

1-1 By: Smithee (Senate Sponsor - Fraser) H.B. No. 2960
1-2 (In the Senate - Received from the House May 9, 2007;
1-3 May 10, 2007, read first time and referred to Committee on Business
1-4 and Commerce; May 18, 2007, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 7, Nays 0;
1-6 May 18, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2960 By: Fraser

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to operation of the Texas Windstorm Insurance Association
1-11 and the Texas FAIR Plan Association, including funding of coverage
1-12 for certain catastrophic events through the issuance of public
1-13 securities.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. Section 2210.002, Insurance Code, is amended to
1-16 read as follows:

1-17 Sec. 2210.002. SHORT TITLE; SUNSET PROVISION. (a) This
1-18 chapter may be cited as the Texas Windstorm Insurance Association
1-19 Act.

1-20 (b) The association is subject to review under Chapter 325,
1-21 Government Code (Texas Sunset Act), but is not abolished under that
1-22 chapter. The association shall be reviewed during the period in
1-23 which state agencies abolished in 2013 are reviewed. This
1-24 subsection expires September 1, 2013.

1-25 SECTION 1A. Section 2210.001, Insurance Code, is amended to
1-26 read as follows:

1-27 Sec. 2210.001. PURPOSE. An adequate market for windstorm
1-28 and[~~7~~] hail[~~7~~, and fire] insurance in the seacoast territory is
1-29 necessary to the economic welfare of this state, and without that
1-30 insurance, the orderly growth and development of this state would
1-31 be severely impeded. This chapter provides a method by which
1-32 adequate windstorm and[~~7~~] hail[~~7~~, and fire] insurance may be
1-33 obtained in certain designated portions of the seacoast territory
1-34 of this state.

1-35 SECTION 2. Section 2210.003(6), Insurance Code, is amended
1-36 to read as follows:

1-37 (6) "Insurance" means Texas ~~[fire and explosion~~
1-38 ~~insurance and Texas]~~ windstorm and hail insurance.

1-39 SECTION 3. Sections 2210.004(a) and (g), Insurance Code,
1-40 are amended to read as follows:

1-41 (a) For purposes of this chapter and subject to this
1-42 section, "insurable property" means immovable property at a fixed
1-43 location in a catastrophe area or corporeal movable property
1-44 located in that immovable property, as designated in the plan of
1-45 operation, that is determined by the association according to the
1-46 criteria specified in the plan of operation to be in an insurable
1-47 condition against windstorm and hail ~~[or fire and explosion, as~~
1-48 ~~appropriate],~~ as determined by normal underwriting standards.

1-49 (g) For purposes of this chapter, a residential structure is
1-50 insurable property if:

1-51 (1) the residential structure is not:

1-52 (A) a condominium, apartment, duplex, or other
1-53 multifamily residence; or

1-54 (B) a hotel or resort facility; and

1-55 (2) the residential structure is located within an
1-56 area designated as a unit under the Coastal Barrier Resources Act
1-57 (Pub. L. No. 97-348) [~~7~~, and

1-58 ~~(3) a building permit or plat for the residential~~
1-59 ~~structure was filed with the municipality, the county, or the~~
1-60 ~~United States Army Corps of Engineers before January 1, 2004].~~

1-61 SECTION 4. Section 2210.005, Insurance Code, is amended to
1-62 read as follows:

1-63 Sec. 2210.005. DESIGNATION AS CATASTROPHE AREA [~~OR~~

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

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

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

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

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

~~(d) After at least 10 days' notice and a hearing, the commissioner may determine, unless such a determination creates an adverse impact to the exposure of the association, that windstorm and hail insurance is not reasonably available to a group that is located in a specified area of the state and that has similar risk characteristics. On such a determination by the commissioner, that group of risks shall be considered the same as a risk that is located in a catastrophe area for all purposes under this chapter.~~

~~(e) The commissioner shall revoke a determination made under Subsection (d) if the commissioner determines, after at least 10 days' notice and a hearing, that the applicable insurance coverage is no longer reasonably unavailable to a group determined to be eligible under Subsection (d).~~

~~(f) If the association determines that windstorm and hail insurance is no longer reasonably unavailable to a group determined to be eligible under Subsection (d), the association may request in writing that the commissioner revoke the determination. After at least 10 days' notice and a hearing, but not later than the 30th day after the date of the hearing, the commissioner shall:~~

- ~~(1) approve the request and revoke the determination;~~

~~or~~

- ~~(2) reject the request.~~

~~(g) The commissioner may adopt reasonable and necessary rules in the manner prescribed by Subchapter A, Chapter 36, to implement this section.~~

~~SECTION 5. Section 2210.008, Insurance Code, is amended to read as follows:~~

~~Sec. 2210.008. DEPARTMENT ORDERS; RULEMAKING AUTHORITY.~~

~~(a) The [After notice and hearing as provided by Subsection (b), the] commissioner may issue any orders that the commissioner considers necessary to implement this chapter [including orders regarding maximum rates, competitive rates, and policy forms].~~

~~(b) The commissioner may adopt rules in the manner prescribed by Subchapter A, Chapter 36, as reasonable and necessary to implement this chapter. [Before the commissioner adopts an order, the department shall post notice of the hearing on the order at the secretary of state's office in Austin and shall hold a hearing to consider the proposed order. Any person may appear at the hearing and testify for or against the adoption of the order.]~~

SECTION 6. Subchapter A, Chapter 2210, Insurance Code, is amended by adding Section 2210.009 to read as follows:

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

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

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

SECTION 7. Section 2210.052, Insurance Code, is amended by amending Subsections (a) and (d) and adding Subsection (e) to read as follows:

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

(d) Notwithstanding Subsection (a), a member, in accordance with the plan of operation, is entitled to receive credit for similar insurance voluntarily written in areas [an area] designated by the commissioner. The member's participation in the insured losses and operating expenses of the association in excess of premium and other revenue [writings] of the association shall be reduced in accordance with the plan of operation.

(e) Notwithstanding Subsections (a)-(d), an insurer that becomes a member of the association and that has not previously been a member of the association is not subject to participation in any insured losses and operating expenses of the association in excess of premium and other revenue of the association until the second anniversary of the date on which the insurer first becomes a member of the association. The commissioner may adopt procedures in the plan of operation for reduced assessments for such an insurer for an additional period, not to exceed three years, beyond the initial exemption under this subsection.

SECTION 8. Section 2210.053, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c) As directed by the commissioner, after notice and hearing, the association shall assume reinsurance from a county mutual insurance company issuing industrial fire insurance policies as described by Section 912.310.

SECTION 9. Section 2210.058, Insurance Code, is amended to read as follows:

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

(b) For each occurrence, [follows:

(1) \$100 million shall be assessed against the members of the association as provided by Subsection (b);

(2) losses [in excess of \$100 million] shall be paid as provided by this section from the catastrophe reserve trust fund established under Subchapter J. For each occurrence, not more than 50 percent of the amount in the catastrophe reserve trust fund as of the date of the occurrence, reduced by anticipated payments from prior occurrences, may be used unless the commissioner determines that a greater percentage should be applied after at least 10 days' notice and a hearing, if a hearing is requested by any person within the 10-day notice period. If the trust fund is reduced by more than 50 percent in any calendar year, the association may, with the approval of the commissioner, require each member of the association and the Texas FAIR Plan Association to collect a premium surcharge for one year from their respective policyholders who reside or have operations in, or whose insured property is

4-1 located in, the catastrophe area. The premium surcharge may not
 4-2 exceed two percent of premium and applies to all policies of
 4-3 insurance for all property and casualty lines, other than workers'
 4-4 compensation insurance, accident and health insurance, and medical
 4-5 malpractice insurance. The premium surcharge collected under this
 4-6 subsection shall be deposited in the catastrophe reserve trust
 4-7 fund.

4-8 (c) Losses [and any reinsurance program established by the
 4-9 association,

4-10 [~~(3)~~ for losses] in excess of those paid under
 4-11 Subsection (b) [~~Subdivisions (1) and (2), an additional \$200~~
 4-12 million] shall be paid as provided by this subsection. For each
 4-13 occurrence, an amount equal to a maximum of 2.5 percent of all the
 4-14 direct premiums written by all the members of the association and
 4-15 the Texas FAIR Plan Association, as reported in the annual
 4-16 statement filed with the department for the calendar year
 4-17 immediately preceding the year in which the assessment is made for
 4-18 fire insurance and allied lines insurance, homeowners insurance,
 4-19 farm and ranch insurance, and commercial multiperil insurance,
 4-20 shall be computed and assessed against the members of the
 4-21 association and the Texas FAIR Plan Association, as provided by
 4-22 Subsection (h). The association may not assess members of the
 4-23 association and the Texas FAIR Plan Association under this
 4-24 subsection more than twice in any calendar year.

4-25 (d) Any [~~(b)~~, and
 4-26 [~~(4)~~] losses in excess of those paid under
 4-27 Subsections (b) and (c) [~~Subdivisions (1), (2), and (3)~~] shall be
 4-28 paid with proceeds from Class 1 public securities issued by the
 4-29 association in accordance with Subchapter M before the date of any
 4-30 occurrence that results in insured losses under Subsection (a), as
 4-31 provided by Subsection (i).

4-32 (e) For losses in excess of those paid under Subsections
 4-33 (a), (b), and (c), an amount equal to a maximum of four percent of
 4-34 all the direct premiums written by all the members of the
 4-35 association and the Texas FAIR Plan Association, as reported in the
 4-36 annual statement filed with the department for the calendar year
 4-37 immediately preceding the year in which the assessment is made for
 4-38 fire insurance and allied lines insurance, homeowners insurance,
 4-39 farm and ranch insurance, and commercial multiperil insurance,
 4-40 shall be computed and assessed against the members of the
 4-41 association and the Texas FAIR Plan Association, as provided by
 4-42 Subsection (h). The association may not assess members of the
 4-43 association and the Texas FAIR Plan Association under this
 4-44 subsection more than twice in any calendar year [~~assessed against~~
 4-45 members of the association, as provided by Subsection (b)].

4-46 (f) Any losses in excess of those paid under Subsections
 4-47 (b)-(e) shall be paid from proceeds from Class 2 public securities
 4-48 issued by the association in accordance with Subchapter M on or
 4-49 after the date of any occurrence that results in insured losses
 4-50 under Subsection (a).

4-51 (g) Any losses in excess of those paid under Subsections
 4-52 (b)-(f) shall be assessed against members of the association and
 4-53 the Texas FAIR Plan Association, as provided by Subsection (h).

4-54 (h) [~~(b)~~] The proportion of the losses allocable to each
 4-55 insurer and the Texas FAIR Plan Association under Subsections (c),
 4-56 (e), and (g) [~~(a)(1), (3), and (4)~~] shall be determined in the
 4-57 manner used to determine each insurer's participation in the
 4-58 association for the year under Section 2210.052, and as to the Texas
 4-59 FAIR Plan Association, as provided by the plan of operation.

4-60 (i) Public securities described by Subsection (d) may be
 4-61 issued in principal amounts not to exceed \$1.2 billion. Any public
 4-62 securities proceeds received under Subsection (d) must be used
 4-63 before the proceeds of any public securities that the association
 4-64 authorizes to be issued under Subsection (f) on or after any
 4-65 catastrophic event, and may not be used to fund losses of any
 4-66 catastrophic event occurring before the date on which public
 4-67 securities described by Subsection (d) are authorized to be issued.

4-68 (j) In addition to the funding described by Subsections
 4-69 (b)-(g), the association may also borrow from, or enter into other

5-1 financing arrangements with, any market sources at prevailing
 5-2 interest rates.

5-3 (k) The commissioner may adopt rules in the manner provided
 5-4 by Subchapter A, Chapter 36, as necessary to implement this
 5-5 section.

5-6 ~~[(c) An insurer may credit an amount paid in accordance with~~
 5-7 ~~Subsection (a)(4) in a calendar year against the insurer's premium~~
 5-8 ~~tax under Chapter 221. The tax credit authorized under this~~
 5-9 ~~subsection shall be allowed at a rate not to exceed 20 percent per~~
 5-10 ~~year for five or more successive years following the year of payment~~
 5-11 ~~of the claims. The balance of payments made by the insurer and not~~
 5-12 ~~claimed as a premium tax credit may be reflected in the books and~~
 5-13 ~~records of the insurer as an admitted asset of the insurer for all~~
 5-14 ~~purposes, including exhibition in an annual statement under Section~~
 5-15 ~~862.001.]~~

5-16 SECTION 10. Section 2210.060(c), Insurance Code, is amended
 5-17 to read as follows:

5-18 (c) Subsection (a) does not authorize the association to
 5-19 indemnify a member of the association for participating in the
 5-20 assessments made by ~~[writings, expenses, profits, and losses of]~~
 5-21 the association in the manner provided by this chapter.

5-22 SECTION 11. The heading to Subchapter C, Chapter 2210,
 5-23 Insurance Code, is amended to read as follows:

5-24 SUBCHAPTER C. ASSOCIATION BOARD OF DIRECTORS; GENERAL POWERS AND
 5-25 DUTIES OF BOARD OF DIRECTORS

5-26 SECTION 12. Section 2210.102, Insurance Code, is amended to
 5-27 read as follows:

5-28 Sec. 2210.102. COMPOSITION. (a) The board of directors is
 5-29 composed of ~~[the following]~~ nine members appointed by the
 5-30 commissioner in accordance with this section.

5-31 (b) Four members must be [+
 5-32 [(1) five] representatives of different insurers who
 5-33 are members of the association.

5-34 (c) Three members must be [, elected by the members as
 5-35 provided by the plan of operation,

5-36 [(2) two] public representatives:
 5-37 (1) at least one of whom [who are nominated by the
 5-38 office of public insurance counsel and who], as of the date of the
 5-39 appointment, resides[+]

5-40 [(A) reside] in or owns property in a first tier
 5-41 coastal county and at least one of whom, as of the date of the
 5-42 appointment, does not reside in or own property in the seacoast
 5-43 territory [a catastrophe area]; and

5-44 (2) who [(B)] are policyholders of the association.

5-45 (d) Two members must be [+ and
 5-46 [(3) two] general property and casualty agents who are
 5-47 licensed under this code and are not captive agents. One of the
 5-48 agents, as of the date of the appointment, must maintain the agent's
 5-49 principal office in a first tier coastal county. The second agent,
 5-50 as of the date of the appointment, may not maintain the agent's
 5-51 principal office in the seacoast territory.

5-52 (e) All members must have [+
 5-53 [(A) who have] demonstrated experience in
 5-54 insurance, general business, or actuarial principles sufficient to
 5-55 make the success of the association probable[, and

5-56 [(B) whose principal offices, as of the date of
 5-57 the appointment, are located in a catastrophe area].

5-58 ~~[(b) The persons appointed under Subsections (a)(2) and (3)~~
 5-59 ~~must be from different counties.]~~

5-60 SECTION 13. Section 2210.103, Insurance Code, is amended by
 5-61 adding Subsection (c) to read as follows:

5-62 (c) The commissioner shall appoint a replacement in the
 5-63 manner provided by Section 2210.102 for a member who leaves or is
 5-64 removed from the board of directors.

5-65 SECTION 14. Section 2210.104, Insurance Code, is amended to
 5-66 read as follows:

5-67 Sec. 2210.104. OFFICERS. The board of directors shall
 5-68 elect from the board's membership an executive committee consisting
 5-69 of a presiding officer, assistant presiding officer, and

6-1 secretary-treasurer. ~~[At least one of the officers must be a member~~
6-2 ~~appointed under Section 2210.102(a)(2) or (3).]~~

6-3 SECTION 15. Subchapter C, Chapter 2210, Insurance Code, is
6-4 amended by adding Section 2210.1051 to read as follows:

6-5 Sec. 2210.1051. MEETINGS OF BOARD OF DIRECTORS. (a)
6-6 Notwithstanding Chapter 551, Government Code, or any other law,
6-7 members of the board of directors may meet by telephone conference
6-8 call, video conference, or other similar telecommunication method.
6-9 The board may use telephone conference call, video conference, or
6-10 other similar telecommunication method for purposes of
6-11 establishing a quorum or voting or for any other meeting purpose in
6-12 accordance with this subsection and Subsection (b). This
6-13 subsection applies without regard to the subject matter discussed
6-14 or considered by the members of the board at the meeting.

6-15 (b) A meeting held by telephone conference call, video
6-16 conference, or other similar telecommunication method:

6-17 (1) is subject to the notice requirements applicable
6-18 to other meetings of the board of directors;

6-19 (2) may not be held unless notice of the meeting
6-20 specifies the location of the meeting;

6-21 (3) must be audible to the public at the location
6-22 specified in the notice under Subdivision (2); and

6-23 (4) must provide two-way audio communication between
6-24 all members of the board attending the meeting during the entire
6-25 meeting, and if the two-way audio communication link with members
6-26 attending the meeting is disrupted so that a quorum of the board is
6-27 no longer participating in the meeting, the meeting may not
6-28 continue until the two-way audio communication link is
6-29 reestablished.

6-30 SECTION 16. Subchapter C, Chapter 2210, Insurance Code, is
6-31 amended by adding Section 2210.107 to read as follows:

6-32 Sec. 2210.107. PRIMARY BOARD OBJECTIVES. The primary
6-33 objectives of the board of directors are to ensure that the
6-34 association:

6-35 (1) operates in accordance with this chapter and
6-36 commissioner rules;

6-37 (2) complies with sound insurance principles; and

6-38 (3) meets all standards imposed under this chapter.

6-39 SECTION 17. Section 2210.151, Insurance Code, is amended to
6-40 read as follows:

6-41 Sec. 2210.151. ADOPTION OF PLAN OF OPERATION. With the
6-42 advice of the board of directors, the commissioner by rule shall
6-43 adopt the plan of operation to provide[+]

6-44 ~~[(1)] Texas windstorm and hail insurance in a~~
6-45 ~~catastrophe area[+, and~~

6-46 ~~[(2)] Texas fire and explosion insurance in an~~
6-47 ~~inadequate fire insurance area].~~

6-48 SECTION 18. Section 2210.152(a), Insurance Code, is amended
6-49 to read as follows:

6-50 (a) The plan of operation must:

6-51 (1) provide for the efficient, economical, fair, and
6-52 nondiscriminatory administration of the association; and

6-53 (2) include:

6-54 (A) a plan for the equitable assessment of the
6-55 members of the association to defray losses and expenses;

6-56 (B) underwriting standards;

6-57 (C) procedures for accepting and ceding
6-58 reinsurance;

6-59 (D) procedures for determining the amount of
6-60 insurance to be provided to specific risks;

6-61 (E) time limits and procedures for processing
6-62 applications for insurance; ~~and~~

6-63 (F) a plan for the assessment of the Texas FAIR
6-64 Plan Association; and

6-65 (G) other provisions as considered necessary by
6-66 the department to implement the purposes of this chapter.

6-67 SECTION 19. Section 2210.202(a), Insurance Code, is amended
6-68 to read as follows:

6-69 (a) A person who has an insurable interest in insurable

7-1 property may apply to the association for insurance coverage
7-2 provided under the plan of operation and an inspection of the
7-3 property, subject to any rules~~[, including any inspection fee,]~~
7-4 established by the board of directors and approved by the
7-5 commissioner. The association shall make insurance available to
7-6 each applicant in the catastrophe area whose property is insurable
7-7 property but who, after diligent efforts, is unable to obtain
7-8 property insurance through the voluntary market, as evidenced by
7-9 two declinations from insurers authorized to engage in the business
7-10 of, and writing, property insurance in this state. For purposes of
7-11 this section, "declination" has the meaning assigned by the plan of
7-12 operation and may include a refusal to offer coverage and the
7-13 inability to obtain substantially equivalent insurance coverage
7-14 and rates.

7-15 SECTION 20. Section 2210.203, Insurance Code, is amended by
7-16 adding Subsection (a-1) to read as follows:

7-17 (a-1) Notwithstanding Subsection (a), if all or any part of
7-18 the property for which an application for new or renewal insurance
7-19 coverage is made is located in Zone V or another similar zone with
7-20 an additional hazard associated with storm waves, as defined by the
7-21 National Flood Insurance Program, and if flood insurance under that
7-22 federal program is available, the association may not issue a new or
7-23 renewal insurance policy unless evidence that the property is
7-24 covered by a flood insurance policy is submitted to the
7-25 association. If that flood insurance is unavailable in any portion
7-26 of the seacoast territory, an association policy insuring a
7-27 residential structure described by Section 2210.004(g) is subject
7-28 to a premium surcharge for the insurance coverage obtained through
7-29 the association in an amount equal to not less than 10 percent of
7-30 the premium, as set by the commissioner after notice and a hearing.
7-31 A premium surcharge collected under this subsection shall be
7-32 deposited in the catastrophe reserve trust fund under Subchapter J.
7-33 A premium surcharge under this subsection is a separate charge in
7-34 addition to the premiums collected and is not subject to premium tax
7-35 or commissions. Failure to pay the surcharge by a policyholder
7-36 constitutes failure to pay premium for purposes of policy
7-37 cancellation.

7-38 SECTION 21. Subchapter E, Chapter 2210, Insurance Code, is
7-39 amended by adding Section 2210.210 to read as follows:

7-40 Sec. 2210.210. NOTICE TO APPLICANTS FOR INSURANCE AND
7-41 POLICYHOLDERS; CONSUMER INFORMATION. (a) Each application for
7-42 insurance and each policy issued by the association must include a
7-43 notice as provided by this section. The commissioner by rule may
7-44 prescribe specific requirements for the notice. The notice must be
7-45 substantially as follows:

7-46 IMPORTANT NOTICE TO TEXAS WINDSTORM INSURANCE
7-47 ASSOCIATION POLICYHOLDERS

7-48 Insurance policies issued by the Texas Windstorm Insurance
7-49 Association are not guaranteed by the state or federal government.
7-50 In the event of a major catastrophe, the association may not have
7-51 sufficient funding resources to pay all losses to all policyholders
7-52 suffering damage. In such an event, you may be paid less than the
7-53 full amount of damages that you suffer. You may obtain additional
7-54 information as to the association's potential exposure and its
7-55 available funding resources at www.tdi.state.tx.us.

7-56 (b) The department shall establish a link on the
7-57 department's Internet website through which applicants for
7-58 insurance coverage through the association and association
7-59 policyholders may obtain information in a format easily understood
7-60 about the association's exposure and available resources.

7-61 SECTION 22. Section 2210.251, Insurance Code, is amended to
7-62 read as follows:

7-63 Sec. 2210.251. INSPECTION REQUIREMENTS. (a) Except as
7-64 provided by this section, to be considered insurable property
7-65 eligible for windstorm and hail insurance coverage from the
7-66 association, a structure that is constructed or repaired or to
7-67 which additions are made on or after January 1, 1988, must be
7-68 inspected ~~[or approved]~~ by the association ~~[department]~~ for
7-69 compliance with the plan of operation.

8-1 (b) After January 1, 2004, for geographic areas specified by
 8-2 the commissioner, the board of directors [~~commissioner by rule~~]
 8-3 shall recognize for the purposes of this chapter [~~adopt~~] the 2003
 8-4 International Residential Code for one- and two-family dwellings
 8-5 published by the International Code Council. For those geographic
 8-6 areas, the board of directors [~~commissioner by rule~~] may recognize
 8-7 [~~adopt~~] a subsequent edition of that code and [~~may adopt~~] any
 8-8 supplements published by the International Code Council and
 8-9 amendments to that code.

8-10 (c) After January 1, 2004, a person must submit a notice of a
 8-11 windstorm inspection to the association [~~unit responsible for~~
 8-12 ~~certification of windstorm inspections at the department~~] before
 8-13 beginning to construct, alter, remodel, enlarge, or repair a
 8-14 structure.

8-15 (d) A structure constructed or repaired or to which
 8-16 additions were made before January 1, 1988, that is located in an
 8-17 area that was governed at the time of the construction, repair, or
 8-18 addition by a building code recognized by the association is
 8-19 insurable property eligible for windstorm and hail insurance
 8-20 coverage from the association without compliance with the
 8-21 inspection [~~or approval~~] requirements of this section or the plan
 8-22 of operation.

8-23 (e) A structure constructed or repaired or to which
 8-24 additions were made before January 1, 1988, that is located in an
 8-25 area not governed by a building code recognized by the association
 8-26 is insurable property eligible for windstorm and hail insurance
 8-27 coverage from the association without compliance with the
 8-28 inspection [~~or approval~~] requirements of this section or the plan
 8-29 of operation if the structure was previously insured by an insurer
 8-30 authorized to engage in the business of insurance in this state and
 8-31 the structure is in essentially the same condition as when
 8-32 previously insured, except for normal wear and tear, and is without
 8-33 any structural change other than a change made according to code.
 8-34 For purposes of this subsection, evidence of previous insurance
 8-35 coverage includes:

- 8-36 (1) a copy of a previous insurance policy;
- 8-37 (2) copies of canceled checks or agent's records that
 8-38 show payments for previous policies; and
- 8-39 (3) a copy of the title to the structure or mortgage
 8-40 company records that show previous policies.

8-41 (f) The association [~~department~~] shall issue a certificate
 8-42 of compliance for each structure that qualifies for coverage. The
 8-43 certificate is evidence of insurability of the structure by the
 8-44 association.

8-45 (g) [~~The department may enter into agreements and contracts~~
 8-46 ~~as necessary to implement this section.~~

8-47 [~~(h)~~] The association [~~department~~] may charge a reasonable
 8-48 fee to cover the cost of making building requirements and
 8-49 inspection standards available to the public.

8-50 (h) The association may charge a reasonable fee for each
 8-51 inspection in an amount set by commissioner rule. The association
 8-52 may use fees collected under this section for operating expenses.

8-53 (i) In the event of an occurrence or series of occurrences
 8-54 within a defined catastrophe area that results in widespread
 8-55 destruction of property, the association may:

8-56 (1) fund inspections, including the funding of
 8-57 expenses for:

8-58 (A) independent contractors hired by the
 8-59 association to serve as temporary qualified inspectors; and

8-60 (B) other persons designated by the association
 8-61 to assist with inspections or related responsibilities as necessary
 8-62 to facilitate recovery, rebuilding, and repair in the affected
 8-63 catastrophe area; or

8-64 (2) hire independent contractors and other persons as
 8-65 described by Subdivision (1) as necessary to facilitate recovery,
 8-66 rebuilding, and repair in the affected catastrophe area.

8-67 (j) Without limitation of the department's authority to
 8-68 otherwise enforce this chapter, the department shall monitor the
 8-69 association's compliance with this subchapter and may take any

9-1 disciplinary action available under this code to enforce this
 9-2 subchapter, including an action authorized under Chapters 82, 83,
 9-3 and 84.

9-4 (k) The commissioner may adopt rules in the manner
 9-5 prescribed by Subchapter A, Chapter 36, as necessary to implement
 9-6 this section.

9-7 SECTION 23. Section 2210.252, Insurance Code, is amended to
 9-8 read as follows:

9-9 Sec. 2210.252. INTERNATIONAL RESIDENTIAL CODE BUILDING
 9-10 SPECIFICATIONS. (a) After January 1, 2004, for geographic areas
 9-11 specified by the commissioner, the association [~~commissioner by~~
 9-12 ~~rule~~] may supplement the plan of operation building specifications
 9-13 with the structural provisions of the International Residential
 9-14 Code for one- and two-family dwellings, as published by the
 9-15 International Code Council or an analogous entity recognized by the
 9-16 board of directors [~~department~~].

9-17 (b) For a geographic area specified under Subsection (a),
 9-18 the board of directors [~~commissioner by rule~~] may recognize [~~adopt~~]
 9-19 a subsequent edition of the International Residential Code for
 9-20 one- and two-family dwellings and [~~may adopt~~] a supplement
 9-21 published by the International Code Council or an amendment to that
 9-22 code.

9-23 SECTION 24. Sections 2210.254(a) and (b), Insurance Code,
 9-24 are amended to read as follows:

9-25 (a) For purposes of this chapter, a "qualified inspector"
 9-26 includes:

9-27 (1) a person determined by the board of directors
 9-28 [~~department~~] to be qualified because of training or experience to
 9-29 perform building inspections;

9-30 (2) a licensed professional engineer who meets the
 9-31 requirements specified by the board of directors [~~commissioner~~
 9-32 ~~rule~~] for appointment to conduct windstorm inspections; and

9-33 (3) an inspector who:
 9-34 (A) is certified by the International Code
 9-35 Council, the Building Officials and Code Administrators
 9-36 International, Inc., the International Conference of Building
 9-37 Officials, or the Southern Building Code Congress International,
 9-38 Inc.;

9-39 (B) has certifications as a buildings inspector
 9-40 and coastal construction inspector; and

9-41 (C) complies with other requirements specified
 9-42 by the board of directors [~~commissioner rule~~].

9-43 (b) A windstorm inspection may be performed only by a
 9-44 qualified inspector who is employed by or under contract with the
 9-45 association.

9-46 SECTION 25. Section 2210.255, Insurance Code, is amended to
 9-47 read as follows:

9-48 Sec. 2210.255. APPOINTMENT OF LICENSED ENGINEER AS
 9-49 INSPECTOR. (a) On request of an engineer licensed by the Texas
 9-50 Board of Professional Engineers, the association may [~~commissioner~~
 9-51 ~~shall~~] appoint the engineer as an inspector under this subchapter
 9-52 on receipt of information satisfactory to the board of directors
 9-53 [not later than the 10th day after the date the engineer delivers to
 9-54 the commissioner information demonstrating] that the engineer is
 9-55 qualified to perform windstorm inspections under this subchapter.

9-56 (b) The board of directors shall consult with the
 9-57 commissioner regarding [~~shall adopt rules establishing~~] the
 9-58 information to be considered in appointing engineers under this
 9-59 section.

9-60 SECTION 26. Subchapter F, Chapter 2210, Insurance Code, is
 9-61 amended by adding Sections 2210.258 through 2210.261 to read as
 9-62 follows:

9-63 Sec. 2210.258. MANDATORY COMPLIANCE WITH BUILDING CODES;
 9-64 ELIGIBILITY. (a) Notwithstanding any other provision of this
 9-65 chapter, to be eligible for insurance through the association, all
 9-66 construction, alteration, remodeling, enlargement, and repair of
 9-67 any structure located in the catastrophe area that is begun on or
 9-68 after January 1, 2008, must be performed in compliance with the
 9-69 applicable building code standards, as set forth in the plan of

10-1 operation.

10-2 (b) The association may not insure a structure described by
10-3 Subsection (a) until:

10-4 (1) the structure has been inspected for compliance
10-5 with the plan of operation in accordance with Section 2210.251(a);
10-6 and

10-7 (2) a certificate of compliance has been issued for
10-8 the structure in accordance with Section 2210.251(f).

10-9 Sec. 2210.259. EXCEPTION; SURCHARGE FOR CERTAIN
10-10 NONCOMPLIANT STRUCTURES. (a) The association may not insure a
10-11 structure that has not been inspected for compliance with the plan
10-12 of operation in accordance with Section 2210.251(a) and for which a
10-13 certificate of compliance has not been issued on the structure in
10-14 accordance with Section 2210.251(f), unless the structure:

10-15 (1) is a residential structure or is the property of a
10-16 school district or public, or not-for-profit, postsecondary
10-17 educational institution, including a junior college;

10-18 (2) was constructed, altered, remodeled, enlarged, or
10-19 repaired before January 1, 2008, and has not been further altered,
10-20 remodeled, enlarged, or repaired on or after January 1, 2008; and

10-21 (3) was:
10-22 (A) insured in the private market within the
10-23 12-month period immediately preceding the date of the application;
10-24 or

10-25 (B) property covered by a self-insured school
10-26 district or postsecondary institution.

10-27 (b) A structure eligible for insurance under Subsection (a)
10-28 is subject to a premium surcharge for insurance coverage obtained
10-29 through the association. The commissioner shall determine the
10-30 surcharge, after notice and a hearing, in an amount not less than an
10-31 amount equal to 20 percent of the premium.

10-32 (c) A premium surcharge collected under this section shall
10-33 be deposited in the catastrophe reserve trust fund under Subchapter
10-34 J. A premium surcharge under this section is a separate charge in
10-35 addition to the premiums collected and is not subject to premium tax
10-36 or commissions. Failure to pay the surcharge by a policyholder
10-37 constitutes failure to pay premium for purposes of policy
10-38 cancellation.

10-39 Sec. 2210.260. STRUCTURES NOT SUBJECT TO PREMIUM SURCHARGE.
10-40 Notwithstanding Section 2210.259, the association may insure
10-41 without a premium surcharge a structure that:

10-42 (1) was constructed or repaired or to which additions
10-43 were made before January 1, 1988, and not thereafter, and is
10-44 eligible for association coverage under Section 2210.251(d) or (e);
10-45 or

10-46 (2) is the subject of a certificate of compliance
10-47 issued by the department and that has not been altered, remodeled,
10-48 enlarged, or repaired after the date of issuance of the last
10-49 department certificate.

10-50 Sec. 2210.261. RULES. The commissioner may adopt rules to
10-51 implement Sections 2210.258, 2210.259, and 2210.260.

10-52 SECTION 27. Section 2210.351(c), Insurance Code, is amended
10-53 to read as follows:

10-54 (c) Except as provided by Section 2210.352(a-1), as [As]
10-55 soon as reasonably possible after the filing has been made, the
10-56 commissioner in writing shall approve, modify, or disapprove the
10-57 filing. A filing is considered approved unless modified or
10-58 disapproved on or before the 30th day after the date of the filing.

10-59 SECTION 28. Section 2210.352, Insurance Code, is amended by
10-60 amending Subsection (a) and adding Subsection (a-1) to read as
10-61 follows:

10-62 (a) Not later than August 15 of each year, the association
10-63 shall file with the department [~~for approval by the commissioner~~] a
10-64 proposed manual rate for all types and classes of risks written by
10-65 the association. Chapter 40 does not apply to:

10-66 (1) a filing made under this subsection; or
10-67 (2) a department action with respect to the filing.

10-68 (a-1) The association may use a rate filed by the
10-69 association without prior commissioner approval if:

11-1 (1) the filing is made not later than the 60th day
11-2 before the date of any use or delivery for use of the rate;

11-3 (2) the filed rate does not exceed 105 percent of the
11-4 rate used by the association during the preceding 12-month period;

11-5 (3) the filed rate does not reflect a rate change for
11-6 an individual rating class that is five percent higher than any rate
11-7 used by the association for that rating class during the preceding
11-8 12-month period; and

11-9 (4) the commissioner has not provided written notice
11-10 to the association that the filing will be disapproved or modified
11-11 under the procedure established under Subsections (b)-(g).

11-12 SECTION 29. Section 2210.354(a), Insurance Code, is amended
11-13 to read as follows:

11-14 (a) In conjunction with the review of a filing under Section
11-15 2210.352 or 2210.353:

11-16 (1) the commissioner may request the association to
11-17 provide additional supporting information relating to the filing;
11-18 and

11-19 (2) in the case of a filing in which the filed rate
11-20 exceeds 105 percent of the rate used by the association during the
11-21 preceding 12-month period, any interested person may file a written
11-22 request with the commissioner for additional supporting
11-23 information relating to the filing.

11-24 SECTION 30. Section 2210.355, Insurance Code, is amended by
11-25 adding Subsections (h) and (i) to read as follows:

11-26 (h) The association may establish rating territories and
11-27 may vary rates among the territories. The association may use
11-28 rating territories that subdivide a county only if the rate for any
11-29 subdivision in the county is not greater than 15 percent higher than
11-30 the rate used in any other subdivision of that county.

11-31 (i) Catastrophe models, including hurricane models, may not
11-32 be used to develop rates under this chapter.

11-33 SECTION 31. Sections 2210.452(a) and (c), Insurance Code,
11-34 are amended to read as follows:

11-35 (a) The commissioner shall adopt rules under which the
11-36 association makes ~~[members relinquish their net equity on an annual~~
11-37 ~~basis as provided by those rules by making]~~ payments to the
11-38 catastrophe reserve trust fund. The trust fund may be used only to
11-39 fund:

11-40 (1) the obligations of the trust fund under Section
11-41 2210.058 ~~[2210.058(a)]~~; and

11-42 (2) the mitigation and preparedness plan established
11-43 under Section 2210.454 to reduce the potential for payments by
11-44 association members and the Texas FAIR Plan Association that give
11-45 rise to tax credits in the event of loss.

11-46 (c) At the end of each calendar year or policy year, the
11-47 association shall pay the net gain from operations ~~[equity]~~ of the
11-48 association ~~[a member]~~, including all premium and other revenue of
11-49 the association in excess of incurred losses and operating
11-50 expenses, to the trust fund or a reinsurance program approved by the
11-51 commissioner. For the purposes of this subsection, "operating
11-52 expenses" includes the cost of any reinsurance.

11-53 SECTION 32. Section 2210.453, Insurance Code, is amended to
11-54 read as follows:

11-55 Sec. 2210.453. REINSURANCE ~~[PROGRAM]~~. (a) The association
11-56 may ~~[shall]~~:

11-57 (1) make payments into the trust fund; and ~~[or]~~

11-58 (2) purchase ~~[establish a]~~ reinsurance as part of the
11-59 association's annual operating expenses to the extent ~~[program]~~
11-60 approved by the commissioner ~~[department]~~.

11-61 (b) As provided by this subsection, the ~~[With the approval~~
11-62 ~~of the department, the]~~ association may purchase ~~[establish a]~~
11-63 reinsurance ~~[program]~~ that operates in addition to or in concert
11-64 with the trust fund and with assessments authorized by this
11-65 chapter. The association may purchase reinsurance in lieu of using
11-66 public securities authorized under Section 2210.058 if, after a
11-67 cost-benefit analysis or other appropriate examination, the board
11-68 of directors determines that the use of reinsurance would result in
11-69 lower costs to the association or is otherwise economically

beneficial to the operations of the association.

SECTION 33. Chapter 2210, Insurance Code, is amended by adding Subchapter M to read as follows:

SUBCHAPTER M. PUBLIC SECURITIES PROGRAM

Sec. 2210.601. PURPOSE. The legislature finds that authorizing the issuance of public securities to provide a method to raise funds to provide windstorm and hail insurance through the association in certain designated portions of the state is for the benefit of the public and in furtherance of a public purpose.

Sec. 2210.602. DEFINITIONS. In this subchapter:

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

(2) "Class 1 public securities" means public securities authorized to be issued before the occurrence of a catastrophic event by Section 2210.058(d).

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

(4) "Credit agreement" means:

(A) a loan agreement;

(B) a revolving credit agreement, an agreement establishing a line of credit, or a letter of credit;

(C) an interest rate swap agreement, an interest rate lock agreement, a currency swap agreement, or a forward payment conversion agreement;

(D) an agreement to provide payments based on levels of or changes in interest rates or currency exchange rates;

(E) an agreement to exchange cash flows or a series of payments;

(F) an option, put, or call to hedge payment, currency, interest rate, or other exposure; or

(G) another agreement that enhances the marketability, security, or creditworthiness of a public security issued under this subchapter.

(5) "Insurer" means each property and casualty insurer authorized to engage in the business of property and casualty insurance in this state and an affiliate of such an insurer, as described by Section 823.003, including an affiliate that is not authorized to engage in the business of property and casualty insurance in this state. The term specifically includes a county mutual insurance company, a Lloyd's plan, and a reciprocal or interinsurance exchange.

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

(7) "Public security administrative expenses" means expenses incurred to administer public securities issued under this subchapter, including fees for paying agents, trustees, and attorneys, and for other professional services necessary to ensure compliance with applicable state or federal law.

(8) "Public security obligations" means the principal of a public security and any premium and interest on a public security issued under this subchapter, together with any amount owed under a related credit agreement.

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

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

Sec. 2210.603. APPLICABILITY OF OTHER LAWS. The board shall issue the public securities as described by Section 2210.604 in accordance with and subject to the requirements of Chapter 1232, Government Code, and other provisions of Title 9, Government Code, that apply to issuance of a public security by a state agency. In the event of a conflict, this subchapter controls.

Sec. 2210.604. ISSUANCE OF PUBLIC SECURITIES AUTHORIZED.

(a) At the request of the association and with the approval of the commissioner, the Texas Public Finance Authority shall issue Class 1 or Class 2 public securities.

13-1 (b) The association shall specify in the association's
 13-2 request to the board the maximum principal amount of the public
 13-3 securities and the maximum term of the public securities, not to
 13-4 exceed 30 years.

13-5 (c) The principal amount determined by the association
 13-6 under Subsection (b) may be increased to include an amount
 13-7 sufficient to:

13-8 (1) pay the costs related to issuance of the public
 13-9 securities;

13-10 (2) provide a public security reserve fund; and

13-11 (3) capitalize interest for the period determined
 13-12 necessary by the association, not to exceed two years.

13-13 Sec. 2210.605. TERMS OF ISSUANCE. (a) The board shall
 13-14 determine the method of sale, type and form of public security,
 13-15 maximum interest rates, and other terms of the public securities
 13-16 that, in the board's judgment, best achieve the goals of the
 13-17 association and effect the borrowing at the lowest practicable
 13-18 cost. The board may enter into a credit agreement in connection
 13-19 with the public securities.

13-20 (b) Public securities must be issued in the name of the
 13-21 association.

13-22 Sec. 2210.606. ADDITIONAL COVENANTS. The board may make
 13-23 additional covenants with respect to the public securities and the
 13-24 designated income and receipts of the association pledged to their
 13-25 payment, and provide for the flow of funds and the establishment,
 13-26 maintenance, and investment of funds and accounts with respect to
 13-27 the public securities, and the administration of those funds and
 13-28 accounts, as provided in the proceedings authorizing the public
 13-29 securities.

13-30 Sec. 2210.607. PUBLIC SECURITY PROCEEDS. The proceeds of
 13-31 public securities issued by the board under this subchapter may be
 13-32 deposited with a trustee selected by the association in
 13-33 consultation with the commissioner or held by the comptroller in a
 13-34 dedicated trust fund outside the state treasury in the custody of
 13-35 the comptroller.

13-36 Sec. 2210.608. USE OF PUBLIC SECURITY PROCEEDS. (a) Public
 13-37 security proceeds, including investment income, shall be held in
 13-38 trust for the exclusive use and benefit of the association. The
 13-39 association may use the proceeds to:

13-40 (1) pay incurred claims and operating expenses of the
 13-41 association;

13-42 (2) purchase reinsurance for the association;

13-43 (3) pay the costs of issuing the public securities,
 13-44 and public security administrative expenses, if any;

13-45 (4) provide a public security reserve; and

13-46 (5) pay capitalized interest and principal on the
 13-47 public securities for the period determined necessary by the
 13-48 association, not to exceed two years.

13-49 (b) Any excess public security proceeds remaining after the
 13-50 purposes for which the public securities were issued are satisfied
 13-51 may be used to purchase or redeem outstanding public securities. If
 13-52 there are no outstanding public security obligations or public
 13-53 security administrative expenses, the excess proceeds shall be
 13-54 transferred to the catastrophe reserve trust fund.

13-55 Sec. 2210.609. REPAYMENT OF ASSOCIATION'S PUBLIC SECURITY
 13-56 OBLIGATIONS. (a) The association shall pay all public security
 13-57 obligations from available funds collected by the association from
 13-58 and deposited into the public security obligation revenue fund. If
 13-59 the association determines that it is unable to pay the public
 13-60 security obligations and public security administrative expenses,
 13-61 if any, with available funds, the association shall pay those
 13-62 obligations and expenses in accordance with Sections 2210.612 and
 13-63 2210.613.

13-64 (b) The board shall notify the association of the amount of
 13-65 the public security obligations and the estimated amount of public
 13-66 security administrative expenses, if any, each year in a period
 13-67 sufficient, as determined by the association, to permit the
 13-68 association to determine the availability of funds and assess a
 13-69 premium surcharge if necessary.

14-1 (c) The association shall deposit all revenue collected
 14-2 under Sections 2210.612 and 2210.613 in the public security
 14-3 obligation revenue fund. Money deposited in the fund may be
 14-4 invested as permitted by general law. Money in the fund required to
 14-5 be used to pay public security obligations and public security
 14-6 administrative expenses, if any, shall be transferred to the
 14-7 appropriate funds in the manner and at the time specified in the
 14-8 proceedings authorizing the public securities to ensure timely
 14-9 payment of obligations and expenses.

14-10 (d) The association shall provide for the payment of the
 14-11 public security obligations and the public security administrative
 14-12 expenses by irrevocably pledging revenues received from premiums,
 14-13 premium surcharges, and amounts on deposit in the public security
 14-14 obligation revenue fund, together with any public security reserve
 14-15 fund, as provided in the proceedings authorizing the public
 14-16 securities and related credit agreements.

14-17 (e) An amount owed by the board under a credit agreement
 14-18 shall be payable from and secured by a pledge of revenues received
 14-19 by the association or amounts from the obligation trust fund to the
 14-20 extent provided in the proceedings authorizing the credit
 14-21 agreement.

14-22 Sec. 2210.610. PUBLIC SECURITY PAYMENTS. (a) Revenues
 14-23 received from the premium surcharges under Section 2210.612 or
 14-24 2210.613 may be applied only as provided by this subchapter.

14-25 (b) The association may pay public security obligations
 14-26 with other legally available funds.

14-27 (c) Public security obligations are payable only from
 14-28 sources provided for payment in this subchapter.

14-29 Sec. 2210.611. EXCESS REVENUE COLLECTIONS AND INVESTMENT
 14-30 EARNINGS. Revenue collected in any year from a premium surcharge
 14-31 under Section 2210.612 or 2210.613 that exceeds the amount of the
 14-32 public security obligations and public security administrative
 14-33 expenses payable in that year and interest earned on the public
 14-34 security obligation fund may, in the discretion of the association,
 14-35 be:

14-36 (1) used to pay public security obligations payable in
 14-37 the subsequent year, offsetting the amount of the premium surcharge
 14-38 that would otherwise be required to be levied for the year under
 14-39 this subchapter;

14-40 (2) used to redeem or purchase outstanding public
 14-41 securities; or

14-42 (3) deposited in the catastrophe reserve trust fund.

14-43 Sec. 2210.612. CLASS 1 PREMIUM SURCHARGE. (a) Each
 14-44 insurer, the association, and the Texas FAIR Plan Association may
 14-45 collect from their policyholders a surcharge in addition to any
 14-46 premiums to pay public security obligations and public security
 14-47 administrative expenses, if any, on Class 1 public securities.

14-48 (b) The association shall determine the premium surcharge
 14-49 at least annually.

14-50 (c) On approval by the commissioner, each insurer, the
 14-51 association, and the Texas FAIR Plan Association shall assess a
 14-52 premium surcharge to its policyholders as provided by this section.
 14-53 The premium surcharge must be set in an amount sufficient to pay all
 14-54 debt service not already covered by available funds and all related
 14-55 expenses on the public securities.

14-56 (d) The association shall collect the premium surcharge
 14-57 from its policyholders. Each insurer and the Texas FAIR Plan
 14-58 Association shall collect the premium surcharge from their
 14-59 policyholders who have a property or casualty policy that provides
 14-60 coverage for premises, locations, operations, or property located
 14-61 in the catastrophe area and shall remit the premium surcharge to the
 14-62 association as required by commissioner rule.

14-63 (e) A premium surcharge under this section shall apply to
 14-64 all policies that provide coverage on any premises, locations,
 14-65 operations, or property located in the catastrophe area for all
 14-66 property and casualty lines of insurance, other than workers'
 14-67 compensation insurance, accident and health insurance, and medical
 14-68 malpractice insurance. The premium surcharge does not apply to
 14-69 premiums charged for any premises, locations, operations, or

15-1 property located outside the catastrophe area, except for premiums
15-2 charged by the association for property insured by the association.

15-3 (f) A premium surcharge under this section is a separate
15-4 charge in addition to the premiums collected and is not subject to
15-5 premium tax or commissions. Failure to pay the surcharge by a
15-6 policyholder constitutes failure to pay premium for purposes of
15-7 policy cancellation.

15-8 Sec. 2210.613. CLASS 2 PREMIUM SURCHARGE. (a) Each
15-9 insurer, the association, and the Texas FAIR Plan Association shall
15-10 collect from their policyholders a premium surcharge to pay public
15-11 security obligations and public security administrative expenses,
15-12 if any, on Class 2 public securities.

15-13 (b) The association shall determine the premium surcharge
15-14 at least annually.

15-15 (c) On approval by the commissioner, each insurer, the
15-16 association, and the Texas FAIR Plan Association shall assess a
15-17 premium surcharge to its policyholders as provided by this section.
15-18 The premium surcharge must be set in an amount sufficient to pay all
15-19 debt service and all related expenses on the public securities. The
15-20 premium surcharge assessed under this section may not exceed six
15-21 percent of premium and cumulatively may not exceed 10 percent of
15-22 premium over a 12-month period beginning on the date the surcharge
15-23 is first assessed.

15-24 (d) Each insurer, the association, and the Texas FAIR Plan
15-25 Association shall collect the premium surcharge under this section
15-26 from their policyholders who have a property or casualty policy
15-27 that provides coverage for premises, locations, operations, or
15-28 property located in this state, and shall remit the premium
15-29 surcharge to the association as required by commissioner rule.

15-30 (e) A premium surcharge under this section shall apply to
15-31 all policies that provide coverage on any premises, locations,
15-32 operations, or property located in this state for all property and
15-33 casualty lines of insurance, other than workers' compensation
15-34 insurance, accident and health insurance, and medical malpractice
15-35 insurance. The premium surcharge does not apply to premiums
15-36 charged for any premises, locations, operations, or property
15-37 located outside this state.

15-38 (f) A premium surcharge under this section is a separate
15-39 charge in addition to the premiums collected and is not subject to
15-40 premium tax or commissions. Failure to pay the surcharge by a
15-41 policyholder constitutes failure to pay premium for purposes of
15-42 policy cancellation.

15-43 Sec. 2210.614. SOURCE OF PAYMENT; STATE DEBT NOT CREATED.

15-44 (a) A public security or credit agreement is payable solely from
15-45 revenue as provided by this subchapter.

15-46 (b) A public security issued under this subchapter, and any
15-47 related credit agreement, is not a debt of this state or any state
15-48 agency or political subdivision of this state, and does not
15-49 constitute a pledge of the faith and credit of this state or any
15-50 state agency or political subdivision of this state.

15-51 (c) Each public security, and any related credit agreement,
15-52 issued under this chapter must state on the security's face that:

15-53 (1) neither the state nor a state agency, political
15-54 corporation, or political subdivision of the state is obligated to
15-55 pay the principal of or interest on the public security except as
15-56 provided by this subchapter; and

15-57 (2) neither the faith and credit nor the taxing power
15-58 of the state or any state agency, political corporation, or
15-59 political subdivision of the state is pledged to the payment of the
15-60 principal of or interest on the public security.

15-61 Sec. 2210.615. STATE NOT TO IMPAIR PUBLIC SECURITY
15-62 OBLIGATIONS. If public securities under this subchapter are
15-63 outstanding, the state may not:

15-64 (1) take action to limit or restrict the rights of the
15-65 association to fulfill its responsibility to pay public security
15-66 obligations; or

15-67 (2) in any way impair the rights and remedies of the
15-68 public security owners until the public securities are fully
15-69 discharged.

16-1 Sec. 2210.616. ENFORCEMENT BY MANDAMUS. A writ of mandamus
 16-2 and any other legal and equitable remedies are available to a party
 16-3 at interest to require the association or another party to fulfill
 16-4 an agreement and to perform functions and duties under:

- 16-5 (1) this subchapter;
- 16-6 (2) the Texas Constitution; or
- 16-7 (3) a relevant public security resolution.

16-8 Sec. 2210.617. EXEMPTION FROM TAXATION. A public security
 16-9 issued under this subchapter, any transaction relating to the
 16-10 public security, and profits made from the sale of the public
 16-11 security are exempt from taxation by this state or by a municipality
 16-12 or other political subdivision of this state.

16-13 Sec. 2210.618. NO PERSONAL LIABILITY. The members of the
 16-14 association, association employees, the board, the employees of the
 16-15 Texas Public Finance Authority, the commissioner, and department
 16-16 employees are not personally liable as a result of exercising the
 16-17 rights and responsibilities granted under this subchapter.

16-18 Sec. 2210.619. AUTHORIZED INVESTMENTS. Public securities
 16-19 issued under this subchapter are authorized investments under:

- 16-20 (1) Subchapter B, Chapter 424;
- 16-21 (2) Subchapter C, Chapter 425; and
- 16-22 (3) Sections 425.203-425.213.

16-23 SECTION 34. Section 2211.104, Insurance Code, is amended to
 16-24 read as follows:

16-25 Sec. 2211.104. ADDITIONAL ASSESSMENT IN EVENT OF DEFICIT;
 16-26 PREMIUM SURCHARGE AUTHORIZED. (a) Except as provided by
 16-27 Subsection (f), if ~~if~~ the association incurs a deficit, the
 16-28 association, at the commissioner's direction, shall:

16-29 (1) request the issuance of public securities as
 16-30 authorized by Subchapter E; or

16-31 (2) assess participating insurers in accordance with
 16-32 this section.

16-33 (b) Except as provided by Subsection (f), as ~~As~~
 16-34 reimbursement for assessments paid under this section or service
 16-35 fees paid under Section 2211.209, each insurer may charge a premium
 16-36 surchARGE on every property insurance policy insuring property in
 16-37 this state that the insurer issues, the effective date of which is
 16-38 within the three-year period beginning on the 90th day after the
 16-39 date of the assessment or the 90th day after the date the service
 16-40 fee under Section 2211.209 is paid, as applicable.

16-41 (c) Except as provided by Subsection (f), insurers ~~The~~
 16-42 insurer] shall compute the amount of the surcharge under Subsection
 16-43 (b) as a uniform percentage of the premium on each policy described
 16-44 by Subsection (b). The percentage must be equal to one-third of the
 16-45 ratio of the amount of the participating insurer's assessment or
 16-46 service fee payment to the amount of the insurer's direct earned
 16-47 premiums, as reported to the department in the insurer's financial
 16-48 statement for the calendar year preceding the year in which the
 16-49 assessment or service fee payment is made so that, over the
 16-50 three-year period, the aggregate of all surcharges by the insurer
 16-51 under this section is at least equal to the amount of the assessment
 16-52 or service fee payment.

16-53 (d) The amount of any assessment paid and surcharged under
 16-54 this section may be carried by the insurer as an admitted asset of
 16-55 the insurer for all purposes, including exhibition in annual
 16-56 statements under Section 862.001, until collected.

16-57 (e) The commissioner shall adopt rules and procedures as
 16-58 necessary to implement this section.

16-59 (f) In the event of an occurrence or series of occurrences
 16-60 resulting in deficits for the association and the Texas Windstorm
 16-61 Insurance Association, the commissioner may adopt rules in the
 16-62 manner provided by Subchapter A, Chapter 36, to provide for the
 16-63 coordinated recoupment of those deficits. The rules may not
 16-64 provide for a recoupment of assessments through premium tax
 16-65 credits.

16-66 SECTION 35. Section 941.003, Insurance Code, is amended by
 16-67 adding Subsection (e) to read as follows:

16-68 (e) A Lloyd's plan is subject to Chapter 2210, as provided
 16-69 by that chapter.

17-1 SECTION 36. Section 942.003, Insurance Code, is amended by
17-2 adding Subsection (f) to read as follows:

17-3 (f) An exchange is subject to Chapter 2210, as provided by
17-4 that chapter.

17-5 SECTION 37. The following laws are repealed:

- 17-6 (1) Sections 2210.003(5) and (12), Insurance Code;
- 17-7 (2) Section 2210.059, Insurance Code;
- 17-8 (3) Section 2210.356, Insurance Code; and
- 17-9 (4) Subchapters G and I, Chapter 2210, Insurance Code.

17-10 SECTION 38. (a) The board of directors of the Texas
17-11 Windstorm Insurance Association established under Section
17-12 2210.102, Insurance Code, as that section existed before amendment
17-13 by this Act, is abolished on the 30th day after the effective date
17-14 of this Act.

17-15 (b) The commissioner of insurance shall appoint the members
17-16 of the board of directors of the Texas Windstorm Insurance
17-17 Association under Section 2210.102, Insurance Code, as amended by
17-18 this Act, not later than the 31st day after the effective date of
17-19 this Act.

17-20 (c) The term of a person who is serving as a member of the
17-21 board of directors of the Texas Windstorm Insurance Association
17-22 immediately before the abolition of that board under Subsection (a)
17-23 of this section expires on the 30th day after the effective date of
17-24 this Act. Such a person is eligible for appointment by the
17-25 commissioner of insurance to the new board of directors of the Texas
17-26 Windstorm Insurance Association under Section 2210.102, Insurance
17-27 Code, as amended by this Act.

17-28 SECTION 39. The commissioner of insurance shall adopt rules
17-29 as required by Chapter 2210, Insurance Code, as amended by this Act,
17-30 not later than the 180th day after the effective date of this Act.

17-31 SECTION 40. Section 2210.202(a), Insurance Code, as amended
17-32 by this Act, applies to an application for insurance coverage
17-33 submitted to the Texas Windstorm Insurance Association on or after
17-34 the effective date of this Act.

17-35 SECTION 41. Section 2210.251, Insurance Code, as amended by
17-36 this Act, applies to an inspection conducted by the Texas Windstorm
17-37 Insurance Association on or after the effective date of this Act.
17-38 Except as otherwise specifically provided by that section, a person
17-39 whose insurable property has been inspected by the Texas Department
17-40 of Insurance and is in compliance with Section 2210.251, Insurance
17-41 Code, as that section existed immediately before the effective date
17-42 of this Act, is not required to obtain an inspection from the Texas
17-43 Windstorm Insurance Association to remain eligible for insurance
17-44 coverage through that association.

17-45 SECTION 42. (a) In accordance with Section 311.031(c),
17-46 Government Code, which gives effect to a substantive amendment
17-47 enacted by the same legislature that codifies the amended statute,
17-48 the text of Section 2211.104, Insurance Code, as set out in Section
17-49 34 of this Act, gives effect to changes made by Chapter 1082, Acts
17-50 of the 79th Legislature, Regular Session, 2005.

17-51 (b) To the extent of any conflict, this Act prevails over
17-52 another Act of the 80th Legislature, Regular Session, 2007,
17-53 relating to nonsubstantive additions and corrections in enacted
17-54 codes.

17-55 SECTION 43. This Act takes effect immediately if it
17-56 receives a vote of two-thirds of all the members elected to each
17-57 house, as provided by Section 39, Article III, Texas Constitution.
17-58 If this Act does not receive the vote necessary for immediate
17-59 effect, this Act takes effect September 1, 2007.

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