

By: Smithee

H.B. No. 2960

A BILL TO BE ENTITLED

AN ACT

relating to the operation and funding of the Texas Windstorm Insurance Association.

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

SECTION 1. Section 2210.001, Insurance Code, is amended to read as follows:

Sec. 2210.001. PURPOSE. (a) An adequate market for windstorm and~~[,]~~ hail~~[, and fire]~~ 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. This chapter provides a method by which adequate windstorm and~~[,]~~ hail~~[, and fire]~~ insurance may be obtained in certain designated portions of the seacoast territory of this state.

(b) 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. 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. Section 2210.003(6), Insurance Code, is amended to read as follows:

(6) "Insurance" means Texas ~~[fire and explosion~~

1 ~~insurance and Texas]~~ windstorm and hail insurance.

2 SECTION 3. Sections 2210.004(a) and (g), Insurance Code,
3 are amended to read as follows:

4 (a) For purposes of this chapter and subject to this
5 section, "insurable property" means immovable property at a fixed
6 location in a catastrophe area or corporeal movable property
7 located in that immovable property, as designated in the plan of
8 operation, that is determined by the association according to the
9 criteria specified in the plan of operation to be in an insurable
10 condition against windstorm and hail [~~or fire and explosion, as~~
11 ~~appropriate~~], as determined by normal underwriting standards.

12 (g) For purposes of this chapter, a residential structure is
13 insurable property if:

14 (1) the residential structure is not:

15 (A) a condominium, apartment, duplex, or other
16 multifamily residence; or

17 (B) a hotel or resort facility; and

18 (2) the residential structure is located within an
19 area designated as a unit under the Coastal Barrier Resources Act
20 (Pub. L. No. 97-348) [~~, and~~

21 [~~(3) a building permit or plat for the residential~~
22 ~~structure was filed with the municipality, the county, or the~~
23 ~~United States Army Corps of Engineers before January 1, 2004]~~.

24 SECTION 4. Section 2210.005, Insurance Code, is amended to
25 read as follows:

26 Sec. 2210.005. DESIGNATION AS CATASTROPHE AREA [~~OR~~
27 ~~INADEQUATE FIRE INSURANCE AREA~~]; REVOCATION OF DESIGNATION. (a)

1 After at least 10 days' notice and a hearing, the commissioner may
2 designate an area of the seacoast area of this state as a
3 catastrophe area if the commissioner determines that windstorm and
4 hail insurance is not reasonably available to a substantial number
5 of the owners of insurable property located in that territory
6 because the territory is subject to unusually frequent and severe
7 damage resulting from windstorms or hailstorms.

8 ~~(b) [After at least 10 days' notice and a hearing, the~~
9 ~~commissioner may designate an area of this state as an inadequate~~
10 ~~fire insurance area if the commissioner determines that fire and~~
11 ~~explosion insurance is not reasonably available to a substantial~~
12 ~~number of owners of insurable property located in that area.~~

13 ~~[(c)]~~ The commissioner shall revoke a designation made under
14 Subsection (a) ~~[or (b)]~~ if the commissioner determines, after at
15 least 10 days' notice and a hearing, that the applicable insurance
16 coverage is no longer reasonably unavailable to a substantial
17 number of owners of insurable property within the designated
18 territory.

19 (c) ~~[(d)]~~ If the association determines that windstorm and
20 hail insurance ~~[or fire and explosion insurance]~~ is no longer
21 reasonably unavailable to a substantial number of owners of
22 insurable property in a territory designated as a catastrophe area
23 ~~[or inadequate fire insurance area, as applicable]~~, the association
24 may request in writing that the commissioner revoke the
25 designation. After at least 10 days' notice and a hearing, but not
26 later than the 30th day after the date of the hearing, the
27 commissioner shall:

1 (1) approve the request and revoke the designation; or

2 (2) reject the request.

3 SECTION 5. Subchapter A, Chapter 2210, Insurance Code, is
4 amended by adding Section 2210.009 to read as follows:

5 Sec. 2210.009. LIST OF PRIVATE INSURERS; INCENTIVE PLAN.

6 (a) The department shall maintain a list of all insurers that
7 engage in the business of property and casualty insurance in the
8 voluntary market in the seacoast territory.

9 (b) The department shall develop incentive programs in the
10 manner described by Section 2210.053(b) to encourage authorized
11 insurers to write insurance on a voluntary basis and to minimize the
12 use of the association as a means to obtain insurance.

13 SECTION 6. Sections 2210.052(a), (c), and (d), Insurance
14 Code, are amended to read as follows:

15 (a) Each member of the association shall participate in
16 insured losses and operating expenses of the association, in excess
17 of premium and other revenue [~~the writings, expenses, profits, and~~
18 ~~losses~~] of the association, in the proportion that the net direct
19 premiums of that member during the preceding calendar year bears to
20 the aggregate net direct premiums by all members of the
21 association, as determined using the information provided under
22 Subsection (b).

23 (c) Each member's participation in the association shall be
24 determined annually in the manner provided by the plan of
25 operation. For purposes of determining participation in the
26 association, two or more members that are subject to common
27 ownership or that operate in this state under common management or

1 control shall be treated as a single member. [~~The determination~~
2 ~~shall also include the net direct premiums of an affiliate that is~~
3 ~~under that common management or control, including an affiliate~~
4 ~~that is not authorized to engage in the business of property~~
5 ~~insurance in this state.~~]

6 (d) Notwithstanding Subsection (a), a member, in accordance
7 with the plan of operation, is entitled to receive credit for
8 similar insurance voluntarily written in an area designated by the
9 commissioner. The member's participation in the insured losses and
10 operating expenses of the association in excess of premium and
11 other revenue [~~writings~~] of the association shall be reduced in
12 accordance with the plan of operation. Incentives adopted under
13 the plan of operation must include a minimum level of participation
14 for an insurer voluntarily writing coverage in a catastrophe area,
15 and may not include a maximum level to cap a member's actual
16 statewide writings compared with other members.

17 SECTION 7. Section 2210.058, Insurance Code, is amended to
18 read as follows:

19 Sec. 2210.058. PAYMENT OF EXCESS LOSSES [~~, PREMIUM TAX~~
20 ~~CREDIT~~]. (a) If, in any calendar year, an occurrence or series of
21 occurrences in a catastrophe area results in insured losses and
22 operating expenses of the association in excess of premium and
23 other revenue of the association, the excess losses shall be paid as
24 provided by this section.

25 (b) The association shall pay excess losses from available
26 reserves of the association and available amounts in [~~follows:~~

27 [~~(1) \$100 million shall be assessed against the~~

1 ~~members of the association as provided by Subsection (b);~~

2 ~~[(2) losses in excess of \$100 million shall be paid~~
3 ~~from] the catastrophe reserve trust fund established under~~
4 ~~Subchapter J. [and any reinsurance program established by the~~
5 ~~association;]~~

6 (c) For [(3) for] losses in excess of those paid under
7 Subsection (b), catastrophe area public securities may be issued in
8 the manner prescribed by Subchapter M. Catastrophe area public
9 securities issued under this subsection may be issued before or on
10 or after the occurrence of a catastrophic event in amounts
11 necessary to fund not more than 45 percent of the required solvency
12 level determined under Subchapter N. All catastrophe area public
13 securities obligations shall be paid in the manner prescribed by
14 Section 2210.609, if applicable, and Section 2210.611.

15 (d) For [Subdivisions (1) and (2), an additional \$200
16 million shall be assessed against the members of the association,
17 as provided by Subsection (b); and

18 [(4)] losses in excess of those paid under Subsections
19 (b) and (c), Class 1 public securities may be issued before or on or
20 after the occurrence of a catastrophic event in the manner
21 prescribed by Subchapter M. Class 1 post-event public securities
22 may be issued only on or after a named storm has caused damage in the
23 seacoast territory and the board of directors has determined that
24 the combination of association reserves, amounts available in the
25 catastrophe reserve trust fund, catastrophe area public
26 securities, and Class 1 pre-event public securities, if any, are
27 insufficient to pay the losses. The board of directors may request

1 the commissioner to authorize Class 1 public securities in an
2 amount sufficient to pay projected losses up to an amount not to
3 exceed 50 percent of the required solvency level determined under
4 Subchapter N. All Class 1 public securities obligations shall be
5 paid in the manner prescribed by Section 2210.609, if applicable,
6 and Section 2210.612.

7 (e) For losses in excess of those paid under Subsections
8 (b)-(d), the board of directors of the association may request the
9 commissioner to authorize member company public securities, in an
10 amount not to exceed \$500 million, to be issued after a catastrophic
11 event in the manner prescribed by Subchapter M. Member company
12 public securities obligations shall be paid in the manner
13 prescribed by Section 2210.613.

14 (f) For losses in excess of those paid under Subsections
15 (b)-(e), the board of directors may request the commissioner to
16 authorize Class 2 post-event public securities to be issued under
17 this subsection on or after a catastrophic event in the manner
18 prescribed by Subchapter M. The commissioner may authorize Class 2
19 post-event public securities under this subsection to pay losses
20 above the required solvency level determined under Subchapter N, in
21 an amount sufficient to pay losses but not to exceed \$3 billion.
22 All Class 2 post-event public securities obligations shall be paid
23 in the manner prescribed by Section 2210.614.

24 (g) Notwithstanding any other provision of this section,
25 the association may pay losses in excess of premium and other
26 revenue of the association with reinsurance proceeds from
27 reinsurance purchased by the association [~~Subdivisions (1), (2),~~

1 and (3) shall be assessed against members of the association, as
2 provided by Subsection (b)].

3 ~~[(b) The proportion of the losses allocable to each insurer~~
4 ~~under Subsections (a)(1), (3), and (4) shall be determined in the~~
5 ~~manner used to determine each insurer's participation in the~~
6 ~~association for the year under Section 2210.052.~~

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

17 SECTION 8. Section 2210.060(c), Insurance Code, is amended
18 to read as follows:

19 (c) Subsection (a) does not authorize the association to
20 indemnify a member of the association for participating in the
21 assessments made by ~~[writings, expenses, profits, and losses of]~~
22 the association in the manner provided by this chapter.

23 SECTION 9. Subchapter B, Chapter 2210, Insurance Code, is
24 amended by adding Section 2210.061 to read as follows:

25 Sec. 2210.061. ELIGIBLE SURPLUS LINES INSURERS. (a) An
26 eligible surplus lines insurer may not be a member of the
27 association and is not subject to assessment as a member of the

1 association.

2 (b) Each surplus lines agent placing property insurance
3 through an eligible surplus lines insurer shall collect from the
4 policyholder and shall remit to the association a surplus lines
5 policy fee on all premiums collected after January 1, 2008, for all
6 insurance written by the surplus lines agent for a policy from an
7 eligible surplus lines insurer for all risks on real property and
8 contents in first tier coastal counties. By procuring or selling
9 insurance on property in this state through an eligible surplus
10 lines insurer, each surplus lines agent described by this
11 subsection agrees to be subject to the provisions of this chapter,
12 and to collect and remit the surplus lines policy fee described by
13 this section.

14 (c) The surplus lines policy fee shall be five percent of
15 the total policy premium, but the fee may not be considered premium
16 and is not subject to premium taxes or commissions. Failure to pay
17 the surplus lines policy fee shall be treated as a failure to pay
18 premium. For purposes of this subsection, "total policy premium"
19 includes taxes and commissions.

20 (d) Not later than the 20th day after the last day of each
21 calendar quarter, each surplus lines agent placing insurance
22 through an eligible surplus lines insurer shall remit directly to
23 the association all surplus lines policy fees collected in the
24 preceding quarter.

25 SECTION 10. The heading to Subchapter C, Chapter 2210,
26 Insurance Code, is amended to read as follows:

1 SUBCHAPTER C. ASSOCIATION BOARD OF DIRECTORS; GENERAL POWERS AND
2 DUTIES OF BOARD OF DIRECTORS

3 SECTION 11. Section 2210.101, Insurance Code, is amended to
4 read as follows:

5 Sec. 2210.101. ACCOUNTABLE TO GOVERNOR AND COMMISSIONER.
6 The board of directors is responsible and accountable to the
7 governor and the commissioner.

8 SECTION 12. Section 2210.102, Insurance Code, is amended to
9 read as follows:

10 Sec. 2210.102. COMPOSITION. (a) The board of directors is
11 composed of seven [~~the following nine~~] members appointed by the
12 governor in accordance with this section.

13 (b) Three members must be employed by or affiliated with,
14 other than as agents, [+

15 [~~(1) five representatives of different~~] insurers who
16 are members of the association.

17 (c) Two members must be [~~, elected by the members as~~
18 ~~provided by the plan of operation,~~

19 [~~(2) two~~] public representatives, one of whom [~~who are~~
20 ~~nominated by the office of public insurance counsel and who~~], as of
21 the date of the appointment, resides [+

22 [~~(A) reside~~] in or owns property in the seacoast
23 territory, and one of whom, as of the date of the appointment, does
24 not reside in or own property in the seacoast territory.

25 (d) At least two members must, but not more than two members
26 may, be [~~a catastrophe area, and~~

27 [~~(B) are policyholders of the association, and~~

1 ~~[(3) two]~~ general property and casualty agents
2 licensed under this code, one of whom, as of the date of the
3 appointment, maintains the agent's principal office in the seacoast
4 territory, and one of whom, as of the date of the appointment, does
5 not maintain the agent's principal office in the seacoast
6 territory.

7 (e) All members must have [÷

8 ~~[(A) who have]~~ demonstrated experience in
9 insurance, general business, or actuarial principles sufficient to
10 make the success of the association probable[÷ and

11 ~~[(B) whose principal offices, as of the date of~~
12 ~~the appointment, are located in a catastrophe area].~~

13 ~~[(b) The persons appointed under Subsections (a)(2) and (3)~~
14 ~~must be from different counties.]~~

15 SECTION 13. Section 2210.103, Insurance Code, is amended to
16 read as follows:

17 Sec. 2210.103. TERMS. (a) Members of the board of
18 directors serve two-year ~~[three-year staggered]~~ terms~~[÷ with the~~
19 ~~terms of three members expiring on the third Tuesday of March of~~
20 ~~each year].~~

21 (b) A person may serve on the board of directors for not more
22 than three consecutive full terms~~[÷ not to exceed nine years].~~

23 (c) The governor shall appoint a replacement in the manner
24 provided by Section 2210.102 for a member who leaves or is removed
25 from the board of directors.

26 SECTION 14. Section 2210.104, Insurance Code, is amended to
27 read as follows:

1 Sec. 2210.104. OFFICERS. The board of directors shall
2 elect from the board's membership an executive committee consisting
3 of a presiding officer, assistant presiding officer, and
4 secretary-treasurer. [~~At least one of the officers must be a member~~
5 ~~appointed under Section 2210.102(a)(2) or (3).~~]

6 SECTION 15. Subchapter C, Chapter 2210, Insurance Code, is
7 amended by adding Section 2210.1051 to read as follows:

8 Sec. 2210.1051. MEETINGS OF BOARD OF DIRECTORS. (a)
9 Notwithstanding Chapter 551, Government Code, or any other law,
10 members of the board of directors may meet by telephone conference
11 call, video conference, or other similar telecommunication method.
12 The board may use telephone conference call, video conference, or
13 other similar telecommunication method for purposes of
14 establishing a quorum or voting or for any other meeting purpose in
15 accordance with this subsection and Subsection (b). This
16 subsection applies without regard to the subject matter discussed
17 or considered by the members of the board at the meeting.

18 (b) A meeting held by telephone conference call, video
19 conference, or other similar telecommunication method:

20 (1) is subject to the notice requirements applicable
21 to other meetings of the board of directors;

22 (2) may not be held unless notice of the meeting
23 specifies the location of the meeting;

24 (3) must be audible to the public at the location
25 specified in the notice under Subdivision (2); and

26 (4) must provide two-way audio communication between
27 all members of the board attending the meeting during the entire

1 meeting, and if the two-way audio communication link with members
2 attending the meeting is disrupted so that a quorum of the board is
3 no longer participating in the meeting, the meeting may not
4 continue until the two-way audio communication link is
5 reestablished.

6 SECTION 16. Subchapter C, Chapter 2210, Insurance Code, is
7 amended by adding Section 2210.107 to read as follows:

8 Sec. 2210.107. PRIMARY BOARD OBJECTIVES. The primary
9 objectives of the board of directors are to ensure that the
10 association:

11 (1) operates in accordance with this chapter and
12 commissioner rules;

13 (2) complies with sound insurance principles; and

14 (3) meets the solvency standards imposed under this
15 chapter.

16 SECTION 17. Section 2210.151, Insurance Code, is amended to
17 read as follows:

18 Sec. 2210.151. ADOPTION OF PLAN OF OPERATION. With the
19 advice of the board of directors, the commissioner by rule shall
20 adopt the plan of operation to provide[+]

21 [~~(1)~~] Texas windstorm and hail insurance in a
22 catastrophe area[~~, and~~

23 [~~(2) Texas fire and explosion insurance in an~~
24 ~~inadequate fire insurance area]~~.

25 SECTION 18. Section 2210.202(a), Insurance Code, is amended
26 to read as follows:

27 (a) A person who has an insurable interest in insurable

1 property may apply to the association for insurance coverage
2 provided under the plan of operation and an inspection of the
3 property, subject to any rules~~[, including any inspection fee,]~~
4 established by the board of directors and approved by the
5 commissioner. In order to be eligible for insurance through the
6 association, an applicant must demonstrate, in the manner
7 established in the plan of operation, inability to obtain
8 insurance coverage from insurers authorized to engage in the
9 business of property and casualty insurance in this state.

10 SECTION 19. Section 2210.203, Insurance Code, is amended by
11 adding Subsection (a-1) to read as follows:

12 (a-1) Notwithstanding Subsection (a), if all or any part of
13 the property for which an application for new or renewal insurance
14 coverage is made is located in Zone V or another similar zone with
15 an additional hazard associated with storm waves, as defined by the
16 National Flood Insurance Program, and if flood insurance under that
17 federal program is available, the association may not issue a new or
18 renewal insurance policy unless evidence that the property is
19 covered by a flood insurance policy is submitted to the
20 association. If that flood insurance is unavailable in any portion
21 of the seacoast territory, an association policy insuring a
22 residential structure described by Section 2210.004(g) is subject
23 to a premium surcharge for the insurance coverage obtained through
24 the association in an amount equal to not less than 10 percent of
25 the premium, as set by the commissioner after notice and a hearing.

26 SECTION 20. Subchapter E, Chapter 2210, Insurance Code, is
27 amended by adding Section 2210.210 to read as follows:

1 Sec. 2210.210. NOTICE TO APPLICANTS FOR INSURANCE AND
2 POLICYHOLDERS; CONSUMER INFORMATION. (a) Each application for
3 insurance and each policy issued by the association must include a
4 notice as provided by this section. The commissioner by rule may
5 prescribe specific requirements for the notice. The notice must be
6 substantially as follows:

7 IMPORTANT NOTICE TO TEXAS WINDSTORM INSURANCE

8 ASSOCIATION POLICYHOLDERS

9 Insurance policies issued by the Texas Windstorm Insurance
10 Association are not guaranteed by the state or federal government.
11 In the event of a major catastrophe, the association may not have
12 sufficient funding resources to pay all losses to all policyholders
13 suffering damage. In such an event, you may be paid less than the
14 full amount of damages that you suffer. You may obtain additional
15 information as to the association's potential exposure and its
16 available funding resources at www.tdi.state.tx.us.

17 (b) The department shall establish a link on the
18 department's Internet website through which applicants for
19 insurance coverage through the association and association
20 policyholders may obtain information in a format easily understood
21 about the association's exposure and available resources.

22 SECTION 21. Sections 2210.251(a) through (f), Insurance
23 Code, are amended to read as follows:

24 (a) Except as provided by this section, to be considered
25 insurable property eligible for windstorm and hail insurance
26 coverage from the association, a structure that is constructed or
27 repaired or to which additions are made on or after January 1, 1988,

1 must be inspected [~~or approved~~] by the association [~~department~~] for
2 compliance with the plan of operation.

3 (b) After January 1, 2004, for geographic areas specified by
4 the commissioner, the board of directors [~~commissioner by rule~~]
5 shall recognize for the purposes of this chapter [~~adopt~~] the 2003
6 International Residential Code for one- and two-family dwellings
7 published by the International Code Council. For those geographic
8 areas, the board of directors [~~commissioner by rule~~] may recognize
9 [~~adopt~~] a subsequent edition of that code and [~~may adopt~~] any
10 supplements published by the International Code Council and
11 amendments to that code.

12 (c) After January 1, 2004, a person must submit a notice of a
13 windstorm inspection to the association [~~unit responsible for~~
14 ~~certification of windstorm inspections at the department~~] before
15 beginning to construct, alter, remodel, enlarge, or repair a
16 structure.

17 (d) A structure constructed or repaired or to which
18 additions were made before January 1, 1988, that is located in an
19 area that was governed at the time of the construction, repair, or
20 addition by a building code recognized by the association is
21 insurable property eligible for windstorm and hail insurance
22 coverage from the association without compliance with the
23 inspection [~~or approval~~] requirements of this section or the plan
24 of operation.

25 (e) A structure constructed or repaired or to which
26 additions were made before January 1, 1988, that is located in an
27 area not governed by a building code recognized by the association

1 is insurable property eligible for windstorm and hail insurance
2 coverage from the association without compliance with the
3 inspection [~~or approval~~] requirements of this section or the plan
4 of operation if the structure was previously insured by an insurer
5 authorized to engage in the business of insurance in this state and
6 the structure is in essentially the same condition as when
7 previously insured, except for normal wear and tear, and is without
8 any structural change other than a change made according to code.
9 For purposes of this subsection, evidence of previous insurance
10 coverage includes:

- 11 (1) a copy of a previous insurance policy;
- 12 (2) copies of canceled checks or agent's records that
13 show payments for previous policies; and
- 14 (3) a copy of the title to the structure or mortgage
15 company records that show previous policies.

16 (f) The association [~~department~~] shall issue a certificate
17 of compliance for each structure that qualifies for coverage. The
18 certificate is evidence of insurability of the structure by the
19 association.

20 SECTION 22. Section 2210.252, Insurance Code, is amended to
21 read as follows:

22 Sec. 2210.252. INTERNATIONAL RESIDENTIAL CODE BUILDING
23 SPECIFICATIONS. (a) After January 1, 2004, for geographic areas
24 specified by the commissioner, the association [~~commissioner by~~
25 ~~rule~~] may supplement the plan of operation building specifications
26 with the structural provisions of the International Residential
27 Code for one- and two-family dwellings, as published by the

1 International Code Council or an analogous entity recognized by the
2 board of directors [~~department~~].

3 (b) For a geographic area specified under Subsection (a),
4 the board of directors [~~commissioner by rule~~] may recognize [~~adopt~~]
5 a subsequent edition of the International Residential Code for
6 one- and two-family dwellings and [~~may adopt~~] a supplement
7 published by the International Code Council or an amendment to that
8 code.

9 SECTION 23. Sections 2210.254(a) and (b), Insurance Code,
10 are amended to read as follows:

11 (a) For purposes of this chapter, a "qualified inspector"
12 includes:

13 (1) a person determined by the board of directors
14 [~~department~~] to be qualified because of training or experience to
15 perform building inspections;

16 (2) a licensed professional engineer who meets the
17 requirements specified by the board of directors [~~commissioner~~
18 ~~rule~~] for appointment to conduct windstorm inspections; and

19 (3) an inspector who:

20 (A) is certified by the International Code
21 Council, the Building Officials and Code Administrators
22 International, Inc., the International Conference of Building
23 Officials, or the Southern Building Code Congress International,
24 Inc.;

25 (B) has certifications as a buildings inspector
26 and coastal construction inspector; and

27 (C) complies with other requirements specified

1 by the board of directors [~~commissioner rule~~].

2 (b) A windstorm inspection may be performed only by a
3 qualified inspector who is employed by or under contract with the
4 association.

5 SECTION 24. Section 2210.255, Insurance Code, is amended to
6 read as follows:

7 Sec. 2210.255. APPOINTMENT OF LICENSED ENGINEER AS
8 INSPECTOR. (a) On request of an engineer licensed by the Texas
9 Board of Professional Engineers, the association may [~~commissioner~~
10 ~~shall~~] appoint the engineer as an inspector under this subchapter
11 on receipt of information satisfactory to the board of directors
12 [~~not later than the 10th day after the date the engineer delivers to~~
13 ~~the commissioner information demonstrating~~] that the engineer is
14 qualified to perform windstorm inspections under this subchapter.

15 (b) The board of directors shall consult with the
16 commissioner regarding [~~shall adopt rules establishing~~] the
17 information to be considered in appointing engineers under this
18 section.

19 SECTION 25. Subchapter F, Chapter 2210, Insurance Code, is
20 amended by adding Section 2210.258 to read as follows:

21 Sec. 2210.258. SURCHARGE FOR CERTAIN NONCOMPLIANT
22 CONSTRUCTION. (a) For purposes of this section, property is not in
23 compliance with mandatory building codes if:

24 (1) the property has not been inspected for compliance
25 with the plan of operation in accordance with Section 2210.251(a);
26 or

27 (2) a certificate of compliance has not been issued in

1 accordance with Section 2210.251(f).

2 (b) An applicant for coverage from the association or a
3 policyholder of the association whose property is determined to not
4 be in compliance as provided by Subsection (a) is subject to a
5 premium surcharge for insurance coverage obtained through the
6 association. The surcharge shall be an amount not less than an
7 amount equal to 10 percent of the premium, as determined by the
8 commissioner after notice and a hearing.

9 SECTION 26. Sections 2210.351(a), (c), and (d), Insurance
10 Code, are amended to read as follows:

11 (a) The association shall [~~must~~] file with the department in
12 the manner prescribed by Section 2251.101 each manual of
13 classifications, rules, rates, including condition charges, and
14 each rating plan, and each modification of those items that the
15 association proposes to use.

16 (c) After the filing has been made, the association may use
17 a filed rate, and a filed rate is subject to disapproval by the
18 commissioner in the manner prescribed by Subchapter C, Chapter
19 2251. [~~As soon as reasonably possible after the filing has been~~
20 ~~made, the commissioner in writing shall approve, modify, or~~
21 ~~disapprove the filing. A filing is considered approved unless~~
22 ~~modified or disapproved on or before the 30th day after the date of~~
23 ~~the filing.]~~

24 (d) If at any time the commissioner determines that a filing
25 in effect [~~approved~~] under Subsection (c) no longer meets the
26 requirements of this chapter, the commissioner may disapprove [~~7~~
27 ~~after a hearing held on at least 20 days' notice to the association~~

1 ~~that specifies the matters to be considered at the hearing, issue an~~
2 ~~order withdrawing approval of] the filing in the manner prescribed~~
3 ~~by Section 2251.104 for disapproval of a rate. [The order must~~
4 ~~specify in what respects the commissioner determines that the~~
5 ~~filing no longer meets the requirements of this chapter. An order~~
6 ~~issued under this subsection may not take effect before the 30th day~~
7 ~~after the date of issuance of the order.]~~

8 SECTION 27. Sections 2210.355(b) and (g), Insurance Code,
9 are amended to read as follows:

10 (b) In adopting rates under this chapter, the association
11 shall:

12 (1) comply with the rate standards adopted under
13 Section 2251.052, to the extent that those standards are determined
14 by the commissioner to be applicable to the purposes of the
15 association;

16 (2) ensure that the rates are actuarially sound; and

17 (3) include rating factors as necessary to:

18 (A) fund the catastrophe reserve trust fund;

19 (B) pay any public securities obligations in
20 accordance with Subchapter M; and

21 (C) pay all losses and expenses of the
22 association, regardless of the ultimate source of funding for those
23 losses and expenses [following must be considered:

24 ~~[(1) the past and prospective loss experience within~~
25 ~~and outside this state of hazards for which insurance is made~~
26 ~~available through the plan of operation, if any;~~

27 ~~[(2) expenses of operation, including acquisition~~

1 costs,

2 ~~[(3) a reasonable margin for profit and contingencies,~~
3 ~~and~~

4 ~~[(4) all other relevant factors, within and outside~~
5 ~~this state].~~

6 (g) A commission paid to an agent for an association policy
7 must be reasonable, adequate, not unfairly discriminatory, and
8 nonconfiscatory and may not exceed 10 percent with refund for any
9 unearned portion.

10 SECTION 28. Section 2210.356, Insurance Code, is amended by
11 amending Subsection (b) and adding Subsection (b-1) to read as
12 follows:

13 (b) The catastrophe element used to develop rates under this
14 subchapter ~~[applicable to risks written by the association must be~~
15 ~~uniform throughout the seacoast territory. The catastrophe element~~
16 ~~of the rates]~~ must be developed using industry data, association
17 data, and catastrophe models approved by the department for use in
18 association filings [+

19 ~~[(1) 90 percent of both the monoline extended coverage~~
20 ~~loss experience and related premium income for all insurers, other~~
21 ~~than the association, for covered property located in the seacoast~~
22 ~~territory, using not less than the most recent 30 years of~~
23 ~~experience available, and~~

24 ~~[(2) 100 percent of both the loss experience and~~
25 ~~related premium income for the association for covered property,~~
26 ~~using not less than the most recent 30 years of experience~~
27 ~~available].~~

1 (b-1) The commissioner shall adopt rules establishing:

2 (1) the procedure for approval by the department of
3 catastrophe models used by the association in the development of
4 its rates; and

5 (2) the methodology of use for those models.

6 SECTION 29. Subchapter H, Chapter 2210, Insurance Code, is
7 amended by adding Section 2210.364 to read as follows:

8 Sec. 2210.364. REVIEW OF RATES. A person who is aggrieved
9 by a rate under this subchapter may proceed as provided by Chapter
10 2251.

11 SECTION 30. Sections 2210.452(a), (c), and (d), Insurance
12 Code, are amended to read as follows:

13 (a) The commissioner shall adopt rules under which the
14 association makes [~~members relinquish their net equity on an annual~~
15 ~~basis as provided by those rules by making~~] payments to the
16 catastrophe reserve trust fund. The trust fund may be used only to
17 fund[+]

18 [~~(1)~~] the obligations of the trust fund under Section
19 2210.058 [~~2210.058(a)~~], and

20 [~~(2)~~] ~~the mitigation and preparedness plan established~~
21 ~~under Section 2210.454 to reduce the potential for payments by~~
22 ~~association members that give rise to tax credits in the event of~~
23 ~~loss~~].

24 (c) At the end of each calendar year or policy year, the
25 association shall pay the net gain from operations [~~equity~~] of the
26 association [~~a member~~], including all premium and other revenue of
27 the association in excess of incurred losses and operating

1 expenses, to the trust fund or a reinsurance program approved by the
2 commissioner.

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

8 SECTION 31. Section 2210.453, Insurance Code, is amended to
9 read as follows:

10 Sec. 2210.453. REINSURANCE PROGRAM. (a) The association may
11 [~~shall~~]:

12 (1) make payments into the trust fund; and [~~or~~]

13 (2) purchase [~~establish a~~] reinsurance as part of the
14 association's annual operating expenses to the extent [~~program~~]
15 approved by the commissioner [~~department~~].

16 (b) With the approval of the commissioner [~~department~~], the
17 association may purchase [~~establish a~~] reinsurance [~~program~~] that
18 operates in addition to or in concert with the trust fund and with
19 public securities and assessments authorized by this chapter.

20 SECTION 32. Section 2210.454(b), Insurance Code, is amended
21 to read as follows:

22 (b) Each state fiscal year, the department may fund the
23 mitigation and preparedness plan using available funds [~~the~~
24 ~~investment income of the trust fund in an amount not less than \$1~~
25 ~~million and not more than 10 percent of the investment income of the~~
26 ~~prior fiscal year. From that amount and as part of that plan, the~~
27 ~~department may use in each fiscal year \$1 million for the windstorm~~

1 ~~inspection program established under Section 2210.251]~~.

2 SECTION 33. Section 2210.551, Insurance Code, is amended by
3 adding Subsection (a-1) and amending Subsections (c) and (d) to
4 read as follows:

5 (a-1) This section does not apply to a matter subject to
6 Section 2210.364.

7 (c) If the association or any interested party is aggrieved
8 by the action of the commissioner with respect to a ruling, order,
9 or determination of the commissioner, the association or interested
10 party may, not later than the 30th day after the date of the action,
11 make a written request to the commissioner for a hearing on the
12 action.

13 (d) On 10 days' written notice of the time and place of the
14 hearing, the commissioner shall conduct a hearing on the
15 ~~[association's]~~ request of the association or interested party or
16 the appeal from an act, ruling, or decision of the association, not
17 later than the 30th day after the date of receipt of the request or
18 appeal.

19 SECTION 34. Chapter 2210, Insurance Code, is amended by
20 adding Subchapters M and N to read as follows:

21 SUBCHAPTER M. PUBLIC SECURITIES PROGRAM

22 Sec. 2210.601. PURPOSE. The legislature finds that issuing
23 public securities to provide a method to raise funds to provide
24 windstorm and hail insurance through the association in certain
25 designated areas of the state is to benefit the public and to
26 further a public purpose.

27 Sec. 2210.602. DEFINITIONS. In this subchapter:

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

3 (2) "Catastrophe area public security" means public
4 securities authorized to be issued before or on or after the
5 occurrence of a catastrophic event by Section 2210.058(c).

6 (3) "Class 1 public securities" means public
7 securities authorized to be issued before or on or after the
8 occurrence of a catastrophic event by Section 2210.058(d).

9 (4) "Class 2 public securities" means public
10 securities authorized to be issued on or after the occurrence of a
11 catastrophic event by Section 2210.058(f).

12 (5) "Credit agreement" has the meaning assigned by
13 Chapter 1371, Government Code.

14 (6) "Credit agreement obligation" means any premium,
15 periodic payment, termination payment, or similar obligation under
16 a credit agreement.

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

22 (8) "Member company public security" means public
23 securities authorized to be issued after the occurrence of a
24 catastrophic event by Section 2210.058(e).

25 (9) "Public security" means a debt instrument or other
26 public security obligation issued by the Texas Public Finance
27 Authority for the purposes described by this subchapter and any

1 credit agreement.

2 (10) "Public security administrative expenses" means
3 expenses incurred in issuing and administering public securities
4 issued under this subchapter, including insurance costs and fees
5 for paying agents, trustees, and attorneys, and for other
6 professional services necessary to ensure compliance with
7 applicable state or federal law.

8 (11) "Public security obligations" means the
9 principal, any premium, and interest on a public security, periodic
10 payments or termination payments, or similar obligations with
11 respect to a public security.

12 (12) "Public security obligation revenue fund" means
13 the dedicated trust fund established by the association outside the
14 state treasury under this subchapter.

15 (13) "Public security resolution" means the
16 resolution or order authorizing public securities to be issued
17 under this subchapter.

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

24 Sec. 2210.604. ISSUANCE OF PUBLIC SECURITIES AUTHORIZED.

25 (a) At the request of the board of directors of the association and
26 with the approval of the commissioner, the board shall issue public
27 securities to:

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

3 (A) establish and maintain reserves to pay
4 claims;

5 (B) pay incurred claims;

6 (C) pay operating expenses; and

7 (D) purchase reinsurance;

8 (2) provide a reserve fund for the public securities;

9 (3) capitalize interest for the period determined by
10 the association, not to exceed two years;

11 (4) pay public security administrative expenses; and

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

14 (b) The board may issue, on behalf of the association,
15 public securities in an amount sufficient to fund the insured
16 losses and operating expenses of the association as determined by
17 the association and approved by the commissioner after at least 10
18 days' notice and a hearing if a hearing is requested by any person
19 within the 10-day notice period.

20 Sec. 2210.605. TERMS OF ISSUANCE. (a) The board shall
21 determine the method of sale, type and form of public security,
22 maximum interest rates, and other terms of the public securities
23 that, in the board's judgment, best achieve the goals of the
24 association and effect the borrowing at the lowest practicable
25 cost. The board may enter into a credit agreement in connection
26 with the public securities.

27 (b) Public securities must include the name of the

1 association.

2 Sec. 2210.606. CONTENTS OF PUBLIC SECURITY RESOLUTION;
3 ADMINISTRATION OF ACCOUNTS. (a) In a public security resolution,
4 the board may:

5 (1) provide for the flow of funds and the
6 establishment, maintenance, and investment of funds and special
7 accounts with regard to the public securities; and

8 (2) make additional covenants with respect to the
9 public securities and the designated income and receipts of the
10 association pledged to the payment of the public securities.

11 (b) The association shall administer the accounts in
12 accordance with this subchapter.

13 Sec. 2210.607. PUBLIC SECURITY PROCEEDS. (a) The proceeds
14 of public securities may be deposited with a trustee selected by the
15 association in consultation with the commissioner or if no trustee
16 is selected, held by the comptroller in a dedicated trust fund
17 outside the state treasury in the custody of the comptroller.

18 (b) Any excess public security proceeds remaining after the
19 purposes for which the public securities were issued are satisfied
20 may be used to pay public security obligations or administrative
21 expenses or pay, purchase, defease, or redeem outstanding public
22 securities. If there are no outstanding public security obligations
23 or public security administrative expenses, the excess proceeds
24 shall be transferred to the catastrophe reserve trust fund.

25 Sec. 2210.608. SOURCE OF PAYMENT; REVENUE FUND. (a) Public
26 security obligations are payable only from the public security
27 obligation revenue fund, into which the following are deposited:

1 (1) the service fees on assessments established under
2 Section 2210.611, 2210.612, 2210.613, or 2210.614, as applicable;
3 or

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

6 (b) The board shall notify the association of the estimated
7 amount of public security administrative expenses and the amount of
8 the public security obligations each year in a period sufficient,
9 as determined by the association, to permit the association to
10 determine the availability of funds and assess a premium surcharge
11 or other assessment if necessary.

12 (c) The association shall deposit all revenue collected
13 under Sections 2210.611 through 2210.614 in the public security
14 obligation revenue fund. Money deposited in the fund may be
15 invested as permitted by general law. Money in the fund required to
16 be used to pay public security administrative expenses and public
17 security obligations shall be transferred to the appropriate funds
18 in the manner and at the time specified in the public security
19 resolution to ensure timely payment of obligations and expenses.

20 (d) The association shall provide for the payment of the
21 public security administrative expenses and the public security
22 obligations by irrevocably pledging revenues received from
23 assessments, premiums, premium surcharges, and amounts on deposit
24 in the public security obligation revenue fund, together with any
25 reserve fund, as provided in the public security resolution and
26 amounts realized under related credit agreements.

27 (e) Revenue deposited into the public security obligation

1 revenue fund that exceeds the amount of the public security
2 obligations payable in that year and interest earned on the public
3 security obligation fund may, in the discretion of the association,
4 be:

5 (1) used to pay public security obligations payable in
6 the subsequent year, offsetting the amount of the premium surcharge
7 or assessment that would otherwise be required to be levied for the
8 year under this subchapter;

9 (2) used to redeem, purchase, or defease outstanding
10 public securities; or

11 (3) deposited in the catastrophe reserve trust fund.

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

15 (g) Each public security must:

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

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

21 (A) is payable solely from the revenue pledged
22 for that purpose; and

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

25 Sec. 2210.609. PAYMENT OF INTEREST; PAYMENT OF PRE-EVENT
26 PUBLIC SECURITY OBLIGATIONS. (a) Except as provided by
27 Subsection (b), the association shall pay all interest, and may pay

1 principal, on any pre-event public security issued as described by
2 Section 2210.058(c) or (d) from the existing premiums of the
3 association.

4 (b) If the association is unable to pay the public security
5 obligations described by Subsection (a) with existing premiums,
6 those public security obligations shall be paid from the service
7 fees collected in accordance with Sections 2210.611 and 2210.612.

8 Sec. 2210.610. REFINANCING PUBLIC SECURITIES. The
9 association may request the board to refinance any public
10 securities issued in accordance with Section 2210.058, whether
11 pre-event or post-event public securities, with the refinanced
12 public securities payable from the same sources as the original
13 public securities.

14 Sec. 2210.611. CATASTROPHE AREA PUBLIC SECURITY SERVICE
15 FEE; PREMIUM SURCHARGE AND ASSESSMENT. (a) The catastrophe area
16 public security obligations and administrative expenses shall be
17 serviced as provided by this section.

18 (b) For public securities, the proceeds of which are used to
19 fund excess losses under Section 2210.058(c), the public security
20 obligations and administrative expenses shall be collected from
21 association policyholders each year until all outstanding public
22 security obligations and administrative expenses have been
23 satisfied and paid.

24 (c) The service fee imposed on association policyholders
25 under this section shall be determined and collected as provided by
26 this subsection. The association shall determine the amount of a
27 service fee imposed under this section at least annually. On

1 approval by the commissioner of the amount of a service fee after at
2 least 10 days' notice and a hearing, if a hearing is requested by
3 any person within the 10-day notice period, the association shall
4 charge the service fee to its policyholders. The service fee must
5 be set in an amount sufficient to pay all public security
6 obligations and administrative expenses. The service fee shall be
7 collected in the form of a premium surcharge and shall be remitted
8 to the association as required by the commissioner by rule. The
9 service fees collected under this subsection are separate charges
10 in addition to premiums collected and are not subject to premium
11 taxes or commissions. For purposes of policy cancellation, failure
12 by a policyholder to pay a premium surcharge imposed under this
13 subsection is equivalent to failure to pay premium.

14 Sec. 2210.612. SERVICE FEE: CLASS 1 PUBLIC SECURITIES;
15 PREMIUM SURCHARGE. (a) A fee to service Class 1 public securities
16 issued by the association in accordance with Section 2210.058(d)
17 shall be collected by each insurer, the association, and the FAIR
18 Plan Association from policyholders who reside or have operations
19 in, or whose insured property is located in, a catastrophe area.

20 (b) The association shall determine the amount of a service
21 fee imposed under Subsection (a) at least annually.

22 (c) On approval by the commissioner after at least 10 days'
23 notice and a hearing, if a hearing is requested by any person within
24 the 10-day notice period, each insurer, the association, and the
25 FAIR Plan Association shall charge the service fee to the
26 policyholders described by Subsection (a). The service fee must be
27 set in an amount sufficient to pay all public security obligations

1 and administrative expenses. The service fee shall be collected in
2 the form of a premium surcharge and shall be remitted to the
3 association as required by the commissioner by rule.

4 (d) The premium surcharge shall apply to all insurance
5 policies for all property and casualty lines other than workers'
6 compensation, accident and health, and medical malpractice. The
7 service fees collected in the form of a premium surcharge under this
8 section are separate charges in addition to premiums collected and
9 are not subject to premium taxes or commissions.

10 (e) For purposes of policy cancellation, failure by a
11 policyholder to pay a premium surcharge imposed under this section
12 is equivalent to failure to pay premium.

13 Sec. 2210.613. POST-EVENT ASSESSMENT: MEMBER COMPANY
14 PUBLIC SECURITIES. (a) An assessment to service member company
15 public security obligations and administrative expenses issued by
16 the association after a catastrophic event shall be assessed to and
17 collected from each member company.

18 (b) The association shall determine the amount of each
19 member company assessment at least annually. The assessment must be
20 set in an amount sufficient to pay all public security obligations
21 and administrative expenses.

22 (c) Each member company shall be assessed with the
23 proportion of the loss allocable to each member company determined
24 in the same manner as its participation in the association has been
25 determined for the year under Section 2210.052.

26 Sec. 2210.614. POST-EVENT SERVICE FEE: CLASS 2 PUBLIC
27 SECURITIES; PREMIUM SURCHARGE. (a) A fee to service Class 2 public

1 securities issued by the association after a catastrophic event
2 shall be collected by each insurer, the association, and the FAIR
3 Plan Association from policyholders who reside or have operations
4 in, or whose insured property is located in, this state.

5 (b) The association shall determine the amount of a service
6 fee imposed under Subsection (a) at least annually.

7 (c) On approval by the commissioner after at least 10 days'
8 notice and a hearing, if a hearing is requested by any person within
9 the 10-day notice period, each insurer, the association, and the
10 FAIR Plan Association shall charge the service fee to the
11 policyholders described by Subsection (a). The service fee must be
12 set in an amount sufficient to pay all public security obligations
13 and administrative expenses. The service fee shall be collected in
14 the form of a premium surcharge and shall be remitted to the
15 association as required by the commissioner by rule.

16 (d) The premium surcharge shall apply to all insurance
17 policies for all property and casualty lines other than workers'
18 compensation, accident and health, and medical malpractice. The
19 service fees collected in the form of a premium surcharge under this
20 section are separate charges in addition to premiums collected and
21 are not subject to premium taxes or commissions.

22 (e) For purposes of policy cancellation, failure by a
23 policyholder to pay a premium surcharge imposed under this section
24 is equivalent to failure to pay premium.

25 Sec. 2210.615. EXEMPTION FROM TAXATION. Public securities
26 issued under this subchapter, any interest from those public
27 securities, and all assets pledged to secure the payment of the

1 public securities are free from taxation by the state or a political
2 subdivision of this state.

3 Sec. 2210.616. AUTHORIZED INVESTMENTS. Public securities
4 issued under this subchapter are authorized investments under
5 Subchapter B, Chapter 424, and Subchapters C and D, Chapter 425.

6 Sec. 2210.617. STATE PLEDGE REGARDING PUBLIC SECURITY OWNER
7 RIGHTS AND REMEDIES. (a) The state pledges to and agrees with the
8 owners of public securities issued in accordance with this
9 subchapter that the state will not limit or alter the rights vested
10 in the association to fulfill the terms of agreements made with the
11 owners or in any way impair the rights and remedies of those owners
12 until the public security obligations are fully discharged.

13 (b) The board may include the state's pledge and agreement
14 under Subsection (a) in a public security resolution.

15 Sec. 2210.618. PAYMENT ENFORCEABLE BY MANDAMUS. A writ of
16 mandamus from any Travis County district court and any other legal
17 or equitable remedy are available to a party in interest to require
18 the association or another party to fulfill an agreement or perform
19 a function or duty under:

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

23 Sec. 2210.619. NO PERSONAL LIABILITY. The members of the
24 association, association employees, the board, the employees of the
25 Texas Public Finance Authority, the commissioner, and department
26 employees are not personally liable as a result of exercising the
27 rights and responsibilities granted under this subchapter.

1 SUBCHAPTER N. ASSOCIATION SOLVENCY REQUIREMENTS

2 Sec. 2210.651. SOLVENCY DUTIES. The board of directors
3 shall maintain the required solvency level of the association.

4 Sec. 2210.652. REQUIRED SOLVENCY LEVEL; FUNDING SOURCES.

5 (a) For purposes of this chapter, the "required solvency level" is
6 the level of available internal association funding necessary to
7 pay 100 percent of losses for which the association is liable and
8 that result from a probable maximum loss determined by the board of
9 directors under Section 2210.654.

10 (b) The board of directors shall maintain the funding of the
11 association at a level sufficient to achieve the required solvency
12 level.

13 (c) The association shall derive the funding to maintain the
14 required solvency level from a combination of:

15 (1) association reserves;

16 (2) available funds in the catastrophe reserve trust
17 fund;

18 (3) reinsurance purchased at any level;

19 (4) catastrophe area public securities; and

20 (5) Class 1 pre-event and post-event public
21 securities, to be issued only as required in accordance with
22 Section 2210.058(d).

23 (d) As prescribed by Section 2210.058(d), Class 1 pre-event
24 and post-event public securities may not be used to achieve more
25 than 50 percent of the required solvency level.

26 Sec. 2210.653. CERTIFICATION; ANNUAL SOLVENCY REPORT. (a)
27 The board of directors shall certify to the governor, the

1 lieutenant governor, the speaker of the house of representatives,
2 and the commissioner, not later than April 15 of each calendar year,
3 that the required solvency level of the association is satisfied
4 for that calendar year.

5 (b) The board of directors shall make the certification in
6 the manner prescribed by commissioner rule.

7 (c) After calendar year 2008, in any calendar year, the
8 association may not issue any new coverage after April 15 if the
9 board of directors has not certified the required solvency level in
10 the annual solvency report. This subsection does not apply to
11 renewal of a policy issued through the association.

12 Sec. 2210.654. DETERMINATION OF PROBABLE MAXIMUM LOSS. (a)
13 Not later than April 1 of each calendar year, to establish the
14 required solvency level under Section 2210.652, the board of
15 directors shall determine the association's current probable
16 maximum loss, based on an average of at least two recognized
17 catastrophe models, as follows:

18 (1) for calendar years 2007 and 2008, at not less than
19 a one in 50 year occurrence;

20 (2) for calendar year 2009, at not less than a one in
21 75 year occurrence; and

22 (3) for each calendar year after calendar year 2009,
23 at not less than a one in 100 year occurrence.

24 (b) The board of directors must ensure the ability of the
25 association to generate funding sufficient to cover the probable
26 maximum loss without reliance on any member company public
27 securities or Class 2 post-event public securities.

1 SECTION 35. Section 2251.003, Insurance Code, is amended by
2 adding Subsection (a-1) to read as follows:

3 (a-1) Except as otherwise provided by Chapter 2210,
4 Subchapters B and C apply to the Texas Windstorm Insurance
5 Association.

6 SECTION 36. The following laws are repealed:

- 7 (1) Sections 2210.003(5) and (12), Insurance Code;
8 (2) Section 2210.059, Insurance Code;
9 (3) Section 2210.351(b), Insurance Code;
10 (4) Sections 2210.352, 2210.353, and 2210.354,
11 Insurance Code;
12 (5) Sections 2210.355(c), (d), and (e), Insurance
13 Code;
14 (6) Sections 2210.356(a), (c), and (d), Insurance
15 Code;
16 (7) Section 2210.359, Insurance Code;
17 (8) Section 2210.360, Insurance Code;
18 (9) Section 2210.502(c), Insurance Code; and
19 (10) Subchapter I, Chapter 2210, Insurance Code.

20 SECTION 37. (a) The board of directors of the Texas
21 Windstorm Insurance Association established under Section
22 2210.102, Insurance Code, as that section existed before amendment
23 by this Act, is abolished effective December 31, 2007.

24 (b) The governor shall appoint the members of the board of
25 directors of the Texas Windstorm Insurance Association under
26 Section 2210.102, Insurance Code, as amended by this Act, for terms
27 beginning on January 1, 2008.

1 (c) The term of a person who is serving as a member of the
2 board of directors of the Texas Windstorm Insurance Association
3 immediately before the abolition of that board under Subsection (a)
4 of this section expires on December 31, 2007. Such a person is
5 eligible for appointment by the governor to the new board of
6 directors of the Texas Windstorm Insurance Association under
7 Section 2210.102, Insurance Code, as amended by this Act.

8 SECTION 38. The commissioner of insurance shall adopt rules
9 as required by Section 2210.356(b-1), Insurance Code, as added by
10 this Act, not later than the 180th day after the effective date of
11 this Act.

12 SECTION 39. An assessment may not be made before the end of
13 the 2007-2008 state fiscal biennium under Chapter 2210, Insurance
14 Code, as amended by this Act, against any member of the Texas
15 Windstorm Insurance Association until the comptroller has
16 certified that any tax credits allowable to that member under
17 Chapter 2210, Insurance Code, as that chapter existed immediately
18 before amendment by this Act, may be taken within available revenue
19 that has been certified by the comptroller.

20 SECTION 40. (a) Except as provided by Subsection (b) of
21 this section, this Act takes effect immediately if it receives a
22 vote of two-thirds of all the members elected to each house, as
23 provided by Section 39, Article III, Texas Constitution. If this
24 Act does not receive the vote necessary for immediate effect, this
25 Act takes effect September 1, 2007.

26 (b) The change in law made by this Act to Sections 2210.251,
27 2210.252, 2210.254, and 2210.255, Insurance Code, takes effect

H.B. No. 2960

1 September 1, 2008.