

By: Jackson, Mike

S.B. No. 1473

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

(b) The association is subject to review under Chapter 325, Government Code (Texas Sunset Act), but is not abolished under that chapter. The association shall be reviewed during the period in which state agencies abolished in 2009 are reviewed. This subsection expires September 1, 2009.

SECTION 2. Subchapter B, Chapter 2210, Insurance Code, is amended by adding Section 2210.0511 to read as follows:

Sec. 2210.0511. REQUIRED PERCENTAGE; SURCHARGE. (a) As a condition of the insurer's authority to engage in the business of property and casualty insurance in this state, each insurer subject to Section 2210.051(a) must write the same percentage of property and casualty insurance policies in the seacoast territory that the insurer writes in this state as a whole.

(b) If the commissioner determines that an insurer subject to Subsection (a) is not in compliance with that subsection, the

1 commissioner shall assess the insurer a surcharge in an amount  
2 equal to five percent of the insurer's total premiums earned in the  
3 preceding calendar year from property and casualty insurance  
4 policies delivered, issued for delivery, or renewed in this state.

5 (c) Amounts collected as surcharges under Subsection (b)  
6 shall be remitted to the department for deposit in the catastrophe  
7 reserve trust fund.

8 (d) An insurer that becomes authorized to write and is  
9 engaged in writing insurance that requires the insurer to be a  
10 member of the association shall comply with Subsection (a) not  
11 later than January 1 of the year after the year in which the insurer  
12 becomes a member of the association.

13 SECTION 3. Section 2210.058, Insurance Code, is amended to  
14 read as follows:

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

21 (b) For each occurrence, not more than 50 percent of the  
22 amount as of the date of the occurrence in the catastrophe reserve  
23 trust fund established under Subchapter J, reduced by anticipated  
24 payments for prior occurrences, may be used, unless the  
25 commissioner determines that a greater percentage should be applied  
26 after at least 10 days' notice and a hearing, if a hearing is  
27 requested by any person within the 10-day notice period.

1           (c) For each occurrence, for ~~[follows:~~

2                   ~~[(1) \$100 million shall be assessed against the~~  
3 ~~members of the association as provided by Subsection (b),~~

4                   ~~[(2)]~~ losses in excess of those paid under Subsection  
5 (b), an amount shall be assessed against the members of the  
6 association in the manner provided by Subsection (i). The amount  
7 may not exceed 2.5 percent of the members' written premiums, as  
8 reported in the annual statement filed with the department for the  
9 calendar year immediately preceding the year in which the  
10 assessment is made, for fire and allied lines insurance, homeowners  
11 insurance, farm and ranch owners insurance, and commercial  
12 multiperil insurance. The association may not assess member  
13 insurers under this subsection more than twice in any calendar  
14 year.

15           (d) For each occurrence, losses ~~[\$100 million shall be paid~~  
16 ~~from the catastrophe reserve trust fund established under~~  
17 ~~Subchapter J and any reinsurance program established by the~~  
18 ~~association,~~

19                   ~~[(3) for losses]~~ in excess of those paid under  
20 Subsections (b) and (c) [Subdivisions (1) and (2), an additional  
21 \$200 million] shall be paid from the proceeds of public securities  
22 issued by the association in accordance with Subchapter M before  
23 any catastrophic event that results in insured losses described  
24 under this section. Any proceeds from public securities that are  
25 received under this subsection must be used before any proceeds  
26 received by the association from public securities that are issued  
27 after any catastrophic event. The association may accelerate the

1 repayment of public securities received under this subsection if  
2 funds are available for that accelerated repayment.

3 (e) For each occurrence, for ~~[assessed against the members~~  
4 ~~of the association, as provided by Subsection (b), and~~

5 [~~(4)~~] losses in excess of those paid under Subsections  
6 (b)-(d), an amount ~~[Subdivisions (1), (2), and (3)]~~ shall be  
7 assessed against members of the association in the manner ~~[, as]~~  
8 provided by Subsection (i) ~~[(b)]~~. The amount may not exceed 2.5  
9 percent of the insurers' written premiums, as reported in the  
10 annual statement filed with the department for the calendar year  
11 immediately preceding the year in which the assessment is made, for  
12 fire and allied lines insurance, homeowners insurance, farm and  
13 ranch owners insurance, and commercial multiperil insurance. The  
14 association may not assess member insurers under this subsection  
15 more than twice in any calendar year.

16 (f) Losses in excess of those paid under Subsections (b)-(e)  
17 shall be paid by the proceeds from public securities issued by the  
18 association in accordance with Subchapter M after any catastrophic  
19 event that results in insured losses described by this section.

20 (g) Losses in excess of those paid under Subsections (b)-(f)  
21 shall be assessed against members of the association in the manner  
22 provided by Subsection (i).

23 (h) Notwithstanding Subsections (b)-(g), losses described  
24 by this section may also be paid from any reinsurance proceeds  
25 recoverable by the association.

26 (i) ~~[(b)]~~ The proportion of the losses allocable to each  
27 insurer under Subsections (c), (e), and (g) ~~[(a)(1), (3), and (4)]~~

1 shall be determined in the manner used to determine each insurer's  
2 participation in the association for the year under Section  
3 2210.052.

4 (j) [~~(c)~~] An insurer may credit an amount paid in accordance  
5 with Subsection (g) [~~(a)(4)~~] in a calendar year against the  
6 insurer's premium tax under Chapter 221. The tax credit authorized  
7 under this subsection shall be allowed without limit for insurers  
8 who write coverage in the first tier coastal counties, and at a rate  
9 not to exceed 20 percent per year for five or more successive years  
10 following the year of payment of the claims for other insurers. The  
11 balance of payments made by the insurer and not claimed as a premium  
12 tax credit may be reflected in the books and records of the insurer  
13 as an admitted asset of the insurer for all purposes, including  
14 exhibition in an annual statement under Section 862.001.

15 SECTION 4. Section 2210.059, Insurance Code, is amended to  
16 read as follows:

17 Sec. 2210.059. NOTIFICATION REGARDING TAX CREDITS. (a) The  
18 association shall immediately notify the department if an  
19 occurrence or series of occurrences in a catastrophe area results  
20 in insured losses that result in a tax credit under Section  
21 2210.058(j) [~~2210.058(c)~~] in a calendar year.

22 (b) On receipt of notice under Subsection (a), the  
23 department shall immediately notify the governor and the  
24 appropriate committees of each house of the legislature of the  
25 amount of insured losses eligible for tax credits under Section  
26 2210.058(j) [~~2210.058(c)~~].

27 SECTION 5. Section 2210.101, Insurance Code, is amended to

1 read as follows:

2 Sec. 2210.101. ACCOUNTABLE TO GOVERNOR [~~COMMISSIONER~~]. The  
3 board of directors is responsible and accountable to the governor  
4 [~~commissioner~~].

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

7 (a) The board of directors is composed of the following nine  
8 members appointed by the governor:

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

12 (2) three [~~two~~] public representatives, at least one  
13 of whom [~~who are nominated by the office of public insurance counsel~~  
14 ~~and who~~], as of the date of the appointment:

15 (A) resides [~~reside~~] in a catastrophe area; and

16 (B) is a policyholder [~~are policyholders~~] of the  
17 association; and

18 (3) two general property and casualty agents:

19 (A) who have demonstrated experience in the  
20 association; and

21 (B) at least one of whom [~~whose principal~~  
22 ~~offices~~], as of the date of the appointment, maintains the agent's  
23 principal office [~~are located~~] in a catastrophe area.

24 SECTION 7. Section 2210.103, Insurance Code, is amended to  
25 read as follows:

26 Sec. 2210.103. TERMS. (a) Members of the board of directors  
27 serve two-year [~~three-year staggered~~] terms[~~, with the terms of~~

1 ~~three members expiring on the third Tuesday of March of each year].~~

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

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

7 SECTION 8. Subchapter F, Chapter 2210, Insurance Code, is  
8 amended by adding Section 2210.258 to read as follows:

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

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

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

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

23 SECTION 9. Section 2210.452, Insurance Code, is amended by  
24 amending Subsections (a) and (d) and by adding Subsection (f) to  
25 read as follows:

26 (a) The commissioner shall adopt rules under which  
27 association members relinquish their net equity on an annual basis

1 as provided by those rules by making payments to the catastrophe  
2 reserve trust fund. The trust fund may be used only to fund:

3 (1) the obligations of the trust fund under Section  
4 2210.058 [~~2210.058(a)~~]; and

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

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

14 (f) The association may use money from the trust fund only  
15 as prescribed by rule by the commissioner.

16 SECTION 10. Chapter 2210, Insurance Code, is amended by  
17 adding Subchapter M to read as follows:

18 SUBCHAPTER M. PUBLIC SECURITIES PROGRAM

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

24 Sec. 2210.602. DEFINITIONS. In this subchapter:

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

27 (2) "Insurer" means each property and casualty insurer



1 authorized to engage in the business of property and casualty  
2 insurance in this state. The term specifically includes a county  
3 mutual insurance company, a Lloyd's plan, and a reciprocal or  
4 interinsurance exchange.

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

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

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

14 (b) The following laws also apply to public securities  
15 issued under this subchapter to the extent consistent with this  
16 section:

17 (1) Chapters 1201, 1202, 1204, 1205, 1231, and 1371,  
18 Government Code; and

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

20 Sec. 2210.604. ISSUANCE OF PUBLIC SECURITIES AUTHORIZED.

21 (a) At the request of the association and with the approval of the  
22 commissioner, the Texas Public Finance Authority shall issue public  
23 securities to:

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

26 (A) establish and maintain reserves to pay  
27 claims;

- 1                   (B) pay incurred claims;
- 2                   (C) pay operating expenses; and
- 3                   (D) purchase reinsurance;
- 4           (2) pay costs related to issuance of the public  
5 securities; and
- 6           (3) pay other costs related to the public securities  
7 as may be determined by the board.

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

14           Sec. 2210.605. TERMS OF ISSUANCE. (a) Public securities  
15 issued under this subchapter may be issued at a public or private  
16 sale.

17           (b) Public securities must:  
18                   (1) be issued in the name of the association; and  
19                   (2) mature not more than 10 years after the date  
20 issued.

21           Sec. 2210.606. CONTENTS OF PUBLIC SECURITY RESOLUTION;  
22 ADMINISTRATION OF ACCOUNTS. (a) In a public security resolution,  
23 the board may:

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

1 accounts; and

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

5 (b) The association shall administer the accounts in  
6 accordance with this subchapter.

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

9 (1) the service fees established under Section  
10 2210.609 or 2210.610, as applicable; or

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

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

16 (c) Each public security must:

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

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

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

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

26 Sec. 2210.608. PAYMENT OF INTEREST. (a) Except as provided  
27 by Subsection (b), all interest on a public security issued as

1 described by Section 2210.058 shall be paid by the association from  
2 the existing premiums and investment income of the association.

3 (b) If the association is unable to pay the interest on a  
4 public security described by Subsection (a) with existing premiums,  
5 the interest on the public securities shall be paid from the service  
6 fees collected in accordance with Sections 2210.609 and 2210.610.

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

8 (a) A fee to service public securities issued by the association  
9 before a catastrophic event may be collected by each insurer, the  
10 association, and the FAIR Plan Association from policyholders who  
11 reside or have operations in, or whose insured property is located  
12 in, the catastrophe area.

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

15 (c) On approval by the commissioner after at least 10 days'  
16 notice and a hearing, if a hearing is requested by any person within  
17 the 10-day notice period, each insurer, the association, and the  
18 FAIR Plan Association shall charge the service fee to its  
19 policyholders. The service fee must be set in an amount sufficient  
20 to pay all debt service and all related expenses on the public  
21 securities. The service fee shall be collected in the form of a  
22 premium surcharge in an amount not to exceed six percent of premium,  
23 and shall be remitted to the association as required by the  
24 commissioner by rule.

25 (d) The premium surcharge shall apply to all insurance  
26 policies for all property and casualty lines other than workers'  
27 compensation, accident and health, and medical malpractice. The

1 service fees collected in the form of a policy surcharge under this  
2 section are separate charges in addition to premiums collected and  
3 are not subject to premium taxes or commissions.

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

7 Sec. 2210.610. POST-EVENT SERVICE FEE; PREMIUM SURCHARGE.

8 (a) A fee to service public securities issued by the association  
9 after a catastrophic event may be collected by each insurer, the  
10 association, and the FAIR Plan Association from policyholders who  
11 reside or have operations in, or whose insured property is located  
12 in, this state.

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

15 (c) On approval by the commissioner after at least 10 days'  
16 notice and a hearing, if a hearing is requested by any person within  
17 the 10-day notice period, each insurer, the association, and the  
18 FAIR Plan Association shall charge the service fee to its  
19 policyholders. The service fee must be set in an amount sufficient  
20 to pay all debt service and all related expenses on the public  
21 securities. The service fee shall be collected in the form of a  
22 premium surcharge in an amount not to exceed 0.5 percent of premium,  
23 and shall be remitted to the association as required by the  
24 commissioner by rule.

25 (d) The commissioner may, after notice and a hearing,  
26 increase the premium surcharge limit under Subsection (c) on a  
27 finding that an occurrence or series of occurrences resulting in

1 losses in the catastrophe area justify a need to:

2 (1) limit assessments made in accordance with Section  
3 2210.058(g); or

4 (2) limit premium tax credits resulting from  
5 assessments in accordance with Section 2210.058(j).

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

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

16 Sec. 2210.611. EXEMPTION FROM TAXATION. Public securities  
17 issued under this subchapter, any interest from those public  
18 securities, and all assets pledged to secure the payment of the  
19 public securities are free from taxation by the state or a political  
20 subdivision of this state.

21 Sec. 2210.612. AUTHORIZED INVESTMENTS. Public securities  
22 issued under this subchapter are authorized investments under  
23 Subchapter B, Chapter 424, and Subchapters C and D, Chapter 425.

24 Sec. 2210.613. STATE PLEDGE REGARDING PUBLIC SECURITY OWNER  
25 RIGHTS AND REMEDIES. (a) The state pledges to and agrees with the  
26 owners of public securities issued in accordance with this  
27 subchapter that the state will not limit or alter the rights vested

1 in the association to fulfill the terms of agreements made with the  
2 owners or in any way impair the rights and remedies of those owners  
3 until the following obligations are fully discharged:

4 (1) the public securities;

5 (2) any bond premium;

6 (3) interest; and

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

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

12 Sec. 2210.614. PAYMENT ENFORCEABLE BY MANDAMUS. A writ of  
13 mandamus and any other legal or equitable remedy are available to a  
14 party in interest to require the association or another party to  
15 fulfill an agreement or perform a function or duty under:

16 (1) this subchapter;

17 (2) the Texas Constitution; or

18 (3) a public security resolution.

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

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

23 SECTION 12. Section 942.003, Insurance Code, is amended by  
24 adding Subsection (f) to read as follows:

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

27 SECTION 13. Subchapter A, Chapter 981, Insurance Code, is

1 amended by adding Section 981.0041 to read as follows:

2 Sec. 981.0041. LIMITATIONS ON UNAFFILIATED SURPLUS LINES  
3 INSURERS. (a) In this section:

4 (1) "Affiliate" means a person or entity described by  
5 Section 823.003(a).

6 (2) "Windstorm insurance" means insurance against:

7 (A) direct loss to insurable property incurred as  
8 a result of windstorm or hail, as those terms are defined and  
9 limited in policies and forms approved by the department under  
10 Chapter 2210; and

11 (B) indirect losses resulting from the direct  
12 loss.

13 (b) Notwithstanding any other provision of this code or  
14 other law, a surplus lines insurer that is not an affiliate of an  
15 insurer that holds a certificate of authority issued by the  
16 department to engage in the business of property and casualty  
17 insurance in this state may only write surplus lines insurance for  
18 property located in this state if the surplus lines insurer also  
19 writes windstorm insurance in this state.

20 SECTION 14. (a) The board of directors of the Texas  
21 Windstorm Insurance Association established under Section  
22 2210.102, Insurance Code, as that section existed before amendment  
23 by this Act, is abolished effective December 31, 2007.

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



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

8           SECTION 15. 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.