

BILL ANALYSIS

C.S.S.B. 14
By: Fraser
Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Windstorm Insurance Association (TWIA), formerly known as the Texas Catastrophe Property Insurance Association, was established by the 62nd Legislature as a mechanism to provide wind and hail coverage to applicants who otherwise might be unable to obtain insurance in the voluntary market. TWIA is authorized to write limited coverage for wind and hail in areas designated by the commissioner of insurance as "catastrophe areas." Currently, the following areas have been designated as catastrophe areas: the 14 coastal counties (Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Refugio, San Patricio, and Willacy) and those areas in Harris County that are located east of State Highway 146 and inside the city limits of the cities of Seabrook, La Porte, Shoreacres, Pasadena, and Morgan's Point. TWIA's exposure to loss has grown in recent years. The current funding mechanism was developed in 1993, at a time when TWIA's exposure to loss was approximately \$6.5 billion. In 2008, TWIA's exposure to loss was at least \$65 billion. TWIA's current funding structure and formulas for determining rates and premiums, among other key principles, may have been adequate in the past to promote the property market and protect the state revenues. This bill seeks to establish strong, sustainable economic growth along the coast by making necessary insurance coverage available.

C.S.S.B. 14 amends current law relating to the operation and funding of the Texas Windstorm Insurance Association.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of insurance in SECTIONS 7, 37, 41, and 46 of this bill.

ANALYSIS

C.S.S.B. 14 amends the Insurance Code to establish that the primary purpose of the Texas Windstorm Insurance Association is the provision of an adequate market for windstorm and hail insurance in the seacoast territory of Texas and to specify that the association is intended to serve as a residual insurer of last resort for such insurance in that territory. The bill removes language that includes in the association's purpose the provision of an adequate market for fire insurance, and makes conforming changes. The bill requires the association to function in such a manner as to not be a direct competitor in the private market and to provide windstorm and hail insurance coverage to persons who are unable to obtain insurance coverage in the private market. The bill provides that the association is subject to review but not abolishment under the Texas Sunset Act, requires the association to be reviewed during the period in which state agencies abolished in 2015 are reviewed, and sets out provisions relating to the determination and payment of costs incurred by the Sunset Advisory Commission in performing the review. The bill provides that these sunset provisions expire September 1, 2015.

C.S.S.B. 14 requires the association's board of directors, on or before December 31 of each even-numbered year, to submit to the commissioner of insurance, the appropriate committees of each house of the legislature, and the commission a written report relating to the operations of the association during the preceding biennium, and sets forth requirements for the content of the

report. The bill defines "catastrophe reserve trust fund" and "financial instruments" for the purposes of the Texas Windstorm Insurance Association Act. The bill redefines "insurance" for such purposes by removing Texas fire and explosion insurance and makes conforming changes.

C.S.S.B. 14 amends the provision authorizing the commissioner, after notice and a hearing, to designate an area of the state as a catastrophe area under certain conditions to specify that the area is of the seacoast territory and to preclude such a determination that results in an adverse impact to the exposure of the association. The bill authorizes the commissioner to issue orders. The bill authorizes the commissioner to adopt rules as reasonable and necessary to implement the act, and removes provisions including in such orders an order regarding maximum rates, competitive rates, or policy forms.

C.S.S.B. 14 requires Texas Department of Insurance (TDI) to maintain a list of all insurers that engage in the business of property and casualty insurance in the voluntary market in the seacoast territory and to develop incentive programs 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. The bill requires the state auditor to conduct an audit of the association at least once every four years and requires the initial audit to be conducted not later than the fourth anniversary of the effective date of the bill. The bill requires each member of the association to participate in insured losses and operating expenses of the association, in excess of premium and other revenue of the association, rather than participate in the writings, expenses, profits, and losses of the association, in a specified proportion. The bill establishes that an insurer that becomes a member of the association and that has not previously been a member is not subject to participation in any of the association's insured losses and operating expenses in excess of premium and other revenue of the association until the second anniversary of the date on which the insurer first becomes an association member.

C.S.S.B. 14 provides that, if 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 are required to be paid from available reserves of the association and that losses in excess of the available reserves of the association are required to be paid from available amounts in the catastrophe reserve trust fund.

C.S.S.B. 14 establishes that losses not paid from available reserves of the association or the catastrophe reserve trust fund as provided above are required to be paid with proceeds from public securities issued in accordance with the bill's provisions, with association assessments, or with reinsurance in the following categories. The bill requires these funding sources to be used in the following order, with any public securities proceeds received in a particular category being used before the proceeds of any public securities in a subsequent category is authorized to be used:

- Class 1 public securities, in a principal amount not to exceed \$300 million per occurrence, are authorized to be issued as necessary before the date of any occurrence that results in insured losses. The bill authorizes the public securities to be issued if the board of directors determines, before the date of any occurrence, that the amount available from premium and other revenue, in combination with the amounts available from the catastrophe reserve trust fund, may be insufficient to pay insured losses. The bill requires any proceeds received from such public securities before the date of any occurrence that results in insured losses to be used before the proceeds of any of the Class 2 public securities in the following category that the association authorizes to be issued on or after any catastrophic event and prohibits the proceeds from those Class 1 public securities from being used to fund losses of any catastrophic event occurring before the date on which the Class 1 public securities are authorized to be issued.
- Class 2 public securities, in a principal amount not to exceed \$300 million per occurrence, are authorized to be issued as necessary on or after the date of any

occurrence that results in insured losses.

- Nonrecoupable member assessments, in an amount not to exceed \$300 million per occurrence, are required to be assessed against the members of an association for the payment of losses. The bill requires the association to notify each member of the amount of the member's assessment and prohibits a member from recouping an assessment paid through a premium surcharge or tax credit. The bill requires the proportion of the losses allocable to each insurer to be determined in the manner used to determine each insurer's participation in the association for the year.
- Recoupable member assessments, in an amount not to exceed \$100 million per occurrence, are required to be assessed against the members of an association for the payment of losses. The bill requires the association to notify each member of the amount of the member's assessment and requires the proportion of the losses allocable to each insurer to be determined in the manner used to determine each insurer's participation in the association for the year. The bill requires these assessments to be repaid by a nonrefundable premium surcharge collected from certain policyholders in an amount set by the commissioner. The bill establishes that the surcharge is a separate nonrefundable charge in addition to the premiums collected and is not subject to premium tax or commissions, and provides that failure to pay the surcharge constitutes failure to pay premium for purposes of policy cancellation.
- Reinsurance, purchased by the association in an amount not to exceed \$1 billion, the cost of which is required to be paid from premium paid by the policyholders of the association and other revenue of the association.
- Additional association assessments of the members in an amount not to exceed \$750 million per occurrence are authorized to be made by the association for the payment of losses. The bill requires the association to notify each member of the amount of the member's assessments under this provision, with the proportion of the assessment allocable to each insurer determined in the manner used to determine each member's participation in the association. The bill prohibits a member from recouping such an assessment through a premium surcharge. The bill authorizes a member to credit an amount paid in accordance with this provision in a calendar year against the insurer's premium tax, and establishes that such a tax credit shall be allowed at a rate not to exceed 20 percent per year for five or more successive years beginning the calendar year that the assessments under this section are paid. The bill authorizes the balance of payments made by the insurer and not claimed as a premium tax credit to 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. The bill requires the association to immediately notify TDI if an occurrence or series of occurrences in a catastrophe area results in insured losses that result in such a tax credit in a calendar year and requires TDI, on receipt of such notice, to immediately notify the governor and the appropriate committees of each house of the legislature of the amount of insured losses eligible for tax credits.

The bill authorizes the board of directors, with the approval of the commissioner, to use any combination of the financing arrangements described above as necessary to pay excess losses if the board of directors determines that the sale of public securities or the purchase of reinsurance is not possible, or that other financing mechanisms described above are fiscally appropriate or economically beneficial to Texas.

C.S.S.B. 14 establishes that the nine members of the association's board of directors are appointed by the commissioner and makes conforming changes. The bill sets out the revised composition of the board of directors. The bill requires all board members to have demonstrated experience in insurance, general business, or actuarial principles sufficient to make the success of the association probable. The bill sets forth nomination and appointment procedures to fill

vacancies. The bill requires the commissioner to appoint one person to serve as a nonvoting member of the board to advise the board regarding issues relating to the inspection process, and authorizes the commissioner to give preference in such an appointment to a person who is a qualified inspector under provisions relating to property inspections for windstorm and hail insurance. The bill requires the nonvoting board member to be an engineer licensed by, and in good standing with, the Texas Board of Professional Engineers; to reside in a first tier coastal county; and to 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.

C.S.S.B. 14 authorizes the commissioner to remove a member of the board of directors for misconduct, refusal to serve, or other failure to comply with provisions or rules of the Texas Windstorm Insurance Association Act. The bill requires the cause of removal to be stated in writing and posted on the association's website, and authorizes the commissioner to appoint a replacement board member in a certain manner. The bill requires a meeting of the board to be held at a location as determined by the board, except for an emergency meeting. The bill authorizes the board to meet by telephone conference call, videoconference, or other similar telecommunications methods and sets forth requirements regarding a meeting conducted through such a method. The bill establishes that the primary objectives of the board of directors are to ensure that the association operates in accordance with the law and commissioner rules, complies with sound insurance principles, and meets applicable standards. The bill abolishes the association's board of directors, as it existed before amendment by this bill, on December 31, 2009, and requires the commissioner to appoint new board members not later than December 31, 2009. The bill specifies that the term of a person who is serving as a board member immediately before the abolition of that board expires on December 31, 2009, but provides that such a person is eligible for appointment by the commissioner to the new board.

C.S.S.B. 14 requires the association's plan of operation to include procedures for obtaining and repaying amounts under any financial instruments authorized under the Texas Windstorm Insurance Association Act.

C.S.S.B. 14 removes language making a person who applies to the association for insurance coverage subject to a fee for inspection of the property. The bill requires the association to make insurance available to each applicant in the catastrophe area whose property is insurable but who, after diligent efforts, is unable to obtain property insurance through the voluntary market, as evidenced by one declination from an insurer authorized to engage in the business of, and writing, property insurance providing windstorm and hail coverage in the first tier coastal counties. The bill specifies that, for purposes of these provisions, "declination" has the meaning assigned by the association's plan of operation and the bill requires the term to include a refusal to offer coverage and the inability to obtain substantially equivalent insurance coverage for the perils of windstorm and hail. The bill specifies that evidence of one declination is also required with an application for renewal of an association policy. The bill requires each application to the association for initial or renewal coverage also to contain a statement that the property and casualty agent submitting the application possesses proof of the declination and proof of flood insurance coverage or unavailability of that coverage.

C.S.S.B. 14 makes the following provisions applicable only to a structure constructed, remodeled, or enlarged on or after the effective date of this bill and only for insurable property located in areas designated by the commissioner. The bill prohibits the association, if all or any part of the property for which these provisions apply 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, from issuing an insurance policy for initial coverage unless evidence that the property is covered by a flood insurance policy is submitted to the association. The bill requires an agent offering or selling a Texas windstorm and hail insurance policy in any area designated by the commissioner under these provisions to offer flood insurance coverage to the prospective insured, if the coverage is available.

C.S.S.B. 14 specifies that the unearned premium the association is required to refund to an insured and the holder of an unpaid balance if the insured requests cancellation of insurance coverage is less any minimum retained premium set forth in the plan of operation, and requires that minimum retained premium to be for a period of not less than 180 days, except for certain events specified in the plan of operation that reflect a significant change in the exposure or the policyholder concerning the insured property. The bill establishes that a nonrefundable surcharge established under the association act is not refundable under the Insurance Code for any reason or purpose.

C.S.S.B. 14 transfers responsibilities relating to property inspections for windstorm and hail insurance coverage from TDI or the commissioner, as applicable, to the association, and expands the requirements for inspection by the association for consideration as insurable property eligible for such coverage to apply those requirements to a structure that is remodeled or enlarged. The bill requires evidence of previous insurance coverage of a structure under such consideration to reflect coverage for the perils of windstorm and hail for the property within the 12-month period immediately preceding the date of the application for coverage through the association, and authorizes a residential structure insured by the association as of June 1, 2009, to continue coverage through the association subject to the inspection requirements imposed under provisions relating to mandatory building codes. The bill requires the association to charge a reasonable fee for each inspection of each structure in an amount set by the board of directors, and authorizes the fees to be used for operating expenses or for the purchase of reinsurance. The bill requires TDI, without limitation of its authority to otherwise enforce provisions governing the association, to monitor the association's compliance with property inspections for windstorm and hail insurance. The bill prohibits the association from considering any request that a structure be certified as insurable property if, within six months after the final inspection of a structure, the association has not received certain inspection documentation and fees and, if a structure is rejected for coverage, authorizes a person to make a new request for certification and authorizes the structure to be reinspected for compliance with the plan of operation. The bill makes these provisions applicable to an inspection conducted by the association on or after September 1, 2009, and specifies that a structure that has been inspected and is the subject of a certificate of compliance issued by TDI under provisions relating to property inspections for windstorm and hail insurance, as those provisions existed immediately before September 1, 2009, is not required to obtain an inspection certificate from the association to remain eligible for insurance coverage unless the structure is remodeled, enlarged, or repaired on or after September 1, 2009. The bill requires the association to develop procedures for the appointment and oversight of qualified inspectors appointed under these provisions, including procedures relating to the suspension or revocation of an appointment made by the association. The bill redefines "qualified inspector" to make conforming changes. The bill makes these provisions effective September 1, 2009.

C.S.S.B. 14 establishes that, for any structure in the catastrophe area to be eligible for insurance through the association, all construction, remodeling, enlargement, and repair of or addition to the structure that is begun on or after this bill's effective date is required to be performed in compliance with the applicable building code standards, as set forth in the association's plan of operation. The bill prohibits the association from insuring such a structure until the structure has been inspected for compliance with the plan of operation and a certificate of compliance has been issued for the structure. The bill establishes that a noncompliant residential structure insured by the association as of June 1, 2009, that had been approved for insurability under the approval process regulations in effect on that date is subject to an annual premium surcharge in an amount equal to 15 percent of the premium for insurance coverage obtained through the association. The bill makes the surcharge applicable to each policy issued or renewed by the association on or after the effective date of the bill and due on the issuance or renewal of the policy, and requires the surcharge to be deposited in the catastrophe reserve trust fund. The bill establishes that the surcharge is a separate nonrefundable charge in addition to the premiums collected and is not subject to premium tax or commissions, and provides that failure to pay the

surcharge constitutes failure to pay premium for purposes of policy cancellation.

C.S.S.B. 14 requires the commissioner, if the commissioner disapproves a filing by the association, to state in writing the reasons for the disapproval and the criteria the association is required to meet to obtain approval, and removes language relating to TDI's modification of association rate filings. The bill authorizes the association to use a rate filed by the association without prior commissioner approval if certain conditions are met, and removes provisions authorizing the commissioner to issue an order withdrawing approval of a filing. The bill removes language specifying that the proposed manual rate the association is required to file annually with TDI for all types and classes of risks written by the association is for approval by the commissioner and establishing that provisions relating to the duties of the State Office of Administrative Hearings (SOAH) and the commissioner in certain rate setting proceedings do not apply to a manual rate filing by the association or an action by TDI with respect to such a filing. The bill authorizes the association to use a manual rate filed under these provisions without prior commissioner approval if certain requirements are met and removes provisions relating to requirements for an open meeting held by the commissioner regarding such a rate filing and for notice of such filings by TDI with the secretary of state. The bill requires the commissioner to approve or disapprove such a filing in writing not later than October 15, rather than November 15, of the year in which the filing was made. The bill amends provisions relating to an amended filing of a manual rate filing to specify that such a filing is an amended annual filing and requires the commissioner, if the commissioner disapproves an amended annual filing, to state in writing the reasons for the disapproval and the criteria the association is required to meet to obtain approval. The bill removes provisions authorizing the commissioner to hold a hearing regarding an amended filing and setting out the requirements for such a hearing.

C.S.S.B. 14 authorizes the office of public insurance counsel to file a written request with the commissioner for additional supporting information relating to a manual rate filing and removes language relating to the authorization of any interested person filing such a request. The bill establishes that the commissioner's requests for additional supporting information must be submitted to the association not later than the 21st day after the date of receipt of the filing. The bill requires rates for coverage to be sufficient to pay association operating expenses, non-catastrophic claim loads, reinsurance, and other funding requirements of the association as provided under the act. The bill authorizes the consideration of recognized catastrophe models in adopting rates for coverage, and authorizes the association to establish rating territories and to vary rates among the territories. The bill authorizes a rating territory that subdivides a county to be used only if the rate for any subdivision in the county is not more than five percent higher than the rate used by the association in any other subdivision in the county. The bill removes language establishing that provisions relating to the duties of SOAH and the commissioner in certain rate setting proceedings do not apply to an action taken by the commissioner to accept, modify, or reject a recommendation made by the association to reduce coverages or increase deductibles.

C.S.S.B. 14 requires the commissioner to adopt rules under which the association makes payments to the catastrophe reserve trust fund, and removes the requirement that the commissioner adopt rules under which association members relinquish their net equity on an annual basis as provided by those rules by making payments to the trust fund. The bill establishes that the trust fund is authorized to be used only to fund its obligations under provisions relating to the payment of excess losses as set out in the bill and removes language including in the trust fund's authorized use the mitigation and preparedness plan to reduce the potential for payments by association members that give rise to tax credits in the event of loss. The bill authorizes the association, at the end of each calendar year or policy year, to use the net gain from operations of the association to make payments to the trust fund, to procure reinsurance, or both. The bill authorizes the association to purchase reinsurance that operates in addition to or in concert with the trust fund, public securities, financial instruments, and assessments authorized under the association act. The bill removes provisions authorizing the association, at the end of each calendar year or policy year, to pay the net equity of a member to

the trust fund or a reinsurance program approved by the commissioner and requiring the association to make payments into the trust fund or establish such a reinsurance program that operates in addition to or in concert with the trust fund.

C.S.S.B. 14 authorizes TDI, each state fiscal year, to fund the mitigation and preparedness plan using available funds, rather than using the investment income of the trust fund with certain limitations. The bill removes a provision authorizing TDI, from that amount of investment income and as part of that plan, to use in each fiscal year \$1 million for the windstorm inspection program.

C.S.S.B. 14 prohibits an action brought against the association relating to a claims dispute from being transferred by the judicial panel on multidistrict litigation. The bill requires the board of directors of the Texas Public Finance Authority, at the request of the association and with the approval of the commissioner, to issue Class 1 or Class 2 public securities. The bill establishes that the legislature finds that authorizing the issuance of public securities under these provisions 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. The bill requires the finance authority board to issue these public securities in accordance with and subject to the requirements of Government Code provisions that apply to the issuance of a public security by a state agency. The bill establishes that, in the event of a conflict, these provisions control.

C.S.S.B. 14 requires the association to specify in the association's request to the finance authority board the maximum principal amount and the maximum term of the public securities, and authorizes the principal amount determined by the association to be increased to include an amount sufficient to pay the costs related to issuance of the public securities; to provide a public security reserve fund; and to capitalize interest for the period determined necessary by the association, not to exceed two years. The bill requires the finance authority board to determine the terms of issuance of the securities, authorizes the board to enter into a credit agreement in connection with the public securities, and requires the public securities to be issued in the name of the association. The bill authorizes the finance authority board to 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. The bill authorizes the public security proceeds to be deposited with a trustee selected by the association in consultation with the commissioner or held by the comptroller of public accounts in a dedicated trust fund outside the state treasury in the custody of the comptroller. The bill requires the public security proceeds to be held in trust for the exclusive use and benefit of the association, sets forth the authorized uses for the proceeds, and authorizes any proceeds remaining after satisfying the purposes for which the public securities were issued to be used to purchase or redeem outstanding public securities. The bill requires the excess proceeds to be transferred to the catastrophe reserve trust fund if there are no outstanding public security obligations or public security administrative expenses.

C.S.S.B. 14 requires the association to pay all public security obligations from available funds collected by the association and deposited into the public security obligation revenue fund, and requires the association, if it determines it is unable to pay the public security obligations and public security administrative expenses with available funds, to pay those obligations and expenses in accordance with provisions relating to the assessment of Class 1 and Class 2 premium surcharges, as applicable. The bill sets out provisions relating to the notification requirements for the finance authority board, the deposit of collected revenue, the transfer of funds to ensure timely payment of obligations and expenses, the payment of public security obligations and administrative expenses, and the payment of amounts owed by the board under a credit agreement.

C.S.S.B. 14 authorizes revenues received from the premium surcharges to be applied only as provided by these provisions and authorizes the association to pay public security obligations with other legally available funds. The bill provides that public security obligations are payable only from excess revenue collections and investment earnings and from Class 1 and Class 2 premium surcharges, and specifies the authorized uses of funds from each source.

C.S.S.B. 14 requires the association to pay interest on pre-event Class 1 public securities from its premium and certain other revenue. The bill requires each insurer and the association to collect the Class 1 and Class 2 premium surcharges from their catastrophe area policyholders, requires the association to determine the surcharges at least annually, and sets out procedures for making that determination and collecting the surcharges. The bill establishes that a premium surcharge under these provisions is a separate nonrefundable charge in addition to the premiums collected and is not subject to premium tax or commissions, and that failure to pay the surcharge by a policyholder constitutes failure to pay premium for purposes of policy cancellation.

C.S.S.B. 14 authorizes the association to request the finance authority board to refinance any public securities issued in accordance with provisions relating to the payment of losses in excess of the association's revenue, whether Class 1 or Class 2 public securities, with the refinanced public securities payable from the same sources as the original public securities. The bill establishes that a public security or credit agreement is payable solely from revenue and specifies that a public security issued under these provisions, and any related credit agreement, is not a debt of the state or any state agency or political subdivision of the state and does not constitute a pledge of the faith and credit of the state or any state agency or political subdivision. The bill sets forth the disclosure information that is required to appear on the face of each public security and any related credit agreement. The bill prohibits the state, if public securities under these provisions are outstanding, from taking action to limit or restrict the rights of the association to fulfill its responsibility to pay public security obligations or in any way to impair the rights and remedies of the public security owners until the public securities are fully discharged. The bill establishes that 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 certain agreements and to perform certain functions and duties. The bill exempts a public security issued under these provisions, any transaction relating to such a public security, and profits made from the sale of the public security from taxation by the state or by a municipality or other political subdivision of the state and exempts members of the association, members of the association board of directors, association employees, the finance authority board, Texas Public Finance Authority employees, the commissioner, and TDI employees from personal liability as a result of exercising the rights and responsibilities granted under these provisions. The bill sets forth the statutory provisions under which public securities are considered authorized investments. The bill defines "board," "Class 1 public securities," "Class 2 public securities," "credit agreement," "insurer," "public security," "public security administrative expenses," "public security obligations," "public security obligation revenue fund," and "public security resolution" for purposes of these provisions.

C.S.S.B. 14 establishes the windstorm insurance legislative oversight board, provides that the board consists of six members, and sets forth the composition of the board. The bill requires the board to receive information about rules proposed by TDI relating to windstorm insurance and authorizes the board to submit comments to the commissioner on the proposed rules. The bill requires the board to monitor windstorm insurance in Texas, including the fairness of rates, the operation of the association, and the availability of coverage and to review recommendations for legislation proposed by TDI or the association. The bill authorizes the board to request reports and other information from TDI and the association as necessary to implement provisions relating to the powers and duties of the board. The bill requires the board to report to the governor, the lieutenant governor, and the speaker of the house of representatives on the board's activities not later than November 15 of each even-numbered year, and requires the report to include an analysis of any problems identified and recommendations for any legislative action necessary to address those problems and to foster stability, availability, and competition within

the windstorm insurance industry. The bill defines "board" for purposes of these provisions.

C.S.S.B. 14 repeals provisions relating to the deletion of insurance coverages available through the association and to insurance coverage for certain governmental entities. The bill repeals provisions authorizing disciplinary proceedings regarding appointed inspectors who perform property inspections for windstorm and hail insurance effective September 1, 2009. The bill repeals provisions relating to uniform rate requirements, the use of certain surcharges in developing rates, and the effect on rates of certain other insurance coverages. The bill repeals provisions relating to the Windstorm Building Code Advisory Committee.

C.S.S.B. 14 requires the commissioner of insurance to adopt rules as required by these provisions as soon as possible after the effective date of the bill, but not later than the 30th day after the effective date. The bill requires the association, through its board of directors, to propose to the commissioner amendments to the association's plan of operation not later than March 1, 2010.

C.S.S.B. 14 repeals the following provisions of the Insurance Code:

- Sections 2210.003(5) and (12)
- Sections 2210.058 and 2210.059
- Sections 2210.205 and 2210.206
- Sections 2210.256 and 2210.257
- Sections 2210.356, 2210.360, and 2210.363
- Subchapter G, Chapter 2210

EFFECTIVE DATE

Except as otherwise provided, on passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 14 adds a provision not in the original defining "financial instruments" for the purposes of the Texas Windstorm Insurance Association Act. The substitute restores language struck in the original requiring the Texas Department of Insurance (TDI) to post notice and hold a hearing to consider a proposed order relating to the implementation of the Act and authorizing any person to appear at the hearing and testify for or against the adoption of the order. The substitute adds provisions not in the original requiring the state auditor to conduct an audit of the association at least every four years and requiring the initial audit to be conducted not later than the fourth anniversary of the effective date of the bill.

C.S.S.B. 14 differs from the original by requiring losses in excess of premium and other revenue of the association to be paid from available reserves of the association and losses in excess of the available reserves of the association to be paid from available amounts in the catastrophe reserve trust fund, whereas the original requires such losses to be paid from available reserves of the association and from available amounts in the catastrophe reserve trust fund. The substitute differs from the original in the funding sources it requires to be used for the payment of losses not paid from available reserves of the association or the catastrophe reserve trust fund, the priority of those sources, and the amounts per occurrence to be paid from those sources. The substitute specifies that these funding sources be used in the following order for the payment of losses:

- Class 1 public securities, in a principal amount not to exceed \$300 million per occurrence.
- Class 2 public securities, in a principal amount not to exceed \$300 million per occurrence.
- Nonrecoupable member assessments, in an amount not to exceed \$300 million per occurrence.

- Recoupable member assessments, in an amount not to exceed \$100 million per occurrence.
- Reinsurance, purchased by the association in an amount not to exceed \$1 billion, the cost of which is required to be paid from premium paid by the policyholders of the association and other revenue of the association.
- Additional association assessments of the members in an amount not to exceed \$750 million per occurrence.

The original specifies that these funding sources be used in the following order for the payment of excess losses:

- Catastrophe reserve trust fund and any available reinsurance; if losses exceed the funds available from those sources, insured losses are paid by an assessment of members of the association in an amount not greater than \$400 million and with such assessments not to exceed that amount in a calendar year.
- Class 1 public securities, in a principal amount not to exceed \$600 million per occurrence.
- Class 2 public securities, in a principal amount not to exceed \$1 billion per occurrence.
- An association assessment of \$300 million per occurrence, which may not be assessed more than twice in any calendar year.
- Class 2 public securities, in a principal amount not to exceed \$500 million per occurrence.
- Class 2 public securities, in a principal amount not to exceed \$2.8 billion per occurrence.
- Additional association assessments of the members. The original prohibits a member from recouping such an assessment through a premium surcharge and authorizes a member to credit the amount paid in a calendar year against the insurer's premium tax at a rate not to exceed 20 percent per year for five or more successive years beginning the calendar year that the assessments under this section are paid.

C.S.S.B. 14 differs from the original by authorizing the board of directors, with the approval of the commissioner, to use any combination of the financing arrangements described in its provisions as necessary to pay excess losses if the board determines that the sale of public securities or the purchase of reinsurance is not possible, or that other financing mechanisms are fiscally appropriate or economically beneficial to Texas, whereas the original authorizes the association to borrow from, or enter into other financing arrangements with, any market sources at prevailing interest rates as authorized by provisions in the original and as necessary to pay insured losses. The substitute removes provisions in the original relating to the funding categories involving Class 1 and Class 2 public securities to authorize payment of insured losses in those categories from available reinsurance, proceeds from certain financial instruments, or a combination of public securities, reinsurance, and financial instruments.

C.S.S.B. 14 differs from the original by modifying provisions relating to the composition of the board of directors and adds a provision not in the original authorizing the commissioner to remove a member of the board for misconduct, refusal to serve, or other failure to comply with provisions or rules of the Texas Windstorm Insurance Association Act, whereas the original authorizes removal with cause. The substitute differs from the original by requiring the association's plan of operation to include procedures for obtaining and repaying amounts under any financial instruments authorized under the Act, whereas the original requires the association's plan of operation to include procedures for obtaining and repaying amounts pursuant to financial instruments authorized under the bill's provisions relating to the payment of losses in excess of the association's premium and other revenue.

C.S.S.B. 14 differs from the original by prohibiting the association from issuing an insurance policy for initial coverage of a structure that is constructed, remodeled, or enlarged on or after the effective date of the bill and is located in Zone V or another similar zone with an additional hazard associated with storm waves unless evidence that the property is covered by a flood insurance policy is submitted to the association, whereas the original prohibits the association

from issuing a new or renewal insurance policy to any property located in Zone V or another similar zone with an additional hazard associated with storm waves unless evidence that the property is covered by a flood insurance policy is submitted to the association. The substitute adds a provision not included in the original requiring an agent offering or selling a Texas windstorm and hail insurance policy in any area designated by the commissioner under these provisions to offer flood insurance coverage to the prospective insured, if the coverage is available. The bill adds a provision not in the original making these provisions applicable to a structure constructed, remodeled, or enlarged on or after the effective date of the act and only for insurable property located in areas designated by the commissioner.

C.S.S.B. 14 removes language in the original that applies provisions relating to an inspection for consideration of eligibility for insurance to a structure that is altered. The substitute differs from the original by establishing that certain noncompliant residential structures insured by the association are subject to an annual premium surcharge in an amount equal to 15 percent of the premium for insurance coverage obtained through the association, whereas the original establishes this surcharge in an amount not less than 15 percent. The substitute differs from the original by authorizing the office of public insurance counsel to file a written request with the commissioner for additional supporting information relating to a manual rate filing and removing language relating to the authorization of any interested person to file such a request, whereas the original removes language authorizing any interested person to file such a request.

C.S.S.B. 14 adds a provision not in the original requiring rates to be sufficient to pay association operating expenses, non-catastrophic claim loads, reinsurance, and other funding requirements of the association as provided under the Act. The substitute differs from the original by authorizing the consideration of recognized catastrophe models in adopting rates for coverage, whereas the original adds recognized catastrophe models to the information that is required to be considered in adopting rates for coverage. The substitute adds a provision not in the original authorizing a rating territory that subdivides a county to be used only if the rate for any subdivision in the county is not more than five percent higher than the rate used by the association in any other subdivision in the county. The substitute removes a provision in the original requiring the association to begin implementing rates that are actuarially sound as determined by the association not later than September 1, 2009, and requiring all rates used by the association for an initial policy or renewal policy to be actuarially sound as determined by the association not later than August 31, 2012.

C.S.S.B. 14 adds a provision not in the original prohibiting an action brought against the association relating to a claims dispute from being transferred by the judicial panel on multidistrict litigation. The substitute restores language struck in the original relating to an action regarding unfair methods of competition or unfair or deceptive acts or practices in the business of insurance in a claim dispute. The bill removes provisions in the original relating to actions for policy benefits, certain exclusive remedies, and the establishment of venue. The substitute differs from the original by defining "Class 1 public securities" as public securities authorized to be issued before the occurrence of a catastrophic event, whereas the original defines the term as public securities authorized to be issued before or on or after the occurrence of a catastrophic event.

C.S.S.B. 14 adds provisions not in the original relating to Class 1 premium surcharges requiring the association to pay interest on pre-event Class 1 public securities issued to pay losses from its premium and other revenue and requiring each insurer and the association to pay pre- and post-event principal and interest on Class 1 public securities from their policyholder surcharges. The substitute adds provisions not in the original requiring the association to assess Class 1 and Class 2 premium surcharges to policyholders who have a property or casualty insurance policy or Texas windstorm and hail insurance policy that provides coverage for premises, locations, operations, or property located in a catastrophe area, first tier coastal county, or that part of a second tier coastal county that is included in coverage through the association; requiring each insurer to remit the premium surcharge to the association as required by commissioner rule; and

including a policy covering property located in a catastrophe area, first tier coastal county, or that part of a second tier coastal county that is included in coverage through the association in the policies to which a premium surcharge applies. The substitute removes language in the original requiring the Texas FAIR Plan Association to collect Class 1 and Class 2 surcharges from its policyholders. The substitute removes provisions in the original requiring the collection of Class 1 Premium surcharges from policyholders to pay principal and interest on any financial instruments entered into by the association, relating to the setting and assessment of premium surcharges to pay debt service and the collection of premium surcharge from policyholders, and requiring the percent of premium assessed as surcharges to be at least twice the percent of premium assessed as surcharges to all other policies. The substitute removes provisions in the original requiring the collection of Class 2 premium surcharges from policyholders to pay certain public security obligations and public security administrative expenses and principal and interest on financial instruments entered into by the association. The substitute removes provisions in the original relating to the collection of Class 2 premium surcharges from policyholders who have property or casualty policy that provides coverage from premises, locations, operations, or property located in Texas requiring each insurer, the association, and the Texas FAIR Plan Association to remit Class 2 premium surcharges to the association as required by commissioner rule, making such premium surcharges inapplicable to premiums charged for premises, locations, operations, or property located outside Texas, requiring 70 percent of the premium surcharge to be assessed on policyholders who have property or casualty property located in a catastrophe area, and requiring the percent of premium assessed as surcharges to be twice the percent of premium assessed as surcharges to all other new or renewal policies.

C.S.S.B. 14 adds provisions not included in the original relating to the establishment of the windstorm insurance legislative oversight board and requirements relating to the board's composition, powers and duties, and reports. The substitute differs from the original by retaining a provision repealed in the original relating to limitations on certain rate changes for windstorm and hail insurance coverage issued by the association.