

House Bill 2960
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

No equivalent provision.

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

Sec. 2210.001. PURPOSE. (a) An adequate market for windstorm and~~;~~ hail ~~and fire~~ insurance in the seacoast territory is necessary to the economic welfare of this state, and without that insurance, the orderly growth and development of this state would be severely impeded. This chapter provides a method by which adequate windstorm and~~;~~ hail ~~and fire~~ insurance may be obtained in certain designated

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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 2011 are reviewed. The association shall pay the costs incurred by the Sunset Advisory Commission in performing the review of the association under this subsection. The Sunset Advisory Commission shall determine the costs of the review performed under this subsection, and the association shall pay the amount of those costs promptly on receipt of a statement from the Sunset Advisory Commission regarding those costs. This subsection expires September 1, 2011.

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

Sec. 2210.001. PURPOSE. The primary purpose of the Texas Windstorm Insurance Association is the provision of an [An] adequate market for windstorm and~~;~~ hail ~~and fire~~ insurance in the seacoast territory of this state. The legislature finds that the provision of adequate windstorm and hail insurance is necessary to the economic welfare of this state, and without that insurance, the orderly growth and development of this

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portions of the seacoast territory of this state.

(b) The purpose of the Texas Windstorm Insurance Association is to serve as a residual insurer of last resort for windstorm and hail insurance in the seacoast territory. The association shall function in such a manner as to not be a direct competitor in the private market and shall provide insurance coverage to persons who are unable to obtain insurance coverage in the private market.

No equivalent provision.

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state would be severely impeded. This chapter provides a method by which adequate windstorm and[~~;~~] hail[~~;~~ ~~and~~ ~~fire~~] insurance may be obtained in certain designated portions of the seacoast territory of this state.

SECTION 1B. Subchapter A, Chapter 2210, Insurance Code, is amended by adding Section 2210.0025 to read as follows:

Sec. 2210.0025. BIENNIAL REPORT TO LEGISLATURE. On or before December 31 of each even-numbered year, the board of directors shall submit to the commissioner, the appropriate committees of each house of the legislature, and to the Sunset Advisory Commission a written report relating to the operations of the association during the preceding biennium. The report must include:

- (1) any proposed changes in the laws relating to regulation of the association and a statement of the reasons for the changes; and
- (2) any information regarding association operations or procedures that is requested by the department to be

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addressed in the report.

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

Same as House version.

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

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

Same as House version.

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

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

- (1) the residential structure is not:
 - (A) a condominium, apartment, duplex, or other multifamily residence; or
 - (B) a hotel or resort facility; and
- (2) the residential structure is located within an area designated as a unit under the Coastal Barrier Resources Act (Pub. L. No. 97-348)~~]; and~~

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

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

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 the seacoast 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.]~~

~~[(e)]~~ 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.

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

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.]~~

~~[(e)]~~ 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.

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(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.

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(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

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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.

No equivalent provision.

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.]~~

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SECTION 5. 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 6. Sections 2210.052(a), (c), and (d), Insurance Code, are amended 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).

(c) Each member's participation in the association shall be determined annually in the manner provided by the plan of operation. For purposes of determining

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SECTION 6. Same as House version.

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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).

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participation in the association, two or more members that are subject to common ownership or that operate in this state under common management or control shall be treated as a single member. ~~[The determination shall also include the net direct premiums of an affiliate that is under that common management or control, including an affiliate that is not authorized to engage in the business of property insurance in this state.]~~

(d) Notwithstanding Subsection (a), a member, in accordance with the plan of operation, is entitled to receive credit for similar insurance voluntarily written in 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. Incentives adopted under the plan of operation must include a minimum level of participation for an insurer voluntarily writing coverage in a catastrophe area, and may not include a maximum level to cap a member's actual statewide writings compared with other members.

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(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

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operation for reduced assessments for such an insurer for an additional period, not to exceed three years, beyond the initial exemption under this subsection.

No equivalent provision.

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 7. 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 shall be paid as provided by this section.

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) The association shall pay excess losses from available reserves of the association and available amounts in [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 from the catastrophe reserve trust fund established under

(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

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Subchapter J. ~~and any reinsurance program established by the association;~~

(c) ~~For [(3) for] losses in excess of those paid under Subsection (b), catastrophe area public securities may be issued in the manner prescribed by Subchapter M.~~

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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 the association, 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 located in, the catastrophe area. The premium surcharge may not exceed two percent of premium and applies to all policies of insurance for all property and casualty lines, other than workers' compensation insurance, accident and health insurance, and medical malpractice insurance. The premium surcharge collected under this subsection shall be deposited in the catastrophe reserve trust fund. A premium surcharge under this subsection is a separate charge in addition to the premiums collected and is not subject to premium tax or commissions.~~

(c) Losses ~~and any reinsurance program established by the association; [(3) for losses]~~ in excess of those paid under Subsection (b) ~~[Subdivisions (1) and (2), an~~

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Catastrophe area public securities issued under this subsection may be issued before or on or after the occurrence of a catastrophic event in amounts necessary to fund not more than 45 percent of the required solvency level determined under Subchapter N. All catastrophe area public securities obligations shall be paid in the manner prescribed by Section 2210.609, if applicable, and Section 2210.611.

(d) For [Subdivisions (1) and (2), an additional \$200 million shall be assessed against the members of the association, as provided by Subsection (b); and (4)] losses in excess of those paid under Subsections (b) and (c), Class 1 public securities may be issued before or on or after the occurrence of a catastrophic event in the manner prescribed by Subchapter M. Class 1 post-event public securities may be issued only on or after a named storm has caused damage in the seacoast territory and the board of directors has determined that the combination of association reserves, amounts available in the catastrophe reserve trust fund, catastrophe area public securities, and Class 1 pre-event public securities, if any, are insufficient to pay the losses. The board of directors may request the commissioner to authorize Class 1 public

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additional \$200 million] shall be paid as provided by this subsection. For each occurrence, an amount equal to a maximum of 1.25 percent of all the direct premiums written by all the members of the association and the Texas FAIR Plan Association, as reported in the annual statement filed with the department for the calendar year immediately preceding the year in which the assessment is made for fire insurance and allied lines insurance, homeowners insurance, farm and ranch insurance, and commercial multiperil insurance, shall be computed and assessed against the members of the association and the Texas FAIR Plan Association, as provided by Subsection (h). The association may not assess members of the association and the Texas FAIR Plan Association under this subsection more than twice in any calendar year.

(d) Any [(b); and (4)] losses in excess of those paid under Subsections (b) and (c) [Subdivisions (1), (2), and (3)] shall be paid with proceeds from Class 1 public securities authorized to be issued in accordance with Subchapter M before the date of any occurrence that results in insured losses under Subsection (a), as provided by Subsection (i).

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

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

(f) For losses in excess of those paid under Subsections (b)-(e), the board of directors may request the commissioner to authorize Class 2 post-event public securities to be issued under this subsection on or after a catastrophic event in the manner prescribed by Subchapter M. The commissioner may authorize Class 2 post-event public securities under this subsection to pay

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(e) For losses in excess of those paid under Subsections (a), (b), and (c), an amount equal to a maximum of 5.25 percent of all the direct premiums written by all the members of the association and the Texas FAIR Plan Association, as reported in the annual statement filed with the department for the calendar year immediately preceding the year in which the assessment is made for fire insurance and allied lines insurance, homeowners insurance, farm and ranch insurance, and commercial multiperil insurance, shall be computed and assessed against the members of the association and the Texas FAIR Plan Association, as provided by Subsection (h). The association may not assess members of the association and the Texas FAIR Plan Association under this subsection more than twice in any calendar year [assessed against members of the association, as provided by Subsection (b)].

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

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losses above the required solvency level determined under Subchapter N, in an amount sufficient to pay losses but not to exceed \$3 billion. All Class 2 post-event public securities obligations shall be paid in the manner prescribed by Section 2210.614.

(g) Notwithstanding any other provision of this section, the association may pay losses in excess of premium and other revenue of the association with reinsurance proceeds from reinsurance purchased by the association [Subdivisions (1), (2), and (3) shall be assessed against members of the association, as provided by Subsection (b)]. [(b) The proportion of the losses allocable to each insurer under Subsections (a)(1), (3), and (4) shall be determined in the manner used to determine each insurer's participation in the association for the year under Section 2210.052.

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(g) Notwithstanding any other provision of this section, the association may pay losses in excess of premium and other revenue of the association with reinsurance proceeds from reinsurance purchased by the association as authorized under Section 2210.453.

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

(i) Public securities described by Subsection (d) may be issued in principal amounts not to exceed \$1.2 billion. Any public securities proceeds received under Subsection (d) must be used before the proceeds of any public securities that the association authorizes to be issued under Subsection (f) on or after any catastrophic event, and may not be used to fund losses of any

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

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

(c) Subsection (a) does not authorize the association to indemnify a member of the association for participating in the assessments made by ~~[writings, expenses, profits,~~

catastrophic event occurring before the date on which public securities described by Subsection (d) are authorized to be issued.

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

(j-1) Public securities described by Subsection (f) may be issued in principal amounts not to exceed \$5 billion.

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

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

SECTION 10. Same as House version.

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~~and losses of]~~ the association in the manner provided by this chapter.

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

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

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

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

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includes taxes and commissions.

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

SECTION 10. The heading to Subchapter C, Chapter 2210, Insurance Code, is amended to read as follows:
SUBCHAPTER C. ASSOCIATION BOARD OF DIRECTORS; GENERAL POWERS AND DUTIES OF BOARD OF DIRECTORS

SECTION 11. Same as House version.

SECTION 11. Section 2210.101, Insurance Code, is amended to read as follows:
Sec. 2210.101. ACCOUNTABLE TO GOVERNOR AND COMMISSIONER. The board of directors is responsible and accountable to the governor and the commissioner.

No equivalent provision.

SECTION 12. Section 2210.102, Insurance Code, is amended to read as follows:
Sec. 2210.102. COMPOSITION. (a) The board of directors is composed of seven ~~[the following nine]~~ members appointed by the governor in accordance with this section.

(b) Three members must be employed by or affiliated

SECTION 12. Section 2210.102, Insurance Code, is amended to read as follows:
Sec. 2210.102. COMPOSITION. (a) The board of directors is composed of ~~[the following]~~ nine members appointed by the commissioner in accordance with this section.

(b) Four members must be [÷

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with, other than as agents, [:

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

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

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

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

(d) ~~At least two members must, but not more than two members may, be [a catastrophe area; and~~ ~~[(B) are policyholders of the association; and~~ ~~[(3) two]~~ general property and casualty agents licensed under this code, ~~one of whom, as of the date of the appointment, maintains the agent's principal office in the seacoast territory, and one of whom, as of the date of the appointment, does not maintain the agent's principal office in the seacoast territory.~~

(e) All members must have [:

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

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

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

(c) ~~Three~~ members must be [, elected by the members as provided by the plan of operation;

~~[(2) two]~~ public representatives;

(1) ~~at least one of whom [who are nominated by the office of public insurance counsel and who],~~ as of the date of the appointment, ~~resides[:~~

~~[(A) reside]~~ in or owns property in ~~a first tier coastal county [a catastrophe area;] and is a policyholder~~

~~[(B) are policyholders]~~ of the association; ~~and~~

(2) ~~at least one of whom, as of the date of the appointment, does not reside in or own property in the seacoast territory.~~

(d) ~~Two members must be [; and~~

~~[(3) two]~~ general property and casualty agents ~~who are licensed under this code and are not captive agents. Each of the agents, as of the date of the appointment, must maintain the agent's principal office in a first tier coastal county.~~

(e) All members must have [:

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

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

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(f) The commissioner shall appoint one person to serve as a nonvoting member of the board to advise the board regarding issues relating to the inspection process. The commissioner may give preference in an appointment under this subsection to a person who is a qualified inspector under Section 2210.254. The nonvoting member appointed under this section must:
(1) be an engineer licensed by, and in good standing with, the Texas Board of Professional Engineers;
(2) reside in a first tier coastal county; and
(3) be knowledgeable of, and have professional expertise in, wind-related design and construction practices in coastal areas that are subject to high winds and hurricanes.

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

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

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

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

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

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

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

(c) A member of the board of directors may be removed by the commissioner without cause. The commissioner shall appoint a replacement in the manner provided by

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Section 2210.102 for a member who leaves or is removed from the board of directors.

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

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

Same as House version.

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

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

Same as House version.

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(b) A meeting held by telephone conference call, video conference, or other similar telecommunication method:
(1) is subject to the notice requirements applicable to other meetings of the board of directors;
(2) may not be held unless notice of the meeting specifies the location of the meeting;
(3) must be audible to the public at the location specified in the notice under Subdivision (2); and
(4) must provide two-way audio communication between all members of the board attending the meeting during the entire meeting, and if the two-way audio communication link with members attending the meeting is disrupted so that a quorum of the board is no longer participating in the meeting, the meeting may not continue until the two-way audio communication link is reestablished.

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

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

- (1) operates in accordance with this chapter and commissioner rules;
- (2) complies with sound insurance principles; and
- (3) meets **the solvency** standards imposed under this chapter.

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

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

- (1) operates in accordance with this chapter and commissioner rules;
- (2) complies with sound insurance principles; and
- (3) meets **all** standards imposed under this chapter.

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

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

~~[(1)]~~ Texas windstorm and hail insurance in a catastrophe area[; and

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

No equivalent provision.

SENATE VERSION

Same as House version.

CONFERENCE

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

- (a) The plan of operation must:
 - (1) provide for the efficient, economical, fair, and nondiscriminatory administration of the association; and
 - (2) include:
 - (A) a plan for the equitable assessment of the members of the association to defray losses and expenses;
 - (B) underwriting standards;
 - (C) procedures for accepting and ceding reinsurance;
 - (D) procedures for determining the amount of insurance to be provided to specific risks;
 - (E) time limits and procedures for processing applications for insurance; ~~and~~
 - (F) a plan for the assessment of the Texas FAIR Plan Association; and
 - ~~(G)~~ other provisions as considered necessary by the department to implement the purposes of this chapter.

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

(a) A person who has an insurable interest in insurable property may apply to the association for insurance coverage provided under the plan of operation and an inspection of the property, subject to any rules[; ~~including any inspection fee,~~] established by the board of directors and approved by the commissioner. In order to be eligible for insurance through the association, an applicant must demonstrate, in the manner established in the plan of operation, inability to obtain insurance coverage from insurers authorized to engage in the business of property and casualty insurance in this state.

SECTION 19. Section 2210.203, Insurance Code, is

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

(a) A person who has an insurable interest in insurable property may apply to the association for insurance coverage provided under the plan of operation and an inspection of the property, subject to any rules[; ~~including any inspection fee,~~] established by the board of directors and approved by the commissioner. The association shall make insurance available to each applicant in the catastrophe area whose property is insurable property but who, after diligent efforts, is unable to obtain property insurance through the voluntary market, as evidenced by two declinations from insurers authorized to engage in the business of, and writing, property insurance in this state. For purposes of this section, "declination" has the meaning assigned by the plan of operation and may include a refusal to offer coverage and the inability to obtain substantially equivalent insurance coverage and rates. Notwithstanding any other provision of this subsection, a declination or other comparable evidence is not required with an application for renewal of an association policy unless the association has evidence that comparable voluntary market coverage is available at the location of the property to be insured for the same class of risk.

SECTION 20. Section 2210.203, Insurance Code, is

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amended by adding Subsection (a-1) to read as follows:

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

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

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amended by adding Subsection (a-1) to read as follows:

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

SECTION 21. Same as House version.

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follows:

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

IMPORTANT NOTICE TO TEXAS WINDSTORM INSURANCE

ASSOCIATION POLICYHOLDERS

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

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

SECTION 21. Sections 2210.251(a) through (f),

SECTION 22. Section 2210.251, Insurance Code, is

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Insurance Code, are amended to read as follows:

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

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

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

(d) A structure constructed or repaired or to which additions were made before January 1, 1988, that is located in an area that was governed at the time of the construction, repair, or addition by a building code recognized by the association is insurable property

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amended to read as follows:

Sec. 2210.251. INSPECTION REQUIREMENTS.

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

(b) After January 1, 2004, for geographic areas specified by the commissioner, the commissioner by rule shall adopt the 2003 International Residential Code for one- and two-family dwellings published by the International Code Council. For those geographic areas, the commissioner by rule may adopt a subsequent edition of that code and may adopt any supplements published by the International Code Council and amendments to that code.

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

(d) A structure constructed or repaired or to which additions were made before January 1, 1988, that is located in an area that was governed at the time of the construction, repair, or addition by a building code recognized by the association is insurable property

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eligible for windstorm and hail insurance coverage from the association without compliance with the inspection ~~[or approval]~~ requirements of this section or the plan of operation.

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

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

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

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eligible for windstorm and hail insurance coverage from the association without compliance with the inspection ~~[or approval]~~ requirements of this section or the plan of operation.

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

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

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

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

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

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

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

(1) fund inspections, including the funding of expenses for:

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

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

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

(j) Without limitation of the department's authority to otherwise enforce this chapter, the department shall monitor the association's compliance with this subchapter and may take any disciplinary action available under this code to enforce this subchapter, including an action authorized under Chapters 82, 83, and 84.

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

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

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

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

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

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

No equivalent provision.

SECTION 24. Sections 2210.254(a), (c), and (d), Insurance Code, are amended to read as follows:

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

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- (1) a person determined by the board of directors [~~department~~] to be qualified because of training or experience to perform building inspections;
- (2) a licensed professional engineer who meets the requirements specified by the board of directors [~~commissioner rule~~] for appointment to conduct windstorm inspections; and
- (3) an inspector who:
 - (A) is certified by the International Code Council, the Building Officials and Code Administrators International, Inc., the International Conference of Building Officials, or the Southern Building Code Congress International, Inc.;
 - (B) has certifications as a buildings inspector and coastal construction inspector; and
 - (C) complies with other requirements specified by the board of directors [~~commissioner rule~~].
- (b) A windstorm inspection may be performed only by a qualified inspector who is employed by or under contract with the association.

SECTION 24. Section 2210.255, Insurance Code, is

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- (1) a person determined by the board of directors [~~department~~] to be qualified because of training or experience to perform building inspections;
- (2) a licensed professional engineer who meets the requirements specified by the board of directors [~~commissioner rule~~] for appointment to conduct windstorm inspections; and
- (3) an inspector who:
 - (A) is certified by the International Code Council, the Building Officials and Code Administrators International, Inc., the International Conference of Building Officials, or the Southern Building Code Congress International, Inc.;
 - (B) has certifications as a buildings inspector and coastal construction inspector; and
 - (C) complies with other requirements specified by the board of directors [~~commissioner rule~~].
- (c) Before performing building inspections, a qualified inspector must be approved and appointed or employed by the association [~~department~~].
- (d) The association [~~department~~] may charge a reasonable fee for the filing of applications by and determining the qualifications of persons for appointment as qualified inspectors.

SECTION 25. Same as House version.

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amended to read as follows:

Sec. 2210.255. APPOINTMENT OF LICENSED ENGINEER AS INSPECTOR. (a) On request of an engineer licensed by the Texas Board of Professional Engineers, the association may [~~commissioner shall~~] appoint the engineer as an inspector under this subchapter on receipt of information satisfactory to the board of directors [~~not later than the 10th day after the date the engineer delivers to the commissioner information demonstrating~~] that the engineer is qualified to perform windstorm inspections under this subchapter. (b) The board of directors shall consult with the commissioner regarding [~~shall adopt rules establishing~~] the information to be considered in appointing engineers under this section.

No equivalent provision.

SECTION 25. Subchapter F, Chapter 2210, Insurance

SECTION __. Subchapter F, Chapter 2210, Insurance Code, is amended by adding Section 2210.2565 to read as follows:

Sec. 2210.2565. PROCEDURES REGARDING APPOINTMENT OF INSPECTORS. The association shall develop procedures for the appointment and oversight of qualified inspectors appointed under Sections 2210.254 and 2210.255, including procedures relating to the suspension and revocation of an appointment made by the association.

SECTION 26. Subchapter F, Chapter 2210, Insurance

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Code, is amended by adding Section 2210.258 to read as follows:

Sec. 2210.258. SURCHARGE FOR CERTAIN NONCOMPLIANT CONSTRUCTION.

(a) For purposes of this section, property is not in compliance with mandatory building codes if:

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

(2) a certificate of compliance has not been issued in accordance with Section 2210.251(f).

(b) An applicant for coverage from the association or a policyholder of the association whose property is determined to not be in compliance as provided by

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Code, is amended by adding Sections 2210.258 through 2210.261 to read as follows:

Sec. 2210.258. MANDATORY COMPLIANCE WITH BUILDING CODES; ELIGIBILITY.

(a) Notwithstanding any other provision of this chapter, to be eligible for insurance through the association, all construction, alteration, remodeling, enlargement, and repair of any structure located in the catastrophe area that is begun on or after January 1, 2008, must be performed in compliance with the applicable building code standards, as set forth in the plan of operation.

(b) The association may not insure a structure described by Subsection (a) until:

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

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

Sec. 2210.259. EXCEPTION; SURCHARGE FOR CERTAIN NONCOMPLIANT STRUCTURES.

(a) The association may not insure a structure that has not been inspected for compliance with the plan of operation in accordance with Section 2210.251(a) and for which a certificate of compliance has not been issued on the structure in accordance with Section 2210.251(f), unless the structure:

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

(2) was constructed, altered, remodeled, enlarged, or

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Subsection (a) is subject to a premium surcharge for insurance coverage obtained through the association. The surcharge shall be an amount not less than an amount equal to 10 percent of the premium, as determined by the commissioner after notice and a hearing.

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repaired before January 1, 2008, and has not been further altered, remodeled, enlarged, or repaired on or after January 1, 2008; and
(3) was:
(A) insured in the private market within the 12-month period immediately preceding the date of the application;
or
(B) property covered by a self-insured school district or postsecondary institution.
(b) A structure eligible for insurance under Subsection (a) is subject to a premium surcharge for insurance coverage obtained through the association. The commissioner shall determine the surcharge, after notice and a hearing, in an amount not less than an amount equal to 20 percent of the premium.
(c) A premium surcharge collected under this section shall be deposited in the catastrophe reserve trust fund under Subchapter J. A premium surcharge under this section is a separate charge in addition to the premiums collected and is not subject to premium tax or commissions. Failure to pay the surcharge by a policyholder constitutes failure to pay premium for purposes of policy cancellation.
Sec. 2210.260. STRUCTURES NOT SUBJECT TO PREMIUM SURCHARGE. Notwithstanding Section 2210.259, the association may insure without a premium surcharge a structure that:
(1) was constructed or repaired or to which additions were made before January 1, 1988, and not thereafter, and is eligible for association coverage under Section

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

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

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

(d) If at any time the commissioner determines that a filing in effect ~~[approved]~~ under Subsection (c) no longer meets the requirements of this chapter, the commissioner

2210.251(d) or (e); or
(2) is the subject of a certificate of compliance issued by the department and that has not been altered, remodeled, enlarged, or repaired after the date of issuance of the last department certificate.
Sec. 2210.261. RULES. The commissioner may adopt rules to implement Sections 2210.258, 2210.259, and 2210.260.

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

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

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may disapprove [~~after a hearing held on at least 20 days' notice to the association that specifies the matters to be considered at the hearing, issue an order withdrawing approval of~~] the filing in the manner prescribed by Section 2251.104 for disapproval of a rate. [~~The order must specify in what respects the commissioner determines that the filing no longer meets the requirements of this chapter. An order issued under this subsection may not take effect before the 30th day after the date of issuance of the order.~~]

No equivalent provision.

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

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

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

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

- (1) the filing is made not later than the 60th day before the date of any use or delivery for use of the rate;
- (2) the filed rate does not exceed 105 percent of the rate used by the association during the preceding 12-month period;
- (3) the filed rate does not reflect a rate change for an

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individual rating class that is five percent higher than any rate used by the association for that rating class during the preceding 12-month period; and
(4) the commissioner has not provided written notice to the association that the filing will be disapproved or modified under the procedure established under Subsections (b)-(g).

No equivalent provision.

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

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

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

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

(3) include rating factors as necessary to:

(A) fund the catastrophe reserve trust fund;

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

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

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

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

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

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

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

No equivalent provision.

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

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

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

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

No equivalent provision.

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

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

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

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

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

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

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

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

(2) the methodology of use for those models.

subdivision of that county.

(i) Computer simulation models, including models used to estimate hurricane losses, may not be used to develop rates under this chapter.

No equivalent provision.

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

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

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

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

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

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

(c) At the end of each calendar year or policy year, the association shall pay the net gain from operations ~~[equity]~~ of the association ~~[a member]~~, including all premium and other revenue of the association in excess of incurred losses and operating expenses, to the trust fund or a reinsurance program approved by the commissioner.

(d) The commissioner by rule shall establish the procedure relating to the disbursement of money from

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No equivalent provision.

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

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

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

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

(c) At the end of each calendar year or policy year, the association shall pay the net gain from operations ~~[equity]~~ of the association ~~[a member]~~, including all premium and other revenue of the association in excess of incurred losses and operating expenses, to the trust fund or a reinsurance program approved by the commissioner.

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the trust fund to policyholders in the event of an occurrence or series of occurrences within a catastrophe area that results in a disbursement under Section 2210.058 [2210.058(a)].

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

Sec. 2210.453. REINSURANCE PROGRAM.

(a) The association may ~~shall~~:

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

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

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

SECTION 32. Section 2210.454(b), Insurance Code, is

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SECTION 32. Section 2210.453, Insurance Code, is amended to read as follows:

Sec. 2210.453. REINSURANCE PROGRAM.

(a) The association may ~~shall~~:

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

(2) purchase ~~establish a~~ reinsurance to the extent ~~program~~ approved by the commissioner ~~department~~.

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

SECTION __. Section 2210.454(b), Insurance Code, is

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amended to read as follows:

(b) Each state fiscal year, the department may fund the mitigation and preparedness plan using available funds ~~[the investment income of the trust fund in an amount not less than \$1 million and not more than 10 percent of the investment income of the prior fiscal year. From that amount and as part of that plan, the department may use in each fiscal year \$1 million for the windstorm inspection program established under Section 2210.251].~~

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

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

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

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

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amended to read as follows:

(b) Each state fiscal year, the department may fund the mitigation and preparedness plan using available funds ~~[the investment income of the trust fund in an amount not less than \$1 million and not more than 10 percent of the investment income of the prior fiscal year. From that amount and as part of that plan, the department may use in each fiscal year \$1 million for the windstorm inspection program established under Section 2210.251].~~

No equivalent provision.

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

SUBCHAPTER M. PUBLIC SECURITIES PROGRAM

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

Sec. 2210.602. DEFINITIONS. In this subchapter:

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

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

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

(4) "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).

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

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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

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

(7) "Insurer" means each property and casualty insurer 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.

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

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

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.

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

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

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

(13) "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 public securities under this subchapter 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 board of directors of the association and with the approval of the commissioner, the board shall issue public securities to:

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

(A) establish and maintain reserves to pay claims:

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(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.

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- (B) pay incurred claims;
- (C) pay operating expenses; and
- (D) purchase reinsurance;

- (2) provide a reserve fund for the public securities;
- (3) capitalize interest for the period determined by the association, not to exceed two years;
- (4) pay public security administrative expenses; and
- (5) pay other costs related to the public securities as may be determined by the board.

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

Sec. 2210.605. TERMS OF ISSUANCE.

(a) The board shall determine the method of sale, type and form of public security, maximum interest rates, and other terms of the public securities that, in the board's judgment, best achieve the goals of the association and

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

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

- (1) pay the costs related to issuance of the public securities;
- (2) provide a public security reserve fund; and
- (3) capitalize interest for the period determined necessary by the association, not to exceed two years.

Sec. 2210.605. TERMS OF ISSUANCE.

(a) The board shall determine the method of sale, type and form of public security, maximum interest rates, and other terms of the public securities that, in the board's judgment, best achieve the goals of the association and

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effect the borrowing at the lowest practicable cost. The board may enter into a credit agreement in connection with the public securities.

(b) Public securities must include the name of the association.

Sec. 2210.606. CONTENTS OF PUBLIC SECURITY RESOLUTION; ADMINISTRATION OF ACCOUNTS.

(a) In a public security resolution, the board may:

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

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

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

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

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effect the borrowing at the lowest practicable cost. The board may enter into a credit agreement in connection with the public securities.

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

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

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

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

(1) pay incurred claims and operating expenses of the

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

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

- (1) the service fees on assessments established under Section 2210.611, 2210.612, 2210.613, or 2210.614, as applicable; or
- (2) other amounts that the association is authorized to levy, charge, and collect.

(b) The board shall notify the association of the estimated amount of public security administrative expenses and the amount of the public security obligations each year in a period sufficient, as

association:

- (2) purchase reinsurance for the association;
- (3) pay the costs of issuing the public securities, and public security administrative expenses, if any;
- (4) provide a public security reserve; and
- (5) pay capitalized interest and principal on the public securities for the period determined necessary by the association, not to exceed two years.

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

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

(b) The board shall notify the association of the amount of the public security obligations and the estimated amount of public security administrative expenses, if any, each year in a period sufficient, as determined by

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determined by the association, to permit the association to determine the availability of funds and assess a premium surcharge or other assessment if necessary.

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

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

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the association, to permit the association to determine the availability of funds and assess a premium surcharge if necessary.

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

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

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

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

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(e) Revenue deposited into the public security obligation revenue fund that exceeds the amount of the public security obligations payable in that year and interest earned on the public security obligation fund may, in the discretion of the association, be:

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

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

(3) deposited in the catastrophe reserve trust fund.

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

(g) Each public security must:

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

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

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

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

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

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

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

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

(3) deposited in the catastrophe reserve trust fund.

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

Sec. 2210.609. PAYMENT OF INTEREST; PAYMENT OF PRE-EVENT PUBLIC SECURITY OBLIGATIONS. (a) Except as provided by Subsection (b), the association shall pay all interest, and may pay principal, on any pre-event public security issued as described by Section 2210.058(c) or (d) from the existing premiums of the association.

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

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

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

(b) For public securities, the proceeds of which are used to fund excess losses under Section 2210.058(c), the public security obligations and administrative expenses shall be collected from association policyholders each year until all outstanding public security obligations and

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administrative expenses have been satisfied and paid.

(c) The service fee imposed on association policyholders under this section shall be determined and collected as provided by this subsection. The association shall determine the amount of a service fee imposed under this section at least annually. On approval by the commissioner of the amount of a service fee after at least 10 days' notice and a hearing, if a hearing is requested by any person within the 10-day notice period, the association shall charge the service fee to its policyholders. The service fee must be set in an amount sufficient to pay all public security obligations and administrative expenses. The service fee shall be collected in the form of a premium surcharge and shall be remitted to the association as required by the commissioner by rule. The service fees collected under this subsection are separate charges in addition to premiums collected and are not subject to premium taxes or commissions. For purposes of policy cancellation, failure by a policyholder to pay a premium surcharge imposed under this subsection is equivalent to failure to pay premium.

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

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

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

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

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

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

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

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

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

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

(f) A premium surcharge under this section is a separate

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charge in addition to the premiums collected and is not subject to premium tax or commissions. Failure to pay the surcharge by a policyholder constitutes failure to pay premium for purposes of policy cancellation.

Sec. 2210.613. CLASS 2 PREMIUM SURCHARGE.

(a) Each insurer, the association, and the Texas FAIR Plan Association shall collect from their policyholders a premium surcharge to pay public security obligations and public security administrative expenses, if any, on Class 2 public securities.

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

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

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

(e) A premium surcharge under this section shall apply

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to all policies that provide coverage on any premises, locations, operations, or property located in this state for all property and casualty lines of insurance, other than workers' compensation insurance, accident and health insurance, and medical malpractice insurance. The premium surcharge does not apply to premiums charged for any premises, locations, operations, or property located outside this state.

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

Sec. 2210.614. SOURCE OF PAYMENT; STATE DEBT NOT CREATED. (a) A public security or credit agreement is payable solely from revenue as provided by this subchapter.

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

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

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

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

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

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

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

Sec. 2210.614. POST-EVENT SERVICE FEE: CLASS 2 PUBLIC SECURITIES; PREMIUM SURCHARGE.

(a) A fee to service Class 2 public securities issued by the association after a catastrophic event shall be collected by each insurer, the association, and the FAIR Plan Association from policyholders who reside or have operations in, or whose insured property is located in, this state.

(b) The association shall determine the amount of a

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

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

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

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

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

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

(2) in any way impair the rights and remedies of the

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Sec. 2210.615. EXEMPTION FROM TAXATION. Public securities issued under this subchapter, any interest from those public securities, and all assets pledged to secure the payment of the public securities are free from taxation by the state or a political subdivision of this state.

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

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

public security owners until the public securities are fully discharged.

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

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

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

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

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

(1) this subchapter;

(2) the Texas Constitution; or

(3) a public security resolution.

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

SUBCHAPTER N. ASSOCIATION SOLVENCY REQUIREMENTS

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

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

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

(1) Subchapter B, Chapter 424;

(2) Subchapter C, Chapter 425; and

(3) Sections 425.203-425.213.

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Sec. 2210.652. REQUIRED SOLVENCY LEVEL; FUNDING SOURCES. (a) For purposes of this chapter, the "required solvency level" is the level of available internal association funding necessary to pay 100 percent of losses for which the association is liable and that result from a probable maximum loss determined by the board of directors under Section 2210.654.

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

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

(1) association reserves;

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

(3) reinsurance purchased at any level;

(4) catastrophe area public securities; and

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

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

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

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

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

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

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

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

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

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

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

No equivalent provision.

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

No equivalent provision.

SENATE VERSION

SECTION 34. Section 2211.104, Insurance Code, is amended to read as follows:

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

- (1) request the issuance of public securities as authorized by Subchapter E; or
- (2) assess participating insurers in accordance with this section.

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

(c) Except as provided by Subsection (f), insurers [The insurer] shall compute the amount of the surcharge under Subsection (b) as a uniform percentage of the premium on each policy described by Subsection (b). The percentage must be equal to one-third of the ratio of the

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amount of the participating insurer's assessment or service fee payment to the amount of the insurer's direct earned premiums, as reported to the department in the insurer's financial statement for the calendar year preceding the year in which the assessment or service fee payment is made so that, over the three-year period, the aggregate of all surcharges by the insurer under this section is at least equal to the amount of the assessment or service fee payment.

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

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

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

No equivalent provision.

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

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

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No equivalent provision.

SECTION 36. The following laws are repealed:

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

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

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

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SECTION 36. Section 942.003, Insurance Code, is amended by adding Subsection (f) to read as follows:
(f) An exchange is subject to Chapter 2210, as provided by that chapter.

SECTION 37. The following laws are repealed:

- (1) Sections 2210.003(5) and (12), Insurance Code;
- (2) Section 2210.059, Insurance Code;
- (3) Section 2210.256, Insurance Code;
- (4) Section 2210.356, Insurance Code; and
- (5) Subchapters G and I, Chapter 2210, Insurance Code.

SECTION 38. (a) The board of directors of the Texas Windstorm Insurance Association established under Section 2210.102, Insurance Code, as that section existed before amendment by this Act, is abolished effective December 31, 2007.

(b) The **commissioner of insurance** shall appoint the members of the board of directors of the Texas Windstorm Insurance Association under Section 2210.102, Insurance Code, as amended by this Act, **not later than December 31, 2007.**

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

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

SECTION 39. An assessment may not be made before the end of the 2007-2008 state fiscal biennium under Chapter 2210, Insurance Code, as amended by this Act, against any member of the Texas Windstorm Insurance Association until the comptroller has certified that any tax credits allowable to that member under Chapter 2210,

SENATE VERSION

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

SECTION 39. (a) The commissioner of insurance shall adopt rules as required by Sections **2210.452, 2210.612, and 2210.613**, Insurance Code, as amended by this Act, not later than the 180th day after the effective date of this Act.

(b) The Texas Windstorm Insurance Association, through the board of directors of that association, shall propose to the commissioner of insurance amendments to the association's plan of operation as required by Chapter 2210, Insurance Code, as amended by this Act, not later than the 180th day after the effective date of this Act.

No equivalent provision.

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Insurance Code, as that chapter existed immediately before amendment by this Act, may be taken within available revenue that has been certified by the comptroller.

No equivalent provision.

No equivalent provision.

SENATE VERSION

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

SECTION 41. Section 2210.251, Insurance Code, as amended by this Act, applies to an inspection conducted by the Texas Windstorm Insurance Association on or after the effective date of this Act. Except as otherwise specifically provided by that section, a structure that has been inspected and is the subject of a certificate of compliance issued by the Texas Department of Insurance under Section 2210.251(f), Insurance Code, as that section existed immediately before the effective date of this Act, is not required to obtain an inspection certificate from the Texas Windstorm Insurance Association to remain eligible for insurance coverage through that association unless the structure is altered, remodeled, enlarged, or repaired after the effective date of Section 2210.251, as amended by this Act.

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No equivalent provision.

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

(b) The **change** in law made by this Act to Sections 2210.251, 2210.252, 2210.254, and 2210.255, Insurance Code, takes effect September 1, 2008.

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

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

SECTION 43. (a) Except as provided by Subsection (b) of this section, this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

(b) The **changes** in law made by this Act to Sections 2210.251, 2210.252, 2210.254, and 2210.255, Insurance Code, **as amended by this Act, and Section 2210.2565, Insurance Code, as added by this Act,** take effect September 1, 2008.

CONFERENCE