

By: Fraser

S.B. No. 1155

A BILL TO BE ENTITLED

AN ACT

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

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

7 SECTION 1. Section 2210.003, Insurance Code, is amended by
8 adding Subdivision (3-a) to read as follows:

9 (3-a) "Fair share company" means a member of the
10 association if, for any applicable calendar year, the ratio of that
11 member's net direct premium written in the catastrophe area to all
12 members' net direct premium written in the catastrophe area equals
13 or exceeds the ratio of that member's net direct premium written
14 statewide to all members' net direct premium written statewide for
15 fire and allied lines insurance, homeowners insurance, farm and
16 ranch owners insurance, and commercial multiperil insurance.

17 SECTION 2. Section 2210.005, Insurance Code, is amended by
18 adding Subsections (e) through (h) to read as follows:

19 (e) After at least 10 days' notice and a hearing, the
20 commissioner may determine, unless such a determination creates an
21 adverse impact to the exposure of the association, that windstorm
22 and hail insurance or fire and explosion insurance is not
23 reasonably available to a group that is located in a specified area
24 of the state and that has similar risk characteristics. On such a

1 determination by the commissioner, that group of risks shall be
2 considered the same as a risk that is located in a catastrophe area
3 or an inadequate fire insurance area for all purposes under this
4 chapter.

5 (f) The commissioner shall revoke a determination made
6 under Subsection (e) if the commissioner determines, after at least
7 10 days' notice and a hearing, that the applicable insurance
8 coverage is no longer reasonably unavailable to a group determined
9 to be eligible under Subsection (e).

10 (g) If the association determines that windstorm and hail
11 insurance or fire and explosion insurance, as applicable, is no
12 longer reasonably unavailable to a group determined to be eligible
13 under Subsection (e), the association may request in writing that
14 the commissioner revoke the determination. After at least 10 days'
15 notice and a hearing, but not later than the 30th day after the date
16 of the hearing, the commissioner shall:

17 (1) approve the request and revoke the determination;

18 or

19 (2) reject the request.

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

23 SECTION 3. Section 2210.008, Insurance Code, is amended to
24 read as follows:

25 Sec. 2210.008. DEPARTMENT ORDERS; RULEMAKING AUTHORITY.

26 (a) The [~~After notice and hearing as provided by Subsection (b),~~
27 ~~the~~] commissioner may issue any orders that the commissioner

1 considers necessary to implement this chapter [~~, including orders~~
2 ~~regarding maximum rates, competitive rates, and policy forms~~].

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

10 SECTION 4. Section 2210.052, Insurance Code, is amended by
11 amending Subsections (a) and (d) and adding Subsection (e) to read
12 as follows:

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

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

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

11 SECTION 5. Section 2210.058, Insurance Code, is amended to
12 read as follows:

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

19 (b) For each occurrence, an amount equal to a maximum of 2.5
20 percent of all the direct premiums written by all the members of the
21 association and the Texas FAIR Plan Association, as reported in the
22 annual statement filed with the department for the calendar year
23 immediately preceding the year in which the assessment is made for
24 fire insurance and allied lines insurance, homeowners insurance,
25 farm and ranch insurance, and commercial multiperil insurance,
26 shall be computed and [~~follows:~~

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

1 members of the association and the Texas FAIR Plan Association as
2 provided by Subsection (h). The association may not assess members
3 of the association and the Texas FAIR Plan Association under this
4 subsection more than twice in any calendar year. [~~(b) -~~]

5 (c) Losses [~~(2) losses~~] in excess of those paid under
6 Subsection (b) [~~\$100 million~~] shall be paid as provided by this
7 subsection from the catastrophe reserve trust fund established
8 under Subchapter J. For each occurrence, not more than 50 percent
9 of the amount in the catastrophe reserve trust fund as of the date
10 of the occurrence, reduced by anticipated payments from prior
11 occurrences, may be used unless the commissioner determines that a
12 greater percentage should be applied after at least 10 days' notice
13 and a hearing, if a hearing is requested by any person within the
14 10-day notice period. If the trust fund is reduced by more than 50
15 percent in any calendar year, the association may, with the
16 approval of the commissioner, require each member of the
17 association and the Texas FAIR Plan Association to collect a
18 premium surcharge for one year from their respective policyholders
19 who reside or have operations in, or whose insured property is
20 located in, the catastrophe area. The premium surcharge may not
21 exceed two percent of premium, and applies to all policies of
22 insurance for all property and casualty lines, other than workers'
23 compensation insurance, accident and health insurance, and medical
24 malpractice insurance. The premium surcharge collected under this
25 subsection shall be deposited in the catastrophe reserve trust
26 fund.

27 (d) Any [~~and any reinsurance program established by the~~

1 ~~association,~~

2 ~~[(3) for] losses in excess of those paid under~~
3 ~~Subsections (b) and (c) [those paid under Subdivisions (1) and (2),~~
4 ~~an additional \$200 million] shall be paid with proceeds from public~~
5 ~~securities issued by the association in accordance with Subchapter~~
6 ~~M before the date of any occurrence that results in insured losses~~
7 ~~under Subsection (a), as provided by Subsection (j).~~

8 ~~(e) For [assessed against the members of the association, as~~
9 ~~provided by Subsection (b), and~~

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

24 ~~(f) Any losses in excess of those paid under Subsections~~
25 ~~(b)-(e) shall be paid from proceeds from public securities issued~~
26 ~~by the association in accordance with Subchapter M on or after the~~
27 ~~date of any occurrence that results in insured losses under~~

1 Subsection (a), as provided by Subsection (k).

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

5 (h) [~~(b)~~] The proportion of the losses allocable to each
6 insurer and the Texas FAIR Plan Association under Subsections (b),
7 (e), and (g) [~~(a)(1), (3), and (4)~~] shall be determined in the
8 manner used to determine each insurer's participation in the
9 association for the year under Section 2210.052, and as to the Texas
10 FAIR Plan Association, as provided by the plan of operation.

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

24 (j) Public securities described by Subsection (d) may be
25 issued in principal amounts not to exceed \$1.2 billion. Any public
26 securities proceeds received under Subsection (d) must be used
27 before the proceeds of any public securities that the association

1 authorizes to be issued under Subsection (f) on or after any
2 catastrophic event, and may not be used to fund losses of any
3 catastrophic event occurring before the date on which public
4 securities described by Subsection (d) are authorized to be issued.

5 (k) Public securities described by Subsection (f) may be
6 issued in principal amounts not to exceed \$5 billion.

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

11 (m) The commissioner may adopt rules in the manner provided
12 by Subchapter A, Chapter 36, as necessary to implement this
13 section.

14 SECTION 6. Section 2210.059, Insurance Code, is amended to
15 read as follows:

16 Sec. 2210.059. NOTIFICATION REGARDING TAX CREDITS. (a)
17 The association shall immediately notify the department if an
18 occurrence or series of occurrences in a catastrophe area results
19 in insured losses that result in a tax credit under Section
20 2210.058(i) [2210.058(c)] in a calendar year.

21 (b) On receipt of notice under Subsection (a), the
22 department shall immediately notify the governor and the
23 appropriate committees of each house of the legislature of the
24 amount of insured losses eligible for tax credits under Section
25 2210.058(i) [2210.058(c)].

26 SECTION 7. Section 2210.060(c), Insurance Code, is amended
27 to read as follows:

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

5 SECTION 8. Section 2210.102, Insurance Code, is amended to
6 read as follows:

7 Sec. 2210.102. COMPOSITION. (a) The board of directors is
8 composed of the following 11 [~~nine~~] members appointed by the
9 commissioner:

10 (1) five members who represent the interests of
11 [~~representatives of different~~] insurers [~~who are members of the~~
12 ~~association, elected by the members as provided by the plan of~~
13 ~~operation~~];

14 (2) four members who represent the interests of the
15 [~~two~~] public:

16 (A) two of whom [~~representatives who are~~
17 ~~nominated by the office of public insurance counsel and who~~], as of
18 the date of the appointment:

19 (i) [~~(A)~~] reside in a catastrophe area; and
20 (ii) [~~(B)~~] are policyholders of the
21 association; and

22 (B) two of whom, as of the date of the
23 appointment:

24 (i) reside outside a catastrophe area; and
25 (ii) are not policyholders of the
26 association; and

27 (3) two members who are general property and casualty

1 agents licensed under this code:

2 (A) who are not captive agents;

3 (B) who have demonstrated experience in the
4 association; and

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

7 (b) To be eligible to serve on the board of directors as a
8 representative of insurers, a person must be a full-time employee
9 of an authorized insurer that is a member of the association.

10 (c) A member of the board of directors serves at the
11 pleasure of the commissioner. The commissioner shall appoint a
12 replacement for a member who leaves or is removed from the board of
13 directors in the manner provided by Subsection (a). [~~The persons~~
14 ~~appointed under Subsections (a)(2) and (3) must be from different~~
15 ~~counties.~~]

16 SECTION 9. Section 2210.152(a), Insurance Code, is amended
17 to read as follows:

18 (a) The plan of operation must:

19 (1) provide for the efficient, economical, fair, and
20 nondiscriminatory administration of the association; and

21 (2) include:

22 (A) a plan for the equitable assessment of the
23 members of the association to defray losses and expenses;

24 (B) underwriting standards;

25 (C) procedures for accepting and ceding
26 reinsurance;

27 (D) procedures for determining the amount of

1 insurance to be provided to specific risks;

2 (E) time limits and procedures for processing
3 applications for insurance; ~~and~~

4 (F) a plan for the assessment of the Texas FAIR
5 Plan Association; and

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

8 SECTION 10. Section 2210.251, Insurance Code, is amended by
9 adding Subsections (i), (j), and (k) to read as follows:

10 (i) The department may charge a reasonable fee for each
11 inspection in an amount set by commissioner rule. All fees
12 collected under this section shall be deposited to the credit of the
13 Texas Department of Insurance operating account.

14 (j) In the event of an occurrence or series of occurrences
15 within a defined catastrophe area that results in widespread
16 destruction of property, the association may:

17 (1) transfer to the department assets as considered
18 appropriate and necessary by the association to fund inspections,
19 including the funding of expenses for:

20 (A) independent contractors hired by the
21 department to serve as temporary qualified inspectors; and

22 (B) other persons designated by the department to
23 assist with inspections or related responsibilities as necessary to
24 facilitate recovery, rebuilding, and repair in the affected
25 catastrophe area; or

26 (2) hire independent contractors and other persons as
27 described by Subdivision (1) as necessary to facilitate recovery,

1 rebuilding, and repair in the affected catastrophe area.

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

5 SECTION 11. Subchapter F, Chapter 2210, Insurance Code, is
6 amended by adding Section 2210.2521 to read as follows:

7 Sec. 2210.2521. MANDATORY COMPLIANCE WITH CERTAIN BUILDING
8 CODES. Notwithstanding any other provision of this chapter, all
9 construction of, and repairs and additions to, property located in
10 the catastrophe area begun on or after January 1, 2008, must be in
11 compliance with the applicable building code standards set forth in
12 the plan of operation.

13 SECTION 12. Section 2210.351, Insurance Code, is amended by
14 amending Subsection (c) and adding Subsection (f) to read as
15 follows:

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

21 (f) The association's rates must include a premium
22 surcharge in the amount of 10 percent of premium for nonhomestead
23 residential properties.

24 SECTION 13. Section 2210.352, Insurance Code, is amended by
25 amending Subsection (a) and adding Subsection (a-1) to read as
26 follows:

27 (a) Not later than August 15 of each year, the association

1 shall file with the department [~~for approval by the commissioner~~] a
2 proposed manual rate for all types and classes of risks written by
3 the association. Chapter 40 does not apply to:

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

6 (a-1) The association may use a rate filed by the
7 association without prior commissioner approval if:

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

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

12 (3) the filed rate does not reflect a rate change for
13 an individual rating class that is five percent higher than any rate
14 used by the association for that rating class during the preceding
15 12-month period; and

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

19 SECTION 14. Section 2210.354(a), Insurance Code, is amended
20 to read as follows:

21 (a) In conjunction with the review of a filing under Section
22 2210.352 or 2210.353:

23 (1) the commissioner may request the association to
24 provide additional supporting information relating to the filing;
25 and

26 (2) in the case of a filing in which the filed rate
27 exceeds 105 percent of the rate used by the association during the

1 preceding 12-month period, any interested person may file a written
2 request with the commissioner for additional supporting
3 information relating to the filing.

4 SECTION 15. Section 2210.355, Insurance Code, is amended by
5 adding Subsections (h), (i), and (j) to read as follows:

6 (h) The effect of the use of hurricane models in determining
7 the catastrophe element of the association's rates may not increase
8 the association's rates by more than five percent within any
9 calendar year. This subsection does not apply to the reinsurance
10 cost element of the association's rates.

11 (i) The commissioner may limit any increase in the
12 reinsurance cost element of the association's rates after
13 consideration of the effect of the use of hurricane models in
14 determining the catastrophe element of the association's rates.

15 (j) The association may establish rating territories and
16 may vary rates among the territories.

17 SECTION 16. Section 2210.452, Insurance Code, is amended by
18 amending Subsections (a) and (c) and adding Subsection (f) to read
19 as follows:

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

25 (1) the obligations of the trust fund under Section
26 2210.058 [~~2210.058(a)~~]; and

27 (2) the mitigation and preparedness plan established

1 under Section 2210.454 to reduce the potential for payments by
2 association members and the Texas FAIR Plan Association that give
3 rise to tax credits in the event of loss.

4 (c) At the end of each calendar year or policy year, the
5 association shall pay the net gain from operations [~~equity~~] of the
6 association [~~a member~~], including all premium and other revenue of
7 the association in excess of incurred losses and operating
8 expenses, to the trust fund or a reinsurance program approved by the
9 commissioner. For the purposes of this subsection, "operating
10 expenses" includes the cost of any reinsurance.

11 (f) For each calendar year in which an insurer that is a
12 member of the association does not qualify as a fair share company,
13 the insurer must pay an amount equal to 0.5 percent of the insurer's
14 net direct premium for fire insurance, allied lines insurance,
15 homeowners insurance, farm and ranch owners insurance, and
16 commercial multiperil insurance to the association in the manner
17 provided by the plan of operation. The association shall deposit
18 all amounts paid under this subsection in the trust fund.

19 SECTION 17. Section 2210.453, Insurance Code, is amended to
20 read as follows:

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

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

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

27 (b) With the approval of the commissioner [~~department~~], the

1 association may purchase [~~establish a~~] reinsurance [~~program~~] that
2 operates in addition to or in concert with the trust fund and with
3 assessments authorized by this chapter.

4 SECTION 18. Chapter 2210, Insurance Code, is amended by
5 adding Subchapter M to read as follows:

6 SUBCHAPTER M. PUBLIC SECURITIES PROGRAM

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

13 Sec. 2210.602. DEFINITIONS. In this subchapter:

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

16 (2) "Credit agreement" means:

17 (A) a loan agreement;

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

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

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

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

27 (F) an option, put, or call to hedge payment,

1 currency, interest rate, or other exposure; or

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

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

13 (4) "Post-event public securities" means public
14 securities authorized to be issued on or after the occurrence of a
15 catastrophic event.

16 (5) "Pre-event public securities" means public
17 securities authorized to be issued before the occurrence of a
18 catastrophic event.

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

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

26 (8) "Public security obligations" means the principal
27 of a public security and any premium and interest on a public

1 security issued under this subchapter, together with any amount
2 owed under a related credit agreement.

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

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

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

15 Sec. 2210.604. ISSUANCE OF PUBLIC SECURITIES AUTHORIZED.
16 (a) At the request of the association and with the approval of the
17 commissioner, the Texas Public Finance Authority shall issue
18 pre-event or post-event public securities.

19 (b) The association shall specify in the association's
20 request to the board the maximum principal amount of the public
21 securities, not to exceed \$500 million for any separate issue, and
22 the maximum term of the public securities, not to exceed 10 years.

23 (c) The principal amount determined by the association
24 under Subsection (b) may be increased to include an amount
25 sufficient to:

26 (1) pay the costs related to issuance of the public
27 securities;

1 (2) provide a public security reserve fund; and

2 (3) capitalize interest for the period determined
3 necessary by the association, not to exceed two years.

4 Sec. 2210.605. TERMS OF ISSUANCE. (a) The board shall
5 determine the method of sale, type and form of public security,
6 maximum interest rates, and other terms of the public securities
7 that, in the board's judgment, best achieve the goals of the
8 association and effect the borrowing at the lowest practicable
9 cost. The board may enter into a credit agreement in connection
10 with the public securities.

11 (b) Public securities must be issued in the name of the
12 association.

13 Sec. 2210.606. ADDITIONAL COVENANTS. The board may make
14 additional covenants with respect to the public securities and the
15 designated income and receipts of the association pledged to their
16 payment, provide for the flow of funds and the establishment,
17 maintenance, and investment of funds and accounts with respect to
18 the public securities, and the administration of those funds and
19 accounts, as provided in the proceedings authorizing the public
20 securities.

21 Sec. 2210.607. PUBLIC SECURITY PROCEEDS. The proceeds of
22 public securities issued by the board under this subchapter may be
23 deposited with a trustee selected by the association in
24 consultation with the commissioner or held by the comptroller in a
25 dedicated trust fund outside the state treasury in the custody of
26 the comptroller.

27 Sec. 2210.608. USE OF PUBLIC SECURITY PROCEEDS. (a) Public

1 security proceeds, including investment income, shall be held in
2 trust for the exclusive use and benefit of the association. The
3 association may use the proceeds to:

4 (1) pay incurred claims and operating expenses of the
5 association;

6 (2) purchase reinsurance for the association;

7 (3) pay the costs of issuing the public securities,
8 and public security administrative expenses, if any;

9 (4) provide a public security reserve; and

10 (5) pay capitalized interest and principal on the
11 public securities for the period determined necessary by the
12 association, not to exceed two years.

13 (b) Any excess public security proceeds remaining after the
14 purposes for which the public securities were issued are satisfied
15 may be used to purchase or redeem outstanding public securities. If
16 there are no outstanding public security obligations or public
17 security administrative expenses, the excess proceeds shall be
18 transferred to the catastrophe reserve trust fund.

19 Sec. 2210.609. REPAYMENT OF ASSOCIATION'S PUBLIC SECURITY
20 OBLIGATIONS. (a) The association shall pay all public security
21 obligations from available funds collected by the association from
22 and deposited into the public security obligation revenue fund. If
23 the association determines that it is unable to pay the public
24 security obligations and public security administrative expenses,
25 if any, with available funds, the association shall pay those
26 obligations and expenses in accordance with Sections 2210.612 and
27 2210.613.

1 (b) The board shall notify the association of the amount of
2 the public security obligations and the estimated amount of public
3 security administrative expenses, if any, each year in a period
4 sufficient, as determined by the association, to permit the
5 association to determine the availability of funds and assess a
6 premium surcharge if necessary.

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

16 (d) The association shall provide for the payment of the
17 public security obligations and the public security administrative
18 expenses by irrevocably pledging revenues received from premiums,
19 premium surcharges, and amounts on deposit in the public security
20 obligation revenue fund, together with any public security reserve
21 fund, as provided in the proceedings authorizing the public
22 securities and related credit agreements.

23 (e) An amount owed by the board under a credit agreement
24 shall be payable from and secured by a pledge of revenues received
25 by the association or amounts from the obligation trust fund to the
26 extent provided in the proceedings authorizing the credit
27 agreement.

1 Sec. 2210.610. PUBLIC SECURITY PAYMENTS. (a) Revenues
2 received from the premium surcharges under Section 2210.612 or
3 2210.613 may be applied only as provided by this subchapter.

4 (b) The association may pay public security obligations
5 with other legally available funds.

6 (c) Public security obligations are payable only from
7 sources provided for payment in this subchapter.

8 Sec. 2210.611. EXCESS REVENUE COLLECTIONS AND INVESTMENT
9 EARNINGS. Revenue collected in any year from a premium surcharge
10 under Section 2210.612 or 2210.613 that exceeds the amount of the
11 public security obligations and public security administrative
12 expenses payable in that year and interest earned on the public
13 security obligation fund may, in the discretion of the association,
14 be:

15 (1) used to pay public security obligations payable in
16 the subsequent year, offsetting the amount of the premium surcharge
17 that would otherwise be required to be levied for the year under
18 this subchapter;

19 (2) used to redeem or purchase outstanding public
20 securities; or

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

22 Sec. 2210.612. PRE-EVENT PREMIUM SURCHARGE. (a) Each
23 insurer, the association, and the Texas FAIR Plan Association may
24 collect from their policyholders a surcharge in addition to any
25 premiums to pay public security obligations and public security
26 administrative expenses, if any, on pre-event public securities.

27 (b) The association shall determine the premium surcharge

1 at least annually.

2 (c) On approval by the commissioner, each insurer, the
3 association, and the Texas FAIR Plan Association shall assess a
4 premium surcharge to its policyholders as provided by this section.
5 The premium surcharge must be set in an amount sufficient to pay all
6 debt service not already covered by available funds and all related
7 expenses on the public securities. The premium surcharge assessed
8 under this section may not exceed six percent of premium, and may
9 not cumulatively exceed 10 percent of premium over the course of a
10 12-month period beginning with the first assessment of the
11 surcharge.

12 (d) The association shall collect the premium surcharge
13 from its policyholders. Each insurer and the Texas FAIR Plan
14 Association shall collect the premium surcharge from their
15 policyholders who have a property or casualty policy that provides
16 coverage for premises, locations, operations, or property located
17 in the catastrophe area and shall remit the premium surcharge to the
18 association as required by commissioner rule.

19 (e) A premium surcharge under this section shall apply to
20 all policies that provide coverage on any premises, locations,
21 operations, or property located in the catastrophe area for all
22 property and casualty lines of insurance, other than workers'
23 compensation insurance, accident and health insurance, and medical
24 malpractice insurance. The premium surcharge does not apply to
25 premiums charged for any premises, locations, operations, or
26 property located outside the catastrophe area, except for premiums
27 charged by the association for property insured by the association.

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

6 Sec. 2210.613. POST-EVENT PREMIUM SURCHARGE. (a) Each
7 insurer, the association, and the Texas FAIR Plan Association shall
8 collect from their policyholders a premium surcharge to pay public
9 security obligations and public security administrative expenses,
10 if any, on post-event public securities.

11 (b) The association shall determine the premium surcharge
12 at least annually.

13 (c) On approval by the commissioner, each insurer, the
14 association, and the Texas FAIR Plan Association shall assess a
15 premium surcharge to its policyholders as provided by this section.
16 The premium surcharge must be set in an amount sufficient to pay all
17 debt service and all related expenses on the public securities. The
18 premium surcharge assessed under this section may not exceed 3.2
19 percent of premium.

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

26 (e) A premium surcharge under this section shall apply to
27 all policies that provide coverage on any premises, locations,

1 operations, or property located in this state for all property and
2 casualty lines of insurance, other than workers' compensation
3 insurance, accident and health insurance, and medical malpractice
4 insurance. The premium surcharge does not apply to premiums
5 charged for any premises, locations, operations, or property
6 located outside this state.

7 (f) A premium surcharge under this section is a separate
8 charge in addition to the premiums collected and is not subject to
9 premium tax or commissions. Failure to pay the surcharge by a
10 policyholder constitutes failure to pay premium for purposes of
11 policy cancellation.

12 Sec. 2210.614. SOURCE OF PAYMENT; STATE DEBT NOT CREATED.

13 (a) A public security or credit agreement is payable solely from
14 revenue as provided by this subchapter.

15 (b) A public security issued under this subchapter, and any
16 related credit agreement, is not a debt of this state or any state
17 agency or political subdivision of this state, and does not
18 constitute a pledge of the faith and credit of this state or any
19 state agency or political subdivision of this state.

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

22 (1) neither the state nor a state agency, political
23 corporation, or political subdivision of the state is obligated to
24 pay the principal of or interest on the public security except as
25 provided by this subchapter; and

26 (2) neither the faith and credit nor the taxing power
27 of the state or any state agency, political corporation, or

1 political subdivision of the state is pledged to the payment of the
2 principal of or interest on the public security.

3 Sec. 2210.615. STATE NOT TO IMPAIR PUBLIC SECURITY
4 OBLIGATIONS. If public securities under this subchapter are
5 outstanding, the state may not:

6 (1) take action to limit or restrict the rights of the
7 association to fulfill its responsibility to pay public security
8 obligations; or

9 (2) in any way impair the rights and remedies of the
10 public security owners until the public securities are fully
11 discharged.

12 Sec. 2210.616. ENFORCEMENT BY MANDAMUS. A writ of mandamus
13 and any other legal and equitable remedies are available to a party
14 at interest to require the association or another party to fulfill
15 an agreement and to perform functions and duties under:

16 (1) this subchapter;

17 (2) the Texas Constitution; or

18 (3) a relevant public security resolution.

19 Sec. 2210.617. EXEMPTION FROM TAXATION. A public security
20 issued under this subchapter, any transaction relating to the
21 public security, and profits made from the sale of the public
22 security are exempt from taxation by this state or by a municipality
23 or other political subdivision of this state.

24 Sec. 2210.618. NO PERSONAL LIABILITY. The members of the
25 association, association employees, the board, the employees of the
26 Texas Public Finance Authority, the commissioner, and department
27 employees are not personally liable as a result of exercising the

1 rights and responsibilities granted under this subchapter.

2 Sec. 2210.619. AUTHORIZED INVESTMENTS. Public securities
3 issued under this subchapter are authorized investments under:

4 (1) Subchapter B, Chapter 424;

5 (2) Subchapter C, Chapter 425; and

6 (3) Sections 425.203-425.213.

7 SECTION 19. Section 2211.104, Insurance Code, is amended to
8 read as follows:

9 Sec. 2211.104. ADDITIONAL ASSESSMENT IN EVENT OF DEFICIT;
10 PREMIUM SURCHARGE AUTHORIZED. (a) Except as provided by
11 Subsection (f), if [~~If~~] the association incurs a deficit, the
12 association, at the commissioner's direction, shall:

13 (1) request the issuance of public securities as
14 authorized by Subchapter E; or

15 (2) assess participating insurers in accordance with
16 this section.

17 (b) Except as provided by Subsection (f), as [~~As~~]
18 reimbursement for assessments paid under this section or service
19 fees paid under Section 2211.209, each insurer may charge a premium
20 surcharge on every property insurance policy insuring property in
21 this state that the insurer issues, the effective date of which is
22 within the three-year period beginning on the 90th day after the
23 date of the assessment or the 90th day after the date the service
24 fee under Section 2211.209 is paid, as applicable.

25 (c) Except as provided by Subsection (f), insurers [~~The~~
26 ~~insurer~~] shall compute the amount of the surcharge under Subsection
27 (b) as a uniform percentage of the premium on each policy described

1 by Subsection (b). The percentage must be equal to one-third of the
2 ratio of the amount of the participating insurer's assessment or
3 service fee payment to the amount of the insurer's direct earned
4 premiums, as reported to the department in the insurer's financial
5 statement for the calendar year preceding the year in which the
6 assessment or service fee payment is made so that, over the
7 three-year period, the aggregate of all surcharges by the insurer
8 under this section is at least equal to the amount of the assessment
9 or service fee payment.

10 (d) The amount of any assessment paid and surcharged under
11 this section may be carried by the insurer as an admitted asset of
12 the insurer for all purposes, including exhibition in annual
13 statements under Section 862.001, until collected.

14 (e) The commissioner shall adopt rules and procedures as
15 necessary to implement this section.

16 (f) In the event of an occurrence or series of occurrences
17 resulting in deficits for the association and the Texas Windstorm
18 Insurance Association, the commissioner may adopt rules in the
19 manner provided by Subchapter A, Chapter 36, to provide for the
20 coordinated recoupment of those deficits. The rules may not
21 provide for a recoupment of assessments through premium tax
22 credits.

23 SECTION 20. Section 941.003, Insurance Code, is amended by
24 adding Subsection (e) to read as follows:

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

27 SECTION 21. Section 942.003, Insurance Code, is amended by

1 adding Subsection (f) to read as follows:

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

4 SECTION 22. The following laws are repealed:

5 (1) Section 2210.103, Insurance Code; and

6 (2) Section 2210.356, Insurance Code.

7 SECTION 23. (a) The board of directors of the Texas
8 Windstorm Insurance Association established under Section
9 2210.102, Insurance Code, as that section existed before amendment
10 by this Act, is abolished on the 30th day after the effective date
11 of this Act.

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

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

25 SECTION 24. (a) In accordance with Section 311.031(c),
26 Government Code, which gives effect to a substantive amendment
27 enacted by the same legislature that codifies the amended statute,

1 the text of Section 2211.104, Insurance Code, as set out in Section
2 19 of this Act, gives effect to changes made by Chapter 1082, Acts
3 of the 79th Legislature, Regular Session, 2005.

4 (b) To the extent of any conflict, this Act prevails over
5 another Act of the 80th Legislature, Regular Session, 2007,
6 relating to nonsubstantive additions and corrections in enacted
7 codes.

8 SECTION 25. This Act takes effect immediately if it
9 receives a vote of two-thirds of all the members elected to each
10 house, as provided by Section 39, Article III, Texas Constitution.
11 If this Act does not receive the vote necessary for immediate
12 effect, this Act takes effect September 1, 2007.