

By: Eiland

H.B. No. 635

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to funding of the Texas Windstorm Insurance Association,  
3 including funding of coverage for certain catastrophic events  
4 through the issuance of public securities.

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

6 SECTION 1. Section 2210.058, Insurance Code, is amended to  
7 read as follows:

8 Sec. 2210.058. PAYMENT OF EXCESS LOSSES; PREMIUM TAX  
9 CREDIT. (a) If [~~, in any calendar year,~~] an occurrence or series of  
10 occurrences in a catastrophe area results in insured losses and  
11 operating expenses of the association in excess of premium and  
12 other revenue of the association, the excess losses shall be paid as  
13 provided by this section.

14 (b) For each occurrence, an amount not to exceed 1.5 percent  
15 of the members' written premiums for fire, allied lines,  
16 homeowners, farm owners, and commercial multiperil insurance, as  
17 reported in the annual statement filed with the department for the  
18 calendar year immediately preceding the year in which the  
19 assessment is made, [follows:

20 [~~(1) \$100 million~~] shall be assessed against the  
21 members of the association and the FAIR Plan Association as  
22 provided by Subsection (h).

23 (c) For each occurrence, any [~~(b)~~,

24 [~~(2)~~] losses in excess of the amounts assessed under

1 Subsection (b) [~~\$100 million~~] shall be paid from proceeds from  
2 public securities issued by the association in accordance with  
3 Subchapter M before the date of any occurrence that results in  
4 insured losses under Subsection (a). Public securities described  
5 by this subsection may be issued in principal amounts not to exceed  
6 \$300 million in a calendar year.

7 (d) For each occurrence, any losses in excess of the amounts  
8 available under Subsections (b) and (c) shall be paid from the  
9 catastrophe reserve trust fund established under Subchapter J as  
10 provided by this subsection. Unless the commissioner, after at  
11 least 10 days' notice and a hearing if a hearing is requested by any  
12 person within the 10-day notice period, determines that a greater  
13 percentage should be applied, not more than 50 percent of the amount  
14 in the catastrophe reserve trust fund as of the date of the  
15 occurrence, reduced by anticipated payments from prior  
16 occurrences, may be used for the purposes described by this  
17 subsection.

18 (e) Any [~~and any reinsurance program established by the~~  
19 association,

20 [(3) ~~for~~] losses in excess of the amounts available  
21 under Subsections (b), (c), and (d) shall be paid from proceeds from  
22 public securities issued by the association in accordance with  
23 Subchapter M on or after the date of any occurrence that results in  
24 insured losses under Subsection (a). Public securities described  
25 by this subsection may be issued in principal amounts not to exceed  
26 \$200 million in a calendar year.

27 (f) Any losses in excess of the amounts available under

1 Subsections (b), (c), (d), and (e) shall be paid from any  
2 reinsurance proceeds recoverable by the association.

3 (g) Any [~~those paid under Subdivisions (1) and (2), an~~  
4 ~~additional \$200 million shall be assessed against the members of~~  
5 ~~the association, as provided by Subsection (b), and~~

6 [~~4~~] losses in excess of the amounts determined under  
7 Subsections (b), (c), (d), (e), and (f) [~~those paid under~~  
8 ~~Subdivisions (1), (2), and (3)] shall be assessed against members  
9 of the association, as provided by Subsection (h) [~~(b)~~].~~

10 (h) [~~(b)~~] The proportion of the losses allocable to each  
11 insurer under Subsections (b) and (g) [~~(a)(1), (3), and (4)~~] shall  
12 be determined in the manner used to determine each insurer's  
13 participation in the association for the year under Section  
14 2210.052.

15 (i) [~~(c)~~] An insurer may credit an amount paid in accordance  
16 with Subsection (b) or (g) [~~(a)(4)~~] in a calendar year against the  
17 insurer's premium tax under Chapter 221. The tax credit authorized  
18 under this subsection shall be allowed at a rate not to exceed 20  
19 percent per year for five or more successive years following the  
20 year of payment of the claims. The balance of payments made by the  
21 insurer and not claimed as a premium tax credit may be reflected in  
22 the books and records of the insurer as an admitted asset of the  
23 insurer for all purposes, including exhibition in an annual  
24 statement under Section 862.001.

25 (j) Notwithstanding any other provision of this chapter,  
26 the commissioner, after at least 10 days' notice and a hearing if a  
27 hearing is requested by any person within the 10-day notice period,

1 may authorize the association to issue public securities in excess  
2 of the amounts designated in Subsection (c) to provide for the  
3 payment of insured losses and operating expenses not otherwise  
4 funded.

5 (k) In addition to the funding described by Subsections  
6 (b)-(j), the association may also borrow from, or enter into other  
7 financing arrangements with, any market sources at prevailing  
8 interest rates.

9 (l) The commissioner may adopt rules as necessary to  
10 implement this section.

11 SECTION 2. Section 2210.059, Insurance Code, is amended to  
12 read as follows:

13 Sec. 2210.059. NOTIFICATION REGARDING TAX CREDITS. (a) The  
14 association shall immediately notify the department if an  
15 occurrence or series of occurrences in a catastrophe area results  
16 in insured losses that result in a tax credit under Section  
17 2210.058(i) [2210.058(c)] in a calendar year.

18 (b) On receipt of notice under Subsection (a), the  
19 department shall immediately notify the governor and the  
20 appropriate committees of each house of the legislature of the  
21 amount of insured losses eligible for tax credits under Section  
22 2210.058(i) [2210.058(c)].

23 SECTION 3. Sections 2210.452(a) and (d), Insurance Code,  
24 are amended to read as follows:

25 (a) The commissioner shall adopt rules under which  
26 association members relinquish their net equity on an annual basis  
27 as provided by those rules by making payments to the catastrophe

1 reserve trust fund. The trust fund may be used only to fund:

2 (1) the obligations of the trust fund under Section  
3 2210.058 [~~2210.058(a)~~]; and

4 (2) the mitigation and preparedness plan established  
5 under Section 2210.454 to reduce the potential for payments by  
6 association members that give rise to tax credits in the event of  
7 loss.

8 (d) The commissioner by rule shall establish the procedure  
9 relating to the disbursement of money from the trust fund to  
10 policyholders in the event of an occurrence or series of  
11 occurrences within a catastrophe area that results in a  
12 disbursement under Section 2210.058 [~~Section 2210.058(a)~~].

13 SECTION 4. Chapter 2210, Insurance Code, is amended by  
14 adding Subchapter M to read as follows:

15 SUBCHAPTER M. PUBLIC SECURITIES PROGRAM

16 Sec. 2210.601. PURPOSE. The legislature finds that issuing  
17 public securities to provide a method to raise funds to provide  
18 windstorm, hail, and fire insurance through the association in  
19 certain designated areas of the state is to benefit the public and  
20 to further a public purpose.

21 Sec. 2210.602. DEFINITIONS. In this subchapter:

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

24 (2) "Insurer" means each property and casualty insurer  
25 authorized to engage in the business of property and casualty  
26 insurance in this state. The term specifically includes a county  
27 mutual insurance company, a Lloyd's plan, and a reciprocal or

1 interinsurance exchange.

2 (3) "Public security" means a debt instrument or other  
3 public security issued by the Texas Public Finance Authority.

4 (4) "Public security resolution" means the resolution  
5 or order authorizing public securities to be issued under this  
6 subchapter.

7 Sec. 2210.603. APPLICABILITY OF OTHER LAWS. (a) To the  
8 extent consistent with this subchapter, Chapter 1232, Government  
9 Code, applies to public securities issued under this subchapter.  
10 In the event of a conflict, this subchapter controls.

11 (b) The following laws also apply to public securities  
12 issued under this subchapter to the extent consistent with this  
13 section:

14 (1) Chapters 1201, 1202, 1204, 1205, 1231, and 1371,  
15 Government Code; and

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

17 Sec. 2210.604. ISSUANCE OF PUBLIC SECURITIES AUTHORIZED.

18 (a) At the request of the association and with the approval of the  
19 commissioner, the Texas Public Finance Authority shall issue public  
20 securities to:

21 (1) fund the association, including funding necessary  
22 to:

23 (A) establish and maintain reserves to pay  
24 claims;

25 (B) pay incurred claims;

26 (C) pay operating expenses; and

27 (D) purchase reinsurance;

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

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

5           (b) The Texas Public Finance Authority may issue, on behalf  
6 of the association, public securities in an amount sufficient to  
7 fund the insured losses and operating expenses of the association  
8 as determined by the association and approved by the commissioner  
9 after at least 10 days' notice and a hearing if a hearing is  
10 requested by any person within the 10-day notice period.

11           Sec. 2210.605. TERMS OF ISSUANCE. (a) Public securities  
12 issued under this subchapter may be issued at a public or private  
13 sale.

14           (b) Public securities must:

15                 (1) be issued in the name of the association; and

16                 (2) mature not more than 10 years after the date  
17 issued.

18           Sec. 2210.606. CONTENTS OF PUBLIC SECURITY RESOLUTION;  
19 ADMINISTRATION OF ACCOUNTS. (a) In a public security resolution,  
20 the board may:

21                 (1) provide for the flow of funds and the  
22 establishment, maintenance, and investment of funds and special  
23 accounts with regard to the public securities, including an  
24 interest and sinking fund account, a reserve account, and other  
25 accounts; and

26                 (2) make additional covenants with respect to the  
27 public securities and the designated income and receipts of the

1 association pledged to the payment of the public securities.

2 (b) The association shall administer the accounts in  
3 accordance with this subchapter.

4 Sec. 2210.607. SOURCE OF PAYMENT. (a) Public securities  
5 issued under this subchapter are payable only from:

6 (1) the service fees established under Section  
7 2210.609, as applicable; or

8 (2) other amounts that the association is authorized  
9 to levy, charge, and collect.

10 (b) The public securities are obligations solely of the  
11 association and do not create a pledge, gift, or loan of the faith,  
12 credit, or taxing authority of this state.

13 (c) Each public security must:

14 (1) include a statement that the state is not  
15 obligated to pay any amount on the security and that the faith,  
16 credit, or taxing authority of this state are not pledged, given, or  
17 lent to those payments; and

18 (2) state on the security's face that the security:

19 (A) is payable solely from the revenue pledged  
20 for that purpose; and

21 (B) is not and may not constitute a legal or moral  
22 obligation of the state.

23 Sec. 2210.608. PAYMENT OF INTEREST. (a) Except as provided  
24 by Subsection (b), all interest on a public security issued as  
25 described by Section 2210.058(c) shall be paid by the association  
26 from the existing premiums of the association.

27 (b) If the association is unable to pay the interest on a



1 public security described by Subsection (a) with existing premiums,  
2 the interest on the public securities shall be paid from the service  
3 fees collected in accordance with Section 2210.609.

4 Sec. 2210.609. SERVICE FEES; PREMIUM SURCHARGE. (a) A fee  
5 to service public securities issued by the association prior or  
6 subsequent to a catastrophic event may be collected by each  
7 insurer, the association, and the FAIR Plan Association from  
8 policyholders who reside or have operations in, or whose insured  
9 property is located in, the catastrophe area.

10 (b) A fee to service public securities issued by the  
11 association as described by Section 2210.058(j) may be collected by  
12 each insurer, the association, and the FAIR Plan Association from  
13 policyholders who reside or have operations in, or whose insured  
14 property is located in, this state.

15 (c) The association shall determine the amount of a service  
16 fee imposed under Subsection (a) or (b) at least annually.

17 (d) On approval by the commissioner after at least 10 days'  
18 notice and a hearing if a hearing is requested by any person within  
19 the 10-day notice period, each insurer, the association, and the  
20 FAIR Plan Association shall charge the service fee to its  
21 policyholders. The service fee must be set in an amount sufficient  
22 to pay all debt service and all related expenses on the public  
23 securities. The service fee shall be collected in the form of a  
24 premium surcharge and shall be remitted to the association as  
25 required by the commissioner by rule.

26 (e) The premium surcharge shall apply to all insurance  
27 policies for all property and casualty lines other than workers'

1 compensation, accident and health, and medical malpractice. The  
2 service fees collected in the form of a policy surcharge under this  
3 section are separate charges in addition to premiums collected and  
4 are not subject to premium taxes or commissions.

5 (f) For purposes of policy cancellation, failure by a  
6 policyholder to pay a premium surcharge imposed under this section  
7 is equivalent to failure to pay premium.

8 Sec. 2210.610. EXEMPTION FROM TAXATION. Public securities  
9 issued under this subchapter, any interest from those public  
10 securities, and all assets pledged to secure the payment of the  
11 public securities are free from taxation by the state or a political  
12 subdivision of this state.

13 Sec. 2210.611. AUTHORIZED INVESTMENTS. Public securities  
14 issued under this subchapter are authorized investments under  
15 Subchapter B, Chapter 424, and Subchapters C and D, Chapter 425.

16 Sec. 2210.612. STATE PLEDGE REGARDING PUBLIC SECURITY OWNER  
17 RIGHTS AND REMEDIES. (a) The state pledges to and agrees with the  
18 owners of public securities issued in accordance with this  
19 subchapter that the state will not limit or alter the rights vested  
20 in the association to fulfill the terms of agreements made with the  
21 owners or in any way impair the rights and remedies of those owners  
22 until the following obligations are fully discharged:

- 23 (1) the public securities;  
24 (2) any bond premium;  
25 (3) interest; and  
26 (4) all costs and expenses related to an action or  
27 proceeding by or on behalf of the owners.

1       (b) The association may include the state's pledge and  
2 agreement under Subsection (a) in an agreement with the owners of  
3 the public securities.

4       Sec. 2210.613. PAYMENT ENFORCEABLE BY MANDAMUS. A writ of  
5 mandamus and any other legal or equitable remedy are available to a  
6 party in interest to require the association or another party to  
7 fulfill an agreement or perform a function or duty under:

8               (1) this subchapter;

9               (2) the Texas Constitution; or

10              (3) a public security resolution.

11       SECTION 5. Section 941.003, Insurance Code, is amended by  
12 adding Subsection (e) to read as follows:

13       (e) A Lloyd's plan is subject to Chapter 2210, as provided  
14 by that chapter.

15       SECTION 6. Section 942.003, Insurance Code, is amended by  
16 adding Subsection (f) to read as follows:

17       (f) An exchange is subject to Chapter 2210, as provided by  
18 that chapter.

19       SECTION 7. This Act takes effect June 1, 2007, if it  
20 receives a vote of two-thirds of all the members elected to each  
21 house, as provided by Section 39, Article III, Texas Constitution.  
22 If this Act does not receive that vote, this Act takes effect  
23 September 1, 2007.