

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 coastal areas of this state 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 coastal counties ~~[designated portions]~~ 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 first tier coastal counties. 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. Section 2210.004(a), Insurance Code, is amended
3 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 SECTION 4. Section 2210.005, Insurance Code, is amended to
13 read as follows:

14 Sec. 2210.005. DESIGNATION AS CATASTROPHE AREA ~~[OR
15 INADEQUATE FIRE INSURANCE AREA]~~; REVOCATION OF DESIGNATION. (a)
16 After at least 10 days' notice and a hearing, the commissioner may
17 designate an area of this state as a catastrophe area if the
18 commissioner determines that windstorm and hail insurance is not
19 reasonably available to a substantial number of the owners of
20 insurable property located in that territory because the territory
21 is subject to unusually frequent and severe damage resulting from
22 windstorms or hailstorms.

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

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

7 (c) ~~[(d)]~~ If the association determines that windstorm and
8 hail insurance ~~[or fire and explosion insurance]~~ is no longer
9 reasonably unavailable to a substantial number of owners of
10 insurable property in a territory designated as a catastrophe area
11 ~~[or inadequate fire insurance area, as applicable]~~, the association
12 may request in writing that the commissioner revoke the
13 designation. After at least 10 days' notice and a hearing, but not
14 later than the 30th day after the date of the hearing, the
15 commissioner shall:

- 16 (1) approve the request and revoke the designation; or
17 (2) reject the request.

18 SECTION 5. Subchapter A, Chapter 2210, Insurance Code, is
19 amended by adding Sections 2210.009, 2210.010, and 2210.011 to read
20 as follows:

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

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

25 (b) The department shall develop incentive programs in the
26 manner described by Section 2210.053(b) to encourage authorized
27 insurers to write insurance on a voluntary basis and to minimize the

1 use of the association as a means to obtain insurance.

2 Sec. 2210.010. TYPES OF AGENTS. (a) Notwithstanding other
3 law, a property and casualty insurer writing insurance in the
4 voluntary market in the seacoast territory and the association may
5 have both originating agents and issuing agents.

6 (b) An originating agent may complete on behalf of an
7 applicant an application for insurance to submit to an insurer
8 described by Subsection (a) or the association. An applicant is not
9 required to submit the application through an originating agent.
10 If an originating agent is used, the originating agent is not
11 required to be appointed to represent the ultimate insurer.

12 (c) An issuing agent must be appointed to represent the
13 ultimate insurer. The issuing agent shall perform the customary
14 duties of a general property and casualty agent, including:

15 (1) signing, executing, and delivering insurance
16 policies;

17 (2) maintaining a record of the business;

18 (3) examining and inspecting the risk; and

19 (4) receiving and collecting premiums.

20 (d) A licensed general property and casualty agent may act
21 as both the originating agent and the issuing agent. If the
22 originating agent and the issuing agent are not the same person, the
23 originating agent may not be held to be the agent of the insurer
24 unless the agent is appointed as provided by Chapter 4051.

25 Sec. 2210.011. SHARING OF AGENT COMMISSIONS. (a) An
26 originating agent described by Section 2210.010 shall share
27 commissions with an issuing agent as required by the plan of

1 operation if the originating agent holds a license as:

2 (1) a general property and casualty agent; or

3 (2) a salaried representative for one or more insurers

4 whose plan of operation does not contemplate the use of general
5 property and casualty agents.

6 (b) The association may not share in commissions.

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

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

15 (b) The board of directors shall pay excess losses from
16 available reserves of the association, available amounts in
17 [follows:

18 [~~(1) \$100 million shall be assessed against the~~
19 ~~members of the association as provided by Subsection (b),~~

20 [~~(2) losses in excess of \$100 million shall be paid~~
21 ~~from] the catastrophe reserve trust fund established under~~
22 Subchapter J and any reinsurance program established by the
23 association. [~~+~~]

24 (c) For [~~(3) for] losses in excess of those paid under~~
25 Subsection (b), the association may issue pre-event public
26 securities in the manner prescribed by Subchapter M. Pre-event
27 public securities issued under this subsection may be issued in

1 amounts necessary to fund not more than 70 percent of the required
2 solvency level determined under Subchapter N. All interest
3 expenses and redemption costs of pre-event public securities shall
4 be paid in the manner prescribed by Section 2210.609.

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

8 [(4)] losses in excess of those paid under Subsections
9 (b) and (c), the association may issue Class 1 post-event public
10 securities in the manner prescribed by Subchapter M. Class 1
11 post-event public securities may be issued only after a named storm
12 has caused damage in the seacoast territory and the board of
13 directors has determined that the combination of association
14 reserves, amounts available in the catastrophe reserve trust fund,
15 and pre-event public securities are insufficient to pay the losses.
16 On such a determination, the board of directors may request the
17 commissioner to authorize Class 1 post-event public securities in
18 an amount sufficient to pay projected losses up to an amount not to
19 exceed 25 percent of the required solvency level determined under
20 Subchapter N. All interest expenses and redemption costs of Class 1
21 post-event public securities shall be paid in the manner prescribed
22 by Section 2210.610.

23 (e) For losses in excess of those paid under Subsections
24 (b)-(d), the board of directors may request the commissioner to
25 authorize Class 2 post-event public securities. The commissioner
26 may authorize Class 2 post-event public securities to pay losses
27 above the required solvency level determined under Subchapter N.

1 Class 2 post-event public securities shall be issued in the manner
2 prescribed by Subchapter M in an amount not to exceed \$5 billion.
3 All interest expenses and redemption costs of Class 2 post-event
4 public securities shall be paid in the manner prescribed by Section
5 2210.611.

6 (f) Losses in excess of those paid under Subsections (b)-(e)
7 [Subdivisions (1), (2), and (3)] shall be assessed against members
8 of the association, as provided by Subsection (g) [(b)].

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

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

24 SECTION 7. The heading to Subchapter C, Chapter 2210,
25 Insurance Code, is amended to read as follows:

26 SUBCHAPTER C. ASSOCIATION BOARD OF DIRECTORS; GENERAL POWERS AND
27 DUTIES OF BOARD OF DIRECTORS

1 SECTION 8. Section 2210.101, Insurance Code, is amended to
2 read as follows:

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

6 SECTION 9. Section 2210.102, Insurance Code, is amended to
7 read as follows:

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

11 (b) Not more than three members may be employed by or
12 affiliated with[+]

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

15 (c) Not more than two members may [~~, elected by the members~~
16 ~~as provided by the plan of operation,~~

17 [~~(2) two public representatives who are nominated by~~
18 ~~the office of public insurance counsel and who, as of the date of~~
19 ~~the appointment,~~

20 [~~(A)~~] reside in or own property in a first tier
21 coastal county.

22 (d) Not more than two members may be [~~a catastrophe area,~~
23 ~~and~~

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

25 [~~(3) two~~] general property and casualty agents
26 licensed under this code.

27 (e) All members must have [+]

1 ~~[(A) who have]~~ demonstrated experience in
2 insurance, general business, or actuarial principles sufficient to
3 make the success of the association probable~~[, and~~

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

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

8 SECTION 10. Section 2210.103, Insurance Code, is amended to
9 read as follows:

10 Sec. 2210.103. TERMS. (a) Members of the board of directors
11 serve two-year ~~[three-year staggered]~~ terms~~[, with the terms of~~
12 ~~three members expiring on the third Tuesday of March of each year].~~

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

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

18 SECTION 11. Section 2210.104, Insurance Code, is amended to
19 read as follows:

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

25 SECTION 12. Subchapter C, Chapter 2210, Insurance Code, is
26 amended by adding Section 2210.107 to read as follows:

27 Sec. 2210.107. PRIMARY BOARD OBJECTIVES. The primary

1 objectives of the board of directors are to ensure that the
2 association:

3 (1) operates in accordance with this chapter and
4 commissioner rules;

5 (2) complies with sound insurance principles; and

6 (3) meets the solvency standards imposed under this
7 chapter.

8 SECTION 13. Section 2210.151, Insurance Code, is amended to
9 read as follows:

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

13 [~~(1)~~] Texas windstorm and hail insurance in a
14 catastrophe area[+ ~~and~~

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

17 SECTION 14. Section 2210.202(a), Insurance Code, is amended
18 to read as follows:

19 (a) A person who has an insurable interest in insurable
20 property and who, after diligent effort, is unable to obtain
21 insurance, as evidenced by two current declinations from insurers
22 authorized to engage in the business of property and casualty
23 insurance in this state and actually writing insurance in the first
24 tier coastal counties, may apply to the association for insurance
25 coverage provided under the plan of operation and an inspection of
26 the property, subject to any rules, including any inspection fee,
27 established by the board of directors and approved by the

1 commissioner.

2 SECTION 15. Subchapter F, Chapter 2210, Insurance Code, is
3 amended by adding Section 2210.258 to read as follows:

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

7 (1) the property has not been approved or inspected by
8 the department for compliance with the plan of operation in
9 accordance with Section 2210.251(a); or

10 (2) a certificate of compliance has not been issued by
11 the department in accordance with Section 2210.251(f).

12 (b) A policyholder of the association whose property is
13 determined to not be in compliance as provided by Subsection (a) is
14 subject to a premium surcharge for insurance coverage obtained
15 through the association. The surcharge shall be an amount not less
16 than an amount equal to 25 percent of the premium, as determined by
17 the commissioner after notice and a hearing.

18 SECTION 16. Sections 2210.351(a), (c), and (d), Insurance
19 Code, are amended to read as follows:

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

25 (c) After the filing has been made, the association may use
26 a filed rate, and a filed rate is subject to disapproval by the
27 commissioner in the manner prescribed by Subchapter C, Chapter

1 2251. [~~As soon as reasonably possible after the filing has been~~
2 ~~made, the commissioner in writing shall approve, modify, or~~
3 ~~disapprove the filing. A filing is considered approved unless~~
4 ~~modified or disapproved on or before the 30th day after the date of~~
5 ~~the filing.]~~

6 (d) If at any time the commissioner determines that a filing
7 in effect [~~approved~~] under Subsection (c) no longer meets the
8 requirements of this chapter, the commissioner may disapprove [~~r~~
9 ~~after a hearing held on at least 20 days' notice to the association~~
10 ~~that specifies the matters to be considered at the hearing, issue an~~
11 ~~order withdrawing approval of~~] the filing in the manner prescribed
12 by Section 2251.104 for disapproval of a rate. [~~The order must~~
13 ~~specify in what respects the commissioner determines that the~~
14 ~~filing no longer meets the requirements of this chapter. An order~~
15 ~~issued under this subsection may not take effect before the 30th day~~
16 ~~after the date of issuance of the order.]~~

17 SECTION 17. Section 2210.355, Insurance Code, is amended by
18 amending Subsections (b) and (c) and adding Subsection (h) to read
19 as follows:

20 (b) In adopting rates under this chapter, the association
21 shall:

22 (1) comply with the rate standards adopted under
23 Section 2251.052, to the extent that those standards are determined
24 by the commissioner to be applicable to the purposes of the
25 association;

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

27 (3) include rating factors as necessary to:

1 (A) fund the catastrophe reserve trust fund; and

2 (B) pay debt service and redemption fees on any
3 pre-event and post-event public securities issued under Subchapter
4 M [following must be considered:

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

8 ~~[(2) expenses of operation, including acquisition~~
9 ~~costs;~~

10 ~~[(3) a reasonable margin for profit and contingencies;~~
11 ~~and~~

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

14 (c) Rates may not ~~[must]~~ be less than a reasonably
15 determined average market rate for all insurers writing similar
16 coverage in the first tier coastal counties. The commissioner
17 shall report annually to the board of directors on what the average
18 market rate is, based on data collected by the department under this
19 code ~~[reasonable, adequate, not unfairly discriminatory, and~~
20 ~~nonconfiscatory as to any class of insurer].~~

21 (h) The board of directors shall perform territorial rating
22 within the first tier coastal counties as necessary to ensure that
23 high-risk locations pay a higher rate commensurate with the risk.
24 Ratings must be actuarially sound. In determining rating
25 territories and territorial rates, the association shall use
26 methods based on sound actuarial principles.

27 SECTION 18. Section 2210.356(b), Insurance Code, is amended

1 to read as follows:

2 (b) The catastrophe element used to develop rates under this
3 subchapter [~~applicable to risks written by the association must be~~
4 ~~uniform throughout the seacoast territory. The catastrophe element~~
5 ~~of the rates]~~ must be developed using industry data, association
6 data, and models approved by the department[+]

7 [~~(1) 90 percent of both the monoline extended coverage~~
8 ~~loss experience and related premium income for all insurers, other~~
9 ~~than the association, for covered property located in the seacoast~~
10 ~~territory, using not less than the most recent 30 years of~~
11 ~~experience available; and~~

12 [~~(2) 100 percent of both the loss experience and~~
13 ~~related premium income for the association for covered property,~~
14 ~~using not less than the most recent 30 years of experience~~
15 ~~available].~~

16 SECTION 19. Subchapter H, Chapter 2210, Insurance Code, is
17 amended by adding Section 2210.364 to read as follows:

18 Sec. 2210.364. REVIEW OF RATES. A person who is aggrieved
19 by a rate under this subchapter may proceed as provided by Chapter
20 2251.

21 SECTION 20. Sections 2210.452(a) and (d), Insurance Code,
22 are amended to read as follows:

23 (a) The commissioner shall adopt rules under which
24 association members relinquish their net equity on an annual basis
25 as provided by those rules by making payments to the catastrophe
26 reserve trust fund. The trust fund may be used only to fund:

27 (1) the obligations of the trust fund under Section

1 2210.058 [~~2210.058(a)~~]; and

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

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

11 SECTION 21. Section 2210.454(c), Insurance Code, is amended
12 to read as follows:

13 (c) The mitigation and preparedness plan must provide for
14 actions to be taken in the first tier coastal counties [~~seacoast~~
15 ~~territory~~] by the commissioner, or by a local government, state
16 agency, educational institution, or nonprofit organization
17 designated by the commissioner in the plan, to implement programs
18 to:

19 (1) improve preparedness for windstorm and hail
20 catastrophes;

21 (2) reduce potential losses in the event of such a
22 catastrophe; and

23 (3) provide research into the means to:

24 (A) reduce those losses;

25 (B) educate or inform the public in determining
26 the appropriateness of particular upgrades to structures; or

27 (C) protect infrastructure from potential damage

1 from those catastrophes.

2 SECTION 22. Section 2210.551, Insurance Code, is amended by
3 adding Subsection (a-1) to read as follows:

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

6 SECTION 23. Chapter 2210, Insurance Code, is amended by
7 adding Subchapters M and N to read as follows:

8 SUBCHAPTER M. PUBLIC SECURITIES PROGRAM

9 Sec. 2210.601. PURPOSE. The legislature finds that issuing
10 public securities to provide a method to raise funds to provide
11 windstorm and hail insurance through the association in certain
12 designated areas of the state is to benefit the public and to
13 further a public purpose.

14 Sec. 2210.602. DEFINITIONS. In this subchapter:

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

17 (2) "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. The term does not include a county mutual
22 insurance company described by Section 912.310.

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

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

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

5 (b) The following laws also apply to public securities
6 issued under this subchapter to the extent consistent with this
7 section:

8 (1) Chapters 1201, 1202, 1204, 1205, 1231, and 1371,
9 Government Code; and

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

11 Sec. 2210.604. ISSUANCE OF PUBLIC SECURITIES AUTHORIZED.

12 (a) At the request of the association and with the approval of the
13 commissioner, the Texas Public Finance Authority shall issue public
14 securities to:

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

17 (A) establish and maintain reserves to pay
18 claims;

19 (B) pay incurred claims;

20 (C) pay operating expenses; and

21 (D) purchase reinsurance;

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

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

26 (b) The Texas Public Finance Authority may issue, on behalf
27 of the association, public securities in an amount sufficient to

1 fund the insured losses and operating expenses of the association
2 as determined by the association and approved by the commissioner
3 after at least 10 days' notice and a hearing if a hearing is
4 requested by any person within the 10-day notice period.

5 Sec. 2210.605. TERMS OF ISSUANCE. (a) Public securities
6 issued under this subchapter may be issued at a public or private
7 sale.

8 (b) Public securities must:

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

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

12 Sec. 2210.606. CONTENTS OF PUBLIC SECURITY RESOLUTION;
13 ADMINISTRATION OF ACCOUNTS. (a) In a public security resolution,
14 the board may:

15 (1) provide for the flow of funds and the
16 establishment, maintenance, and investment of funds and special
17 accounts with regard to the public securities, including an
18 interest and sinking fund account, a reserve account, and other
19 accounts; and

20 (2) make additional covenants with respect to the
21 public securities and the designated income and receipts of the
22 association pledged to the payment of the public securities.

23 (b) The association shall administer the accounts in
24 accordance with this subchapter.

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

27 (1) the service fees established under Section

1 2210.609, 2210.610, or 2210.611, as applicable; or

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

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

7 (c) Each public security must:

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

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

13 (A) is payable solely from the revenue pledged
14 for that purpose; and

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

17 Sec. 2210.608. PAYMENT OF INTEREST. (a) Except as provided
18 by Subsection (b), all interest on a public security issued as
19 described by Section 2210.058 shall be paid by the association from
20 the existing premiums of the association.

21 (b) If the association is unable to pay the interest on a
22 public security described by Subsection (a) with existing premiums,
23 the interest on the public securities shall be paid from the service
24 fees collected in accordance with Sections 2210.609-2210.611.

25 Sec. 2210.609. PRE-EVENT SERVICE FEE; PREMIUM SURCHARGE.

26 (a) A fee to service public securities issued by the association
27 before a catastrophic event may be collected by the association

1 from policyholders who reside or have operations in, or whose
2 insured property is located in, the first tier coastal counties.

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

5 (c) On approval by the commissioner after at least 10 days'
6 notice and a hearing, if a hearing is requested by any person within
7 the 10-day notice period, the association shall charge the service
8 fee to its policyholders. The service fee must be set in an amount
9 sufficient to pay all debt service and all related expenses on the
10 public securities. The service fee shall be collected in the form
11 of a premium surcharge and shall be remitted to the association as
12 required by the commissioner by rule.

13 (d) The service fees collected in the form of a premium
14 surcharge under this section are separate charges in addition to
15 premiums collected and are not subject to premium taxes or
16 commissions.

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

20 Sec. 2210.610. POST-EVENT SERVICE FEE: CLASS 1 PUBLIC
21 SECURITIES; PREMIUM SURCHARGE. (a) A fee to service Class 1 public
22 securities issued by the association after a catastrophic event
23 shall be collected by each insurer, the association, and the FAIR
24 Plan Association from policyholders who reside or have operations
25 in, or whose insured property is located in, the first tier coastal
26 counties.

27 (b) The association shall determine the amount of a service

1 fee imposed under Subsection (a) at least annually.

2 (c) On approval by the commissioner after at least 10 days'
3 notice and a hearing, if a hearing is requested by any person within
4 the 10-day notice period, each insurer, the association, and the
5 FAIR Plan Association shall charge the service fee to the
6 policyholders described by Subsection (a). The service fee must be
7 set in an amount sufficient to pay all debt service and all related
8 expenses on the public securities. The service fee shall be
9 collected in the form of a premium surcharge and shall be remitted
10 to the association as required by the commissioner by rule.

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

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

20 Sec. 2210.611. POST-EVENT SERVICE FEE: CLASS 2 PUBLIC
21 SECURITIES; PREMIUM SURCHARGE. (a) A fee to service Class 2 public
22 securities issued by the association after a catastrophic event
23 shall be collected by each insurer, the association, and the FAIR
24 Plan Association from policyholders who reside or have operations
25 in, or whose insured property is located in, this state.

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

1 (c) On approval by the commissioner after at least 10 days'
2 notice and a hearing, if a hearing is requested by any person within
3 the 10-day notice period, each insurer, the association, and the
4 FAIR Plan Association shall charge the service fee to the
5 policyholders described by Subsection (a). The service fee must be
6 set in an amount sufficient to pay all debt service and all related
7 expenses on the public securities. The service fee shall be
8 collected in the form of a premium surcharge and shall be remitted
9 to the association as required by the commissioner by rule.

10 (d) The service fees collected in the form of a premium
11 surcharge under this section are separate charges in addition to
12 premiums collected and are not subject to premium taxes or
13 commissions.

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

17 Sec. 2210.612. EXEMPTION FROM TAXATION. Public securities
18 issued under this subchapter, any interest from those public
19 securities, and all assets pledged to secure the payment of the
20 public securities are free from taxation by the state or a political
21 subdivision of this state.

22 Sec. 2210.613. AUTHORIZED INVESTMENTS. Public securities
23 issued under this subchapter are authorized investments under
24 Subchapter B, Chapter 424, and Subchapters C and D, Chapter 425.

25 Sec. 2210.614. STATE PLEDGE REGARDING PUBLIC SECURITY OWNER
26 RIGHTS AND REMEDIES. (a) The state pledges to and agrees with the
27 owners of public securities issued in accordance with this

1 subchapter that the state will not limit or alter the rights vested
2 in the association to fulfill the terms of agreements made with the
3 owners or in any way impair the rights and remedies of those owners
4 until the following obligations are fully discharged:

5 (1) the public securities;

6 (2) any bond premium;

7 (3) interest; and

8 (4) all costs and expenses related to an action or
9 proceeding by or on behalf of the owners.

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

13 Sec. 2210.615. PAYMENT ENFORCEABLE BY MANDAMUS. A writ of
14 mandamus and any other legal or equitable remedy are available to a
15 party in interest to require the association or another party to
16 fulfill an agreement or perform a function or duty under:

17 (1) this subchapter;

18 (2) the Texas Constitution; or

19 (3) a public security resolution.

20 SUBCHAPTER N. ASSOCIATION SOLVENCY REQUIREMENTS

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

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

25 (a) For purposes of this chapter, the "required solvency level" is
26 the level of available internal association funding necessary to
27 pay 100 percent of losses for which the association is liable and

1 that result from a probable maximum loss determined by the
2 commissioner under Section 2210.654.

3 (b) The board of directors shall maintain the funding of the
4 association at a level sufficient to achieve the required solvency
5 level.

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

8 (1) association reserves;

9 (2) available funds in the catastrophe reserve trust
10 fund;

11 (3) reinsurance;

12 (4) pre-event public securities; and

13 (5) Class 1 post-event public securities to be issued
14 only as required in accordance with Section 2210.058(d).

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

18 Sec. 2210.653. CERTIFICATION; ANNUAL SOLVENCY REPORT. (a)
19 The board of directors shall certify to the governor, the
20 lieutenant governor, the speaker of the house of representatives,
21 and the commissioner, not later than February 15 of each calendar
22 year, that the required solvency level of the association is
23 satisfied for that calendar year.

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

26 (c) In any calendar year, the association may not issue any
27 new coverage until the board of directors has certified the

1 required solvency level in the annual solvency report. This
2 subsection does not apply to renewal of a policy issued through the
3 association.

4 Sec. 2210.654. DETERMINATION OF PROBABLE MAXIMUM LOSS. (a)
5 Not later than January 15 of each year, the commissioner shall
6 determine the association's current probable maximum loss and shall
7 notify the board of directors of the probable maximum loss for that
8 year.

9 (b) The board of directors must ensure the ability of the
10 association to generate funding sufficient to cover the probable
11 maximum loss without reliance on any Class 2 post-event public
12 securities.

13 SECTION 24. Section 2251.003, Insurance Code, is amended by
14 adding Subsection (a-1) to read as follows:

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

18 SECTION 25. The following laws are repealed:

- 19 (1) Sections 2210.003(5) and (12), Insurance Code;
20 (2) Section 2210.059, Insurance Code;
21 (3) Section 2210.351(b), Insurance Code;
22 (4) Sections 2210.352, 2210.353, and 2210.354,
23 Insurance Code;
24 (5) Sections 2210.355(d) and (e), Insurance Code;
25 (6) Sections 2210.356(a), (c), and (d), Insurance
26 Code;
27 (7) Section 2210.359, Insurance Code;

1 (8) Section 2210.360, Insurance Code; and

2 (9) Subchapter I, Chapter 2210, Insurance Code.

3 SECTION 26. (a) The board of directors of the Texas
4 Windstorm Insurance Association established under Section
5 2210.102, Insurance Code, as that section existed before amendment
6 by this Act, is abolished on the 30th day after the effective date
7 of this Act.

8 (b) The governor shall appoint the members of the board of
9 directors of the Texas Windstorm Insurance Association under
10 Section 2210.102, Insurance Code, as amended by this Act, for terms
11 beginning on the 31st day after the effective date of this Act.

12 (c) The term of a person who is serving as a member of the
13 board of directors of the Texas Windstorm Insurance Association
14 immediately before the abolition of that board under Subsection (a)
15 of this section expires on the 30th day after the effective date of
16 this Act. Such a person is eligible for appointment by the governor
17 to the new board of directors of the Texas Windstorm Insurance
18 Association under Section 2210.102, Insurance Code, as amended by
19 this Act.

20 SECTION 27. This Act takes effect immediately if it
21 receives a vote of two-thirds of all the members elected to each
22 house, as provided by Section 39, Article III, Texas Constitution.
23 If this Act does not receive the vote necessary for immediate
24 effect, this Act takes effect September 1, 2007.