective date of this Act. (c) The term of a person who is serving as a member of the board of directors of the Texas Windstorm Insurance Association immediately before the abolition of that board under Subsection (a) of this section expires on the 30th day after the effective date of this Act. Such a person is eligible for appointment by the governor to the new board of directors of the Texas Windstorm Insurance Association under Section 2210.102, Insurance Code, as amended by this Act", the substitute states that " The board of directors of the Texas Windstorm Insurance Association established under Section 2210.102, Insurance Code, as that section existed before amendment by this Act, is abolished effective December 31, 2007. (b) The governor shall appoint the members of the board of directors of the Texas Windstorm Insurance Association under Section 2210.102, Insurance Code, as amended by this Act, for terms beginning on January 1, 2008. (c) The term of a person who is serving as a member of the board of directors of the Texas Windstorm Insurance Association immediately before the abolition of that board under Subsection (a) of this section expires on December 31, 2007. Such a person is eligible for appointment by the governor to the new board of directors of the Texas Windstorm Insurance Association under Section 2210.102, Insurance Code, as amended by this Act".

SECTION 37, as found in C.S.H.B. 2960, is not found in the original house bill.

SECTION 27, of the original house bill, is moved to SECTION 38 in C.S.H.B. 2960.