

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 14  
By: Fraser  
Business & Commerce  
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Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Texas Windstorm Insurance Association (TWIA), known as the Texas Catastrophe Property Insurance Association until September 1, 1997, was established by the 62nd Texas Legislature in 1971, as a mechanism to provide wind and hail coverage to applicants 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 fourteen 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 has grown exponentially 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 over \$65 billion, while TWIA generated less than \$100 million in revenue available to pay losses. 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 of TWIA and the Texas FAIR Plan Association and makes an appropriation.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the commissioner of insurance (commissioner) in SECTION 7 (Section 2210.008, Insurance Code) of this bill.

Rulemaking authority previously granted to the commissioner is modified in SECTION 38 (Section 2210.452, Insurance Code) of this bill.

Rulemaking authority previously granted to the commissioner is rescinded in SECTION 19 (Section 2210.151, Insurance Code) and SECTION 28 (Section 2210.255, Insurance Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 2210.001, Insurance Code, as follows:

Sec. 2210.001. PURPOSE. Provides that the primary purpose of the Texas Windstorm Insurance Association (TWIA) is the provision of an adequate market for windstorm and hail insurance, rather than windstorm, hail, and fire insurance, in the seacoast territory of this state. Provides that 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 state would be severely impeded. Provides that this chapter provides a method by which adequate windstorm and hail, rather than windstorm, hail, and fire, insurance is authorized to be obtained in certain designated portions of the seacoast territory of this state. Provides that TWIA is intended to serve as a residual insurer of last resort for windstorm and hail insurance in the seacoast territory. Requires TWIA to function in such a manner as to not be a direct

competitor in the private market, and provide windstorm and hail insurance coverage to those who are unable to obtain that coverage in the private market.

SECTION 2. Amends Section 2210.002, Insurance Code, as follows:

Sec. 2210.002. New heading: SHORT TITLE; SUNSET PROVISION. (a) Creates this subsection from existing text.

(b) Provides that TWIA is subject to review under Chapter 325, Government Code (Texas Sunset Act), but is not abolished under that chapter. Requires TWIA to be reviewed during the period in which state agencies abolished in 2015 are reviewed. Requires TWIA to pay the costs incurred by the Sunset Advisory Commission (sunset commission) in performing the review of TWIA under this subsection. Requires the sunset commission to determine the costs of the review performed under this subsection, and requires TWIA to pay the amount of those costs promptly on receipt of a statement from the sunset commission regarding those costs. Provides that this subsection expires September 1, 2015.

SECTION 3. Amends Subchapter A, Chapter 2210, Insurance code, by adding Section 2210.0025, as follows:

Sec. 2210.0025. BIENNIAL REPORT TO LEGISLATURE. Requires the TWIA board of directors (board), on or before December 31 of each even-numbered year, to submit to the commissioner of insurance (commissioner), the appropriate committees of each house of the legislature, and the sunset commission a written report relating to the operations of TWIA during the preceding biennium. Requires that the report include any proposed changes in the laws relating to regulation of TWIA and a statement of the reasons for the changes and any information regarding TWIA operations or procedures that is requested by the Texas Department of Insurance (TDI) to be addressed in the report.

SECTION 4. Amends Section 2210.003, Insurance Code, by adding Subdivision (3-a) and amending Subdivision (6), to define "catastrophe reserve trust fund" and redefine "insurance."

SECTION 5. Amends Section 2210.004(a), Insurance Code, to redefine "insurable property."

SECTION 6. Amends Section 2210.005, Insurance Code, as follows:

Sec. 2210.005 New heading: DESIGNATION AS CATASTROPHE AREA; REVOCATION OF DESIGNATION. (a) Authorizes the commissioner, after at least 10 days' notice and a hearing, to designate an area of the seacoast territory of this state as a catastrophe area if the commissioner determines, unless such a determination results in an adverse impact to the exposure of TWIA, 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) Deletes existing text authorizing the commissioner, after at least 10 days' notice and a hearing, to 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. Requires the commissioner to revoke a designation made under Subsection (a), rather than Subsection (a) or (b), if the commissioner determines, after at least 10 days' notice and a hearing, that the applicable insurance coverage is no longer reasonably unavailable to a substantial number of owners of insurable property within the designated territory.

(c) Authorizes TWIA, if TWIA determines that windstorm and hail insurance, rather than 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, rather than a catastrophe

area or inadequate fire insurance area, as applicable, to request in writing that the commissioner revoke the designation.

SECTION 7. Amends Section 2210.008, Insurance Code, as follows:

Sec. 2210.008. New heading: DEPARTMENT ORDERS; GENERAL RULEMAKING AUTHORITY. (a) Authorizes the commissioner to issue any orders that the commissioner considers necessary to implement this chapter. Deletes existing text authorizing the commissioner to issue orders after notice and hearing as provided by Subsection (b), including order regarding maximum rates, competitive rates, and policy forms.

(b) Authorizes the commissioner to adopt rules in the manner prescribed by Subchapter A (Rules), Chapter 36 (Department Rules and Procedures), as reasonable and necessary to implement this chapter. Deletes existing text requiring TDI, before the commissioner adopts an order, to post notice of the hearing on the order at the secretary of state's office in Austin and hold a hearing to consider the proposed order. Deletes existing text authorizing any person to appear at the hearing and testify for or against the adoption of the order.

SECTION 8. Amends Subchapter A, Chapter 2210, Insurance Code, by adding Section 2210.009, as follows:

Sec. 2210.009. LIST OF PRIVATE INSURERS; INCENTIVE PLAN. (a) Requires 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.

(b) Requires TDI to develop incentive programs in the manner described by Section 2210.053(b) (relating to the development of programs to improve the efficient operation of TWIA) to encourage authorized insurers to write insurance on a voluntary basis and to minimize the use of TWIA as a means to obtain insurance.

SECTION 9. Amends Section 2210.052, Insurance Code, by amending Subsections (a) and (d) and adding Subsection (e), as follows:

(a) Requires each member of TWIA to participate in insured losses and operating expenses of TWIA, in excess of premium and other revenue of TWIA, rather than participate in the writings, expenses, profits, and losses of TWIA, 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 TWIA, as determined using the information provided under Subsection (b) (relating to the review of annual statements and information).

(d) Entitles a member, notwithstanding Subsection (a), in accordance with the plan of operation, to receive credit for similar insurance voluntarily written in areas, rather than an area, designated by the commissioner. Requires that the member's participation in the insured losses and operating expenses of TWIA in excess of premium and other revenue of TWIA, rather than the writings of TWIA, be reduced in accordance with the plan of operation.

(e) Provides that an insurer, notwithstanding Subsections (a)-(d), that becomes a member of TWIA and that has not previously been a member of TWIA is not subject to participation in any insured losses and operating expenses of TWIA in excess of premium and other revenue of TWIA until the second anniversary of the date on which the insurer first becomes a member of TWIA.

SECTION 10. Amends Section 2210.056(b), Insurance Code, to prohibit TWIA's assets from being used for or diverted to any purpose other than to satisfy, in whole or in part, the obligations of TWIA incurred in connection with Subchapters B-1, J, and M, including reinsurance, public securities, and financial instruments. Makes a nonsubstantive change.

SECTION 11. Amends Section 2210.060(c), Insurance Code, to provide that Subsection (a) (relating to TWIA indemnifying each director, officer, and employee of TWIA) does not authorize TWIA to indemnify a member of TWIA for participating in the assessments made by, rather than writings, expenses, profits, and losses of, TWIA in the manner provided by this chapter.

SECTION 12. Amends Chapter 2210, Insurance Code, by adding Subchapter B-1, as follows:

#### SUBCHAPTER B-1. PAYMENT OF LOSSES

**Sec. 2210.071. RESERVES SOLVENCY ASSESSMENT; PREMIUM SURCHARGES.**

(a) Requires TWIA, to ensure available reserves and the capacity to pay excess losses, to assess the members of TWIA \$250 million once in 2009, and \$250 million once in 2010, with the proportion of the assessment allocable to each insurer determined in the manner used to determine each member's participation in TWIA under Section 2210.052. Requires TWIA, not later than the 30th day before the date on which the assessment is due, to notify each member of TWIA of the amount of the member's assessment under this subsection. Requires the members to remit their assessments to TWIA not later than the 30th day after the date of the notification from TWIA. Requires TWIA to deposit the remitted assessments into the catastrophe reserve trust fund not later than the 10th day after the after the expiration of the 30-day period for the members to remit the assessments to TWIA. Prohibits a member of TWIA from recouping an assessment paid under this section through a premium surcharge.

(b) Requires TWIA, each member of TWIA, and each insurer that engages in the business of property and casualty insurance in this state, including the Texas FAIR Plan Association (FAIR), in addition to the assessment under Subsection (a), to collect a premium surcharge on each policy issued or renewed on or after the effective date of S.B. 14, Acts of the 81st Legislature, Regular Session, 2009, and for the 12-month period following the effective date of that Act, as provided by this section from their policyholders who reside or have operations in, or whose insured property is located in, a catastrophe area.

(c) Requires TWIA to collect from its policyholders the nonrefundable premium surcharge in an amount equal to 20 percent of the policy premium for each policy issued by TWIA. Requires each insurer and FAIR to collect from each of their affected policyholders the nonrefundable premium surcharge in an amount equal to three percent of the policy premium for each property and casualty insurance policy described by Subsection (b) and issued by the insurer or FAIR.

(d) Requires each insurer and FAIR to remit the premium surcharge collected under this section to TWIA not later than the 20th day after the last day of each calendar quarter. Requires TWIA to deposit the remitted premium surcharges in the catastrophe reserve trust fund not later than the 30th day after the last day of each calendar quarter.

(e) Requires that a premium surcharge under this section apply to all policies that provide coverage on any premises, locations, operations, or property located in the area described by Subsection (b) for all property and casualty lines of insurance, other than federal flood insurance, workers' compensation insurance, accident and health insurance, and medical malpractice insurance.

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

**Sec. 2210.072. PAYMENT OF EXCESS LOSSES; AUTHORIZATION TO REINSURE OR BORROW.** (a) Requires that the excess losses and operating expenses, if an occurrence or series of occurrences in a catastrophe area results in insured losses

and operating expenses of TWIA in excess of premium and other revenue of TWIA, be paid as provided by this subchapter.

(b) Requires TWIA to pay losses in excess of premium and other revenue of TWIA from available reserves of TWIA and available amounts in the catastrophe reserve trust fund.

(c) Authorizes TWIA to borrow from, or enter into other financing arrangements with, any market sources at prevailing interest rates as authorized by this subchapter and as necessary to pay insured losses.

(d) Authorizes TWIA to pay losses in excess of premium and other revenue of TWIA with reinsurance proceeds, as provided by this subchapter, from reinsurance purchased by TWIA as authorized under Section 2210.453; the proceeds of Class 1 or Class 2 public securities authorized under Section 2210.074, 2210.075, 2210.077, or 2210.078; and proceeds from financial instruments, including loans or other financing arrangements described by Subsection (c), as authorized under this subchapter.

(e) Requires that the proportion of the losses allocable to each insurer under this subchapter, with respect to assessments to members of TWIA, be determined in the manner used to determine each insurer's participation in TWIA for the year under Section 2210.052 (Member Participation in Association).

**Sec. 2210.073. PAYMENT FROM TRUST FUND; ASSESSMENT; REINSURANCE.**

(a) Requires that for each occurrence, losses be paid from the catastrophe reserve trust fund and any available reinsurance.

(b) Requires that the amounts withdrawn, for each occurrence, if TWIA's losses and operating expenses result in withdrawals from the catastrophe reserve trust fund, be replenished to an amount equal to the lesser of the balance of the trust fund immediately before the withdrawals, reduced by any anticipated payments from prior occurrences, or \$250 million. Requires the board, not later than the 30th day after an occurrence, to determine if it is necessary to withdraw funds from the catastrophe reserve trust fund and assess the members of TWIA as necessary to replenish the trust fund as required under this subsection. Requires that the proportion of the assessment allocable to each insurer be determined in the manner used to determine each member's participation in TWIA under Section 2210.052.

(c) Prohibits assessments against members of TWIA under this section from exceeding \$250 million during a calendar year.

(d) Requires that the amount of an assessment under this section be provided to each member of TWIA not later than the fifth day after the date the assessment is determined by the board under Subsection (b), and paid by each member not later than the 30th day after the date on which the insurer receives notice of the amount of its assessment.

(e) Prohibits a member from recouping an assessment paid under this section through a premium surcharge.

(f) Authorizes TWIA to purchase reinsurance in addition to using some or all of the trust fund if, after a cost-benefit analysis or other appropriate examination, the board determines that the use of reinsurance is a fiscally appropriate alternative to other sources of funding or is economically beneficial to this state. Requires that the cost of the reinsurance, if TWIA purchases reinsurance under this section, be paid from premium paid by policyholders, other revenue of TWIA, and the catastrophe reserve trust fund.

Sec. 2210.074. PAYMENT FROM CLASS 1 PUBLIC SECURITIES; REINSURANCE; FINANCIAL INSTRUMENTS. (a) Requires that losses not paid under Section 2210.073 be paid as provided by this section.

(b) Authorizes the losses to be paid with the 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), available reinsurance described by Subsection (f), proceeds from financial instruments described by Subsection (e), or a combination of reinsurance, public securities, and financial instruments described by Subdivisions (1)-(3).

(c) Authorizes public securities described by Subsection (b)(1) to be issued if the board 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, any reinsurance, and any financial instruments may be insufficient to pay insured losses. Requires that the public securities be issued as necessary in a principal amount not to exceed \$750 million per occurrence.

(d) Requires that any public securities proceeds received under this section be used before the proceeds of any public securities that TWIA authorizes to be issued under Section 2210.075 on or after any catastrophic event. Prohibits any public securities proceeds received under this section from being used to fund losses of any catastrophic event occurring before the date on which public securities described by this section are authorized to be issued.

(e) Authorizes TWIA, under the authority of Section 2210.072(c), to borrow from, or enter into other financing arrangements with, any market source, under which the market source makes interest-bearing loans to TWIA to enable TWIA to pay losses under this section in lieu of, or in addition to, the issuance of public securities.

(f) Authorizes TWIA to purchase reinsurance in lieu of, or in addition to, using Class 1 public securities or proceeds of financial instruments authorized under this section if, after a cost-benefit analysis or other appropriate examination, the board determines that the use of reinsurance is a fiscally appropriate alternative to other sources of funding or is economically beneficial to this state. Requires that the cost of the reinsurance, if TWIA purchases reinsurance under this section, be paid from premium paid by policyholders of TWIA, other revenue of TWIA, and the catastrophe reserve trust fund.

(g) Requires that the public securities or proceeds from financial instruments, if the losses are paid with public securities or proceeds from financial instruments described by this section, be repaid by premium surcharges in the manner prescribed by Section 2210.612.

Sec. 2210.075. PAYMENT FROM CLASS 2 PUBLIC SECURITIES; REINSURANCE; FINANCIAL INSTRUMENTS. (a) Requires that losses not paid under Sections 2210.073 and 2210.074 be paid as provided by this section.

(b) Authorizes the losses to 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), available reinsurance described by Subsection (e), proceeds from financial instruments described by Subsection (d), or a combination of the reinsurance, public securities, and financial instruments described by this subsection.

(c) Authorizes public securities described by Subsection (b)(1) to be issued as necessary in a principal amount not to exceed \$1 billion per occurrence.

(d) Authorizes TWIA, under the authority of Section 2210.072(c), to borrow from, or enter into other financial arrangements with, any market source, under which the market source makes interest-bearing loans to TWIA to enable TWIA to pay losses under this section without the issuance of public securities.

(e) Authorizes TWIA to purchase reinsurance in lieu of, or in addition to, using Class 2 public securities or proceeds of financial instruments authorized under this section if, after a cost-benefit analysis or other appropriate examination, the board determines that the use of reinsurance is a fiscally appropriate alternative to other sources of funding or is economically beneficial to this state. Requires that the cost of the reinsurance, if TWIA purchases reinsurance under this section, be paid from premium paid by the policyholders of TWIA, other revenue of TWIA, and the catastrophe reserve trust fund.

(f) Requires that the public securities or proceeds from financial instruments, if the losses are paid with public securities or proceeds from financial instruments described by this section, be repaid by premium surcharges in the manner prescribed by Section 2210.613.

Sec. 2210.076. PAYMENT FROM ASSOCIATION ASSESSMENT. (a) Requires that losses not paid under Sections 2210.073-2210.075 be paid as provided by this section.

(b) Requires TWIA to assess the members of TWIA \$300 million per occurrence for the payment of losses described by this section and to notify each member of TWIA of the amount of the member's assessment under this subsection. Requires that the proportion of the losses allocable to each insurer under this section be determined in the manner used to determine each insurer's participation in TWIA for the year under Section 2210.052.

(c) Prohibits TWIA from assessing members of TWIA under this section more than twice in any calendar year.

(d) Authorizes a member of TWIA to recoup an assessment paid under this section through a premium surcharge collected for one year on each policy of property or casualty insurance written by the member. Requires that a premium surcharge under this section apply 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 federal flood insurance, workers' compensation insurance, accident and health insurance, and medical malpractice insurance.

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

Sec. 2210.077. PAYMENT FROM CLASS 2 PUBLIC SECURITIES; REINSURANCE; FINANCIAL INSTRUMENTS. (a) Requires that losses not paid under Sections 2210.073-2210.076 be paid as provided by this section.

(b) Authorizes that losses be paid from:

(1) 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);

(2) available reinsurance described by Subsection (e);

(3) proceeds from financial instruments described by Subsection (d); or

(4) a combination of the reinsurance, public securities, and financial instruments described by Subdivisions (1)-(3).

(c) Authorizes public securities described by Subsection (b)(1) to be issued as necessary in a principal amount not to exceed \$500 million per occurrence.

(d) Authorizes TWIA, under the authority of Section 2210.072(c), to borrow from, or enter into other financing agreements with, any market source, under which the market source makes interest-bearing loans to TWIA to enable TWIA to pay losses under this section in lieu of, or in addition to, the issuance of public securities.

(e) Authorizes TWIA to purchase reinsurance in lieu of, or in addition to, using Class 2 public securities or proceeds from financial instruments authorized under this section if, after a cost-benefit analysis to other appropriate examination, the board of directors determines that the use of reinsurance is a fiscally appropriate alternative to other sources of funding or is economically beneficial to this state. Requires that the cost of the reinsurance, if TWIA purchases reinsurance under this section, be paid from premium paid by the policyholders of TWIA, other revenue of TWIA, and the catastrophe reserve trust fund.

(f) Requires that the public securities or proceeds from financial instruments, if the losses are paid with public securities or proceeds from financial instruments described by this section, be repaid by premium surcharges in the manner prescribed by Section 2210.613.

**Sec. 2210.078. PAYMENT FROM CLASS 2 PUBLIC SECURITIES; REINSURANCE.**

(a) Requires that losses not paid under Sections 2210.073-2210.077 be paid as provided by this section.

(b) Authorizes that losses be paid from:

(1) 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);

(2) available reinsurance described by Subsection (d); or

(3) a combination of the reinsurance and public securities described by Subdivisions (1) and (2).

(c) Authorizes public securities described by Subsection (b)(1) to be issued as necessary in a principal amount not to exceed \$2.8 billion per occurrence.

(d) Authorizes TWIA to purchase reinsurance in lieu of, or in addition to, using Class 2 public securities authorized under this section if, after a cost-benefit analysis or other appropriate examination, the board determines that the use of reinsurance is a fiscally appropriate alternative to other sources of funding or is economically beneficial to this state. Requires that the cost of reinsurance, if TWIA purchases reinsurance under this section, be paid from premium paid by the policyholders of TWIA, other revenue of TWIA, and the catastrophe reserve trust fund.

(e) Requires that the public securities, if the losses are paid with public securities described by this section, be repaid by premium surcharges in the manner prescribed by Section 2210.613.

**Sec. 2210.079. PAYMENT FROM ADDITIONAL ASSOCIATION ASSESSMENTS.**

(a) Requires that losses not paid under Sections 2210.073-2210.078 and any available reinsurance be paid as provided by this section.



(b) Requires the board to assess the members of TWIA for the payment of losses described by this section. Requires TWIA to notify each member of TWIA of the amount of the member's assessments under this subsection, with the proportion of the assessment allocable to each insurer determined in the manner used to determine each member's participation in TWIA under Section 2210.052.

(c) Prohibits a member of TWIA from recouping an assessment paid under this section through a premium surcharge.

(d) Authorizes a member of TWIA to credit an amount paid in accordance with this section in a calendar year against the insurer's premium tax under Chapter 221 (Property and Casualty Insurance Premium Tax). Requires that the tax credit authorized under this subsection 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. 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 under Section 862.001.

Sec. 2210.080. NOTIFICATION REGARDING TAX CREDITS. (a) Requires TWIA to immediately notify TDI if an occurrence or series of occurrences in a catastrophe area results in insured losses that result in a tax credit under Section 2210.079(d) in a calendar year.

(b) Requires TDI, on receipt of notice under Subsection (a), 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 under Section 2210.079(d).

SECTION 13. Amends the heading to Subchapter C, Chapter 2210, Insurance Code, to read as follows:

SUBCHAPTER C. ASSOCIATION BOARD OF DIRECTORS; GENERAL  
POWERS AND DUTIES OF BOARD OF DIRECTORS

SECTION 14. Amends Section 2210.102, Insurance Code, as follows:

Sec. 2210.102. COMPOSITION. (a) Provides that the board is composed of nine members, rather than the following nine members, appointed by the commissioner in accordance with this section.

(b) Creates this subsection from existing text. Requires that four members be representatives of different insurers who are members of TWIA.

(c) Requires that three members be public representatives, at least one of whom, as the date of the appointment, does not reside in or own property in a first tier coastal county.

(d) Requires that two members be property and casualty agents who are licensed under this code and are not captive agents. Requires one of the agents, but not more than one, as of the date of the appointment, to maintain the agent's principle office in a first tier coastal county.

(e) Requires that all members have demonstrated experience in insurance, general business, or actuarial principles sufficient to make the success of TWIA probable. Deletes existing text requiring the board to include five representatives of different insurers who are members of the association, elected by the members as provided by the plan of operation; two public representatives who are nominated by the office of public insurance counsel and who, as of the date of appointment, reside in a catastrophe area; and are policyholders of the association; and two property and casualty agents who maintain the agent's principal office, as of the date of the appointment, in a catastrophe area, and hold a license under Chapter

4051 (Property and Casualty Agents) as a general property and casualty agent or a person lines property and casualty agent.

(f) 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. Authorizes the commissioner to give preference in an appointment under this subsection to a person who is a qualified inspector under Section 2210.254. Requires that the nonvoting member appointed under this section be an engineer licensed by, and in good standing with, the Texas Board of Professional Engineers (TBPE); reside in a first tier coastal county; 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.

(g) Requires that the persons appointed under Subsection (c), rather than Subsections (a)(2) and (3), be from different counties. Makes a nonsubstantive change.

SECTION 15. Amends Section 2210.103, Insurance Code, by adding Subsection (c), to authorize a member of the board to be removed by the commissioner without cause. Requires the commissioner to appoint a replacement in the manner provided by Section 2210.102 for a member who leaves or is removed from the board.

SECTION 16. Amends Section 2210.104, Insurance Code, to delete existing text requiring that at least one of the officers be a member appointed under Section 2210.102(a)(2) or (3).

SECTION 17. Amends Subchapter C, Chapter 2210, Insurance Code, by adding Section 2210.1051, as follows:

Sec. 2210.1051. MEETINGS OF BOARD OF DIRECTORS. (a) Authorizes members of the board, notwithstanding Chapter 551 (Open Meetings), Government Code, or any other law, to meet by telephone conference call, videoconference, or other similar telecommunication method. Authorizes the board to use telephone conference call, videoconference, 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). Provides that this subsection applies without regard to the subject matter discussed or considered by the members of the board at the meeting.

(b) Provides that a meeting held by telephone conference call, videoconference, or other similar telecommunication method:

(1) is subject to the notice requirements applicable to other meetings of the board;

(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 18. Amends Subchapter C, Chapter 2210, Insurance Code, by adding Section 2210.107, as follows:

Sec. 2210.107. PRIMARY BOARD OBJECTIVES. Provides that the primary objectives of the board are to ensure that TWIA operates in accordance with this chapter and commissioner rules, complies with sound insurance principles, and meets all standards imposed under this chapter.

SECTION 19. Amends Section 2210.151, Insurance Code, as follows:

Sec. 2210.151. ADOPTION OF PLAN OF OPERATION. Deletes existing text requiring the commissioner by rule, with the advice of the board, to adopt the plan of operation to provide Texas fire and explosion insurance in an inadequate fire insurance area.

SECTION 20. Amends Section 2210.152(a), Insurance Code, to require that the plan of operation include procedures for obtaining and repaying amounts pursuant to financial instruments authorized under Subchapter B-1. Makes nonsubstantive changes.

SECTION 21. Amends Section 2210.202, Insurance Code, as follows:

Sec. 2210.202. APPLICATION FOR COVERAGE. (a) Deletes existing text relating to an inspection fee. Requires TWIA to 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 providing windstorm and hail coverage in the first tier coastal counties. Defines "declination." Requires that evidence of two declinations, notwithstanding Section 2210.203(c) (relating to a policy being renewed annually on application for renewal), be required with an application for renewal of a TWIA policy.

(b) Requires a property and casualty agent, rather than a general property and casualty agent or a personal lines property and casualty agent, to submit an application for the insurance coverage on behalf of the applicant on forms prescribed by TWIA. Requires that each application for initial or renewal coverage also contain a statement that the agent possesses proof of the declinations described by Subsection (a) and proof of flood insurance coverage or unavailability of that coverage as described by Section 2210.203(a-1).

SECTION 22. Amends Section 2210.203, Insurance Code, by adding Subsection (a-1), as follows:

(a-1) Authorizes TWIA, 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, to not issue a new or renewal insurance policy unless evidence that the property is covered by a flood insurance policy is submitted to TWIA.

SECTION 23. Amends Subchapter E, Chapter 2210, Insurance Code, by adding Section 2210.2031, as follows:

Sec. 2210.2031. PREMIUM SURCHARGES IMPOSED ON INITIAL AND RENEWAL COVERAGES FOR CERTAIN RESIDENCES. (a) Provides that notwithstanding any other provision of this chapter, for all applicable policies issued or renewed beginning on the effective date of S.B. No. 14, Acts of the 81st Legislature, Regular Session, 2009, and until the second anniversary of that effective date, a nonrefundable surcharge of:

(1) 20 percent is imposed on the premium for an initial policy of windstorm and hail insurance obtained from TWIA for coverage for each residence for which an application for insurance coverage is submitted to TWIA on or after the effective date of S.B. No. 14, Acts of the 81st Legislature, Regular Session, 2009, but that

is not occupied as the policyholder's primary residence by the policyholder, and the corporeal movable property located in the residence; and

(2) 20 percent is imposed on the premium for renewal coverage from TWIA for each residence that is insured by TWIA as of the effective date of S.B. No. 14, Acts of the 81st Legislature, Regular Session, 2009, but that is not occupied as the policyholder's primary residence by the policyholder, and the corporeal movable property located in the residence.

(b) Provides that a premium surcharge under this section is a separate nonrefundable charge in addition to the premiums collected and is not subject to premium tax or commissions. Provides that failure to pay the premium surcharge by a policyholder or applicant for insurance constitutes failure to pay premium for purposes of policy cancellation. Provides that the premium surcharge under this section is due on the issuance or renewal of the policy.

(c) Requires TWIA to deposit the remitted premium surcharges in the catastrophe reserve trust fund not later than the 30th day after the last day of each calendar quarter.

SECTION 24. Amends Section 2210.204, Insurance Code, by amending Subsection (d) and adding Subsection (e), as follows:

(d) Requires TWIA, if an insured requests cancellation of the insurance coverage, to refund the unearned premium, less any minimum retained premium set forth in the plan of operation, payable to the insured and the holder of an unpaid balance.

(e) Requires that the minimum retained premium in the plan of operation, for cancellation of insurance coverage under this section, be for a period of not less than 180 days, except for events specified in the plan of operation that reflect a significant change in the exposure or the policyholder concerning the insured property, including the purchase of similar coverage in the voluntary market, sale of the property to an unrelated party, death of the policyholder, or total loss of the property.

SECTION 25. Amends Subchapter E, Chapter 2210, Insurance Code, by adding Section 2210.2041, as follows:

Sec. 2210.2041. **NONREFUNDABLE SURCHARGE.** Provides that a nonrefundable surcharge established under this chapter is not refundable under this code for any reason or purpose.

SECTION 26. Amends Section 2210.251, Insurance Code, as follows:

Sec. 2210.251. **INSPECTION REQUIREMENTS.** (a) Requires that a structure that is constructed, altered, remodeled, enlarged, or repaired or to which additions are made on or after January 1, 1988, except as provided by this section, be considered insurable property eligible for windstorm and hail insurance coverage from TWIA, be inspected, rather than inspected or approved, by TWIA, rather than TDI, for compliance with the plan of operation.

(b) Makes no changes to this subsection.

(c) Requires a person, after January 1, 2004, to submit a notice of a windstorm inspection to TWIA, rather than the unit responsible for certification of windstorm inspections at TDI, before beginning to construct, alter, remodel, enlarge, or repair a structure.

(d) Provides that a structure constructed, altered, remodeled, enlarged, 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, alteration, remodeling, enlargement, repair, or addition by a building code recognized by TWIA is insurable property eligible for windstorm and hail insurance coverage from TWIA

without compliance with the inspection, rather than inspection or approval, requirements of this section or the plan of operation.

(e) Provides that a structure constructed, altered, remodeled, enlarged, 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, rather than 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. Requires that evidence of previous insurance coverage, for purposes of this subsection, 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 TWIA and includes certain documents.

(f) Authorizes a residential structure insured by TWIA as of June 1, 2009, notwithstanding any other provision of this section, to continue coverage through TWIA subject to the inspection requirements imposed under Section 2210.258.

(g) Creates this subsection from existing text and makes a conforming change. Deletes existing text authorizing TDI to enter into agreements and contracts as necessary to implement this section.

(h) Makes a conforming change.

(i) Requires TWIA to charge a reasonable fee for each inspection of each structure in an amount set by the board of directors. Authorizes TWIA to use fees collected under this section for operating expenses or for the purchase of reinsurance.

(j) Requires TDI, without limitation of TDI's authority to otherwise enforce this chapter, to monitor TWIA's compliance with this subchapter.

(k) Prohibits TWIA, except as otherwise provided by this subchapter, from considering any request that a structure be certified as insurable property if, within six months after the final inspection of a structure, TWIA has not received fully completed documentation verifying that the structure has been constructed, altered, remodeled, enlarged, or repaired, or any addition to the structure has been made, in compliance with the plan of operation; and full payment of all inspection fees owed to TWIA, including any fees related to prior association inspections.

(l) Authorizes a person, if a structure is rejected for coverage under Subsection (k), to make a new request for certification and the structure to be reinspected for compliance with the plan of operation. Requires that a request for certification brought under this subsection meet the requirements of Subsection (k).

SECTION 27. Amends Sections 2210.254(a), (c), and (d), Insurance Code, as follows:

(a) Redefines "qualified inspector"

(c) Makes a conforming change.

(d) Makes a conforming change

SECTION 28. Amends Section 2210.255, Insurance Code, as follows:

Sec. 2210.255. APPOINTMENT OF LICENSED ENGINEER AS INSPECTOR. (a) Authorizes TWIA, rather than the commissioner, on request of an engineer licensed by

the Texas Board of Professional Engineers, to appoint the engineer as an inspector under this subchapter on receipt of information satisfactory to TWIA that the engineer is qualified to perform windstorm inspections under this subchapter. Deletes existing text that requires the commissioner to appoint the engineer not later than the 10th day after the date the engineer delivers to the commissioner certain information.

(b) Requires TWIA to consult with the commissioner regarding the information to be considered in appointing engineers under this section, rather than requiring the commissioner to adopt certain rules.

SECTION 29. Amends Subchapter F, Chapter 2210, Insurance Code, by adding Section 2210.2565, as follows:

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

SECTION 30. Amends Subchapter F, Chapter 2210, Insurance Code, by adding Sections 2210.258 and 2210.259, as follows:

Sec. 2210.258. MANDATORY COMPLIANCE WITH BUILDING CODES; ELIGIBILITY. (a) Requires that all construction, alteration, remodeling, enlargement, and repair of, or addition to, any structure located in the catastrophe area that is begun on or after the effective date of S.B. No. 14, Acts of the 81st Legislature, Regular Session, 2009, notwithstanding any other provision of this chapter, to be eligible for insurance through TWIA, be performed in compliance with the applicable building code standards, as set forth in the plan of operation.

(b) Prohibits TWIA from insuring a structure described by Subsection (a) until the structure has been inspected for compliance with the plan of operation in accordance with Section 2210.251(a), and a certificate of compliance has been issued for the structure in accordance with Section 2210.251(g).

Sec. 2210.259. SURCHARGE FOR CERTAIN NONCOMPLIANT STRUCTURES. (a) Provides that a structure eligible for coverage through TWIA under Section 2210.251(d), (e), or (f), is subject to an annual premium surcharge equal to 30 percent of the premium for insurance coverage obtained through TWIA. Provides that the surcharge under this subsection applies to each policy issued or renewed by TWIA on or after the effective date of S.B. No. 14, Acts of the 81st Legislature, Regular Session, 2009, and is due on the issuance or renewal of the policy.

(b) Requires that a premium surcharge collected under this section be deposited in the catastrophe reserve trust fund. Provides that a premium surcharge under this section is a separate nonrefundable charge in addition to the premiums collected and is not subject to premium tax or commissions. Provides that failure to pay the surcharge by a policyholder constitutes failure to pay premium for purposes of policy cancellation.

SECTION 31. Amends Sections 2210.351(c) and (d), Insurance Code, as follows:

(c) Requires the commissioner in writing, except as provided by Subsection (d), as soon as reasonably possible after the filing has been made, to approve or disapprove, rather than approve, modify, or disapprove, the filing. Requires the commissioner, if the commissioner disapproves a filing, to state in writing the reasons for the disapproval and the criteria TWIA is required to meet to obtain approval. Makes a conforming change.

(d) Authorizes TWIA to use a rate filed by TWIA without prior commissioner approval if the filing is made not later than the 30th day before the date of any use or delivery for use of the rate; the filed rate does not exceed 105 percent of the rate in effect on the date on which the filing is made; the filed rate does not reflect a rate change for an individual

rating class that is 10 percent higher than the rate in effect for that rating class on the date on which the filing is made; and the commissioner has not disapproved the filing in writing, advising of the reasons for the disapproval and the criteria TWIA is required to meet to obtain approval. Deletes existing text authorizing the commissioner, if at any time the commissioner determines that a filing approved under Subsection (c) no longer meets the requirements of this chapter, after a hearing held on at least 20 days' notice to TWIA that specifies the matters to be considered at the hearing, to issue an order withdrawing approval of the filing. Deletes existing text requiring that the order specify in what respects the commissioner determines that the filing no longer meets the requirements of this chapter. Deletes existing text prohibiting an order issued under this subsection from taking effect before the 30th day after the date of issuance of the order.

SECTION 32. Amends Section 2210.352, Insurance Code, as follows:

Sec. 2210.352. MANUAL RATE FILINGS: ANNUAL FILING. (a) Requires TWIA, not later than August 15 of each year, to file with TDI, rather than to file with TDI for approval of the commissioner, a proposed manual rate for all types and classes of risk written by TWIA. Deletes existing text providing that Chapter 40 (Duties of State Office of Administrative Hearings and Commissioner in Certain Proceedings; Rate Setting Proceedings) does not apply to a filing made under this subsection or a TDI action with respect to the filing.

(a-1) Authorizes TWIA to use a rate filed by TWIA under this section without prior commissioner approval if the filing is made not later than the 30th day before the date of any use or delivery for use of the rate, the filed rate does not exceed 105 percent of the rate used by TWIA in effect on the date on which the filing is made, and the filed rate does not reflect a rate change for an individual rating class that is 10 percent higher than the rate in effect for that rating class on the date on which the filing is made.

(b) Creates an exception under Subsection (a-1). Makes nonsubstantive and conforming changes.

(c) Redesignates Subsection (f) as Subsection (c). Requires the commissioner, except as provided by Subsection (a-1), to approve or disapprove the filing in writing not later than October 15, rather than November 15, of the year in which the filing was made. Provides that if the filing is not approved or disapproved on or before that date, the filing is considered approved. Deletes existing text requiring the commissioner, after the conclusion of the open meeting, to approve, disapprove, or modify the filing in writing not later than November 15 of the year in which the filing was made. Makes a conforming change. Deletes existing text requiring the commissioner to schedule an open meeting not later than the 45th day after the date TDI receives a filing at which interested persons are authorized to present a written or oral comments relating to the filing. Deletes existing Subsection (d) providing that an open meeting under Subsection (c) is subject to Chapter 551 (Open Meetings), Government Code, but is not a contested case hearing under Chapter 2001 (Administrative Procedure), Government Code. Deletes existing Subsection (e) requiring TDI to file with the secretary of state for publication in the Texas Register notice that a filing has been made under Subsection (a) not later than the seventh day after the date TDI receives the filing and setting forth certain requirements of the notice. Makes conforming and nonsubstantive changes.

(d) Redesignates Subsection (g) as Subsection (d). Requires the commissioner, except as provided by Subsection (a-1), if the commissioner disapproves a filing, to state in writing the reasons for the disapproval and the criteria TWIA is required to meet to obtain approval.

SECTION 33. Amends Section 2210.353, Insurance Code, as follows:

Sec. 2210.353. New heading: MANUAL RATE FILINGS: AMENDED ANNUAL FILING. (a) Authorizes TWIA, not later than the 30th day after the date TWIA receives the commissioner's written disapproval under Section 2210.352(c), rather than Section 2210.352(f), to file with the commissioner an amended annual filing that conforms to all criteria stated in that written disapproval.

(b) Requires the commissioner, if the commissioner disapproves a filing, to state in writing the reasons for the disapproval and the criteria TWIA is required to meet to obtain approval. Makes conforming changes.

(c) Makes conforming changes. Deletes existing text authorizing the commissioner, in the manner provided by Sections 2210.352(c) and (d), to hold a hearing regarding an amended filing not later than the 20th day after the date the department receives the amended filing. Deletes existing text requiring the commissioner, not later than the 10th day after the date the hearing is concluded, to approve or disapprove the amended filing. Deletes existing text providing that the requirements imposed under Subsection (a) and under Sections 2210.352(e), (f), and (g) (relating to the commissioner disapproving a filing) apply to a hearing conducted under this section and the commissioner's decision resulting from that hearing.

SECTION 34. Amends Sections 2210.354(a), (c), and (d), Insurance Code, as follows:

(a) Authorizes the commissioner, in conjunction with the review of a filing under Section 2210.352, rather than Section 2210.352 or 2210.353, other than a filing made under Subsection (a-1) of that section, to request TWIA to provide additional supporting information relating to the filing. Deletes existing Subdivision 2 authorizing any interested person to file a written request with the commissioner for additional supporting information relating to the filing. Makes nonsubstantive changes.

(c) Requires the commissioner to submit to TWIA, not later than the 21st day after the date of receipt of the filing, all requests for additional supporting information made under this section for the commissioner's use, rather than for the commissioner's use and the use of any interested person.

(d) Deletes existing text requiring TDI to notify an interested person who has requested additional information of the availability of the information not later than one business day after the date the commissioner receives the information from TWIA.

SECTION 35. Amends Section 2210.355, Insurance Code, by amending Subsection (b) and adding Subsection (h), as follows:

(b) Requires recognized catastrophe models be considered in adopting rates under this chapter, and makes nonsubstantive changes.

(h) Authorizes TWIA to establish rating territories and to vary rates among the territories.

SECTION 36. Amends Section 2210.361(b), Insurance Code, to delete existing text providing that Chapter 40 does not apply to an action taken under this section. Makes a conforming change.

SECTION 37. Amends Subchapter H, Chapter 2210, Insurance Code, by adding Section 2210.364, as follows:

Sec. 2210.364. AUTOMATIC RATE INCREASES. (a) Provides that in addition to any increases made under a rate filing made under this subchapter, each rate used by TWIA for an initial policy or renewal of a policy issued by TWIA automatically increases 10 percent on January 1, 2010, January 1, 2011, and January 1, 2012.



(b) Provides that a rate increase under Subsection (a) takes effect for all purposes on the date on which the rate is increased under Subsection (a).

(c) Provides that a rate increase under this section is presumed to be justified.

SECTION 38. Amends Sections 2210.452(a), (c), and (d), Insurance Code, as follows:

(a) Requires the commissioner to adopt rules under which TWIA makes payments to the catastrophe reserve trust fund. Deletes existing text relating to the commissioner adopting rules under which members relinquish their net equity on an annual basis in a certain manner. Authorizes the trust fund to be used only to fund the obligations of the trust fund under Subchapter B-1, rather than Section 2210.058(a) (relating to insured losses and operating expenses of the association) and the mitigation and preparedness plan established under Section 2210.454 (Mitigation and Preparedness Plan) to reduce the potential for payments by TWIA members that give rise to tax credits in the event of loss. Makes nonsubstantive changes.

(c) Requires the association, at the end of each calendar year or policy year, to use the net gain from operations of the association, including all premium and other revenue of the association in excess of incurred losses and operating expenses, to make payments to the trust fund, to procure reinsurance, or to make payment to the trust fund and to procure reinsurance. Deletes existing text authorizing the association, at the end of each calendar year or policy year, to pay the net equity of a member, including all premium and other revenue of the association in excess of incurred losses and operating expenses, to the trust fund or reinsurance program approved by the commissioner.

(d) Requires the commissioner by rule to establish the procedure relating to the disbursement of money from 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 Subchapter B-1, rather than Section 2210.058(a).

SECTION 39. Amends Section 2210.453, Insurance Code, as follows:

Sec. 2210.453. New heading: REINSURANCE. (a) Authorizes TWIA to purchase reinsurance, rather than requiring TWIA to establish a reinsurance program approved by TDI.

(b) Authorizes TWIA to purchase reinsurance that operates in addition to or in concert with the trust fund, public securities, financial instruments, and assessments authorized by this chapter. Deletes existing text requiring the approval of TDI for these actions.

SECTION 40. Amends Section 2210.454(b), Insurance Code, as follows:

(b) Authorizes TDI, each state fiscal year, to fund the mitigation and preparedness plan using available funds, rather than 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. Deletes existing text authorizing TDI, from that amount and as part of that plan, to use in each fiscal year \$1 million for the windstorm inspection program established under Section 2210.251.

SECTION 41. Amends Section 2210.552, Insurance Code, as follows:

Sec. 2210.552. CLAIM DISPUTES; VENUE. (a) Authorizes a person insured under this chapter who is aggrieved by an act, ruling, or decision of TWIA relating to the payment of, the amount of, or the denial of a claim, except as provided by Sections 2210.007 and 2210.106, to bring an action for policy benefits against TWIA or appeal under Section 2210.551, rather than bring an action against TWIA, including an action under Chapter 541 (Unfair Methods of Competition and Unfair or Deceptive Acts or Practices); or appeal under Section 2210.551, rather than appeal the act, ruling, or decision under Section 2210.551.

(b) Provides that the remedies provided by Subsection (a) and Section 2210.551 are exclusive.

(c) Provides that venue in an action brought under this section against TWIA, rather than except as provided by Subsection (d) venue in an action brought under this section, including an action under Chapter 541 against TWIA, is in the county in which the insured property is located or in a district court in Travis County. Deletes existing Subsection (d) providing that venue in an action, including an action under Chapter 541, brought under this section in which the claimant joins TDI as a party to the action is only in a district court in Travis County.

SECTION 42. Amends Chapter 2210, Insurance Code, by adding Subchapter M, as follows:

#### SUBCHAPTER M. PUBLIC SECURITIES PROGRAM

Sec. 2210.601. PURPOSE. Provides that the legislature finds that authorizing the issuance of public securities to provide a method to raise funds to provide windstorm and hail insurance through TWIA 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. 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."

Sec. 2210.603. APPLICABILITY OF OTHER LAWS. Requires the Texas Public Finance Authority (TPFA) board of directors (TPFA board) to issue the public securities as described by Section 2210.604 in accordance with and subject to the requirements of Chapter 1232 (Texas Public Finance Authority), Government Code, and other provisions of Title 9 (Public Securities), Government Code, that apply to issuance of a public security by a state agency. Provides that in the event of a conflict, this subchapter controls.

Sec. 2210.604. ISSUANCE OF PUBLIC SECURITIES AUTHORIZED. (a) Requires TPFA, at the request of TWIA and with the approval of the commissioner, to issue Class 1 or Class 2 public securities.

(b) Requires TWIA to specify in TWIA's request to the TPFA board the maximum principal amount of the public securities and the maximum term of the public securities.

(c) Authorizes the principal amount determined by TWIA under Subsection (b) to be increased to include an amount sufficient to pay the costs related to issuance of the public securities, provide a public security reserve fund, and capitalize interest for the period determined necessary by TWIA, not to exceed two years.

Sec. 2210.605. TERMS OF ISSUANCE. (a) Requires the TPFA board to determine the method of sale, type and form of public security, maximum interest rates, and other terms of the public securities that, in the TPFA board's judgment, best achieve the goals of TWIA and effect the borrowing at the lowest practicable cost. Authorizes the TPFA board to enter into a credit agreement in connection with the public securities.

(b) Requires that public securities be issued in the name of TWIA.

Sec. 2210.606. ADDITIONAL COVENANTS. Authorizes the TPFA board to make additional covenants with respect to the public securities and the designated income and receipts of TWIA pledged to their payment, and provide for 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. Authorizes the proceeds of public securities issued by the TPFA board under this subchapter to be deposited with a trustee selected by TWIA 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) Requires that public security proceeds, including investment income, be held in trust for the exclusive use and benefit of TWIA. Authorizes TWIA to use the proceeds to pay incurred claims and operating expenses of TWIA; purchase reinsurance for TWIA; pay the costs of issuing the public securities, and public security administrative expenses, if any; provide a public security reserve; and pay capitalized interest and principal on the public securities for the period determined necessary by TWIA.

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

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

(b) Requires the TPFA board to notify TWIA 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 TWIA, to permit TWIA to determine the availability of funds and assess a premium surcharge if necessary.

(c) Requires TWIA to deposit all revenue collected under Sections 2210.612 and 2210.613 in the public security obligation revenue fund. Authorizes money deposited in the fund to be invested as permitted by general law. Requires that money in the fund required to be used to pay public security obligations and public security administrative expenses, if any, to 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) Provides that TWIA is to 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) Requires that an amount owed by the TPFA board under a credit agreement be payable from and secured by a pledge of revenues received by TWIA 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) Authorizes revenues received from the premium surcharge under Section 2210.612 or 2210.613 to be applied only as provided by this subchapter.

(b) Authorizes TWIA to pay public security obligations with other legally available funds.

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

Sec. 2210.611. EXCESS REVENUE COLLECTIONS AND INVESTMENT EARNINGS. Authorizes 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, in the discretion of TWIA, to be 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, used to redeem or purchase outstanding public securities, or deposited in the catastrophe reserve trust fund.

Sec. 2210.612. CLASS 1 PREMIUM SURCHARGE; REPAYMENT OF AMOUNTS OWED UNDER FINANCIAL INSTRUMENTS. (a) Requires each insurer, TWIA, and FAIR to collect from their policyholders a surcharge in addition to an premiums to pay public security obligations and public security administrative expenses, if any, on Class 1 public securities; and principal and interest on any financial instruments entered into by TWIA under Section 2210.074.

(b) Requires TWIA to determine the premium surcharge at least annually.

(c) Requires, on approval by the commissioner, each insurer, TWIA, and FAIR to assess a premium surcharge to its policyholders as provided by this section. Requires that the premium surcharge 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 or financial instruments, as applicable. Requires that the premium surcharge be assessed on all policyholders who reside or have operations in, or whose insured property is located in a catastrophe area.

(d) Requires that the percent of premium assessed as surcharges to all policies issued or renewed by TWIA be at least twice the percent of premium assessed as surcharges to all other policies.

(e) Requires TWIA to collect the premium surcharge from its policyholders. Requires each insurer and FAIR to collect the premium surcharge from their affected policyholders and to remit the premium surcharge to the TWIA as required by commissioner rule.

(f) Requires that a premium surcharge under this section apply to all policies that provide coverage on any premises, locations, operations, or property located in the area described by Subsection (c) for all property and casualty lines of insurance, other than federal flood insurance, workers' compensation insurance, accident and health insurance, and medical malpractice insurance.

(g) Provides that a premium surcharge under this section is a separate nonrefundable charge in addition to the premiums collected and is not subject to premium tax or commissions. Provides that 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; REPAYMENT OF AMOUNTS OWED UNDER FINANCIAL INSTRUMENTS. (a) Requires each insurer, TWIA, and FAIR to collect from their policyholders a premium surcharge to pay:

(1) public security obligations and public security administrative expenses, if any, on Class 2 public securities issued under Section 2210.075;

(2) public security obligations and public security administrative expenses, if any, on Class 2 public securities issued under Section 2210.077;

(3) public security obligations and public security administrative expenses, if any, on Class 2 public securities issued under Section 2210.078;

(4) principal and interest on financial instruments entered into by TWIA under Section 2210.075; or

(5) principal and interest on financial instruments entered into by TWIA under Section 2210.077.

(b) Requires TWIA to determine the premium surcharge at least annually.

(c) Requires each insurer, TWIA, and FAIR, on approval by the commissioner, to assess a premium surcharge to its policyholders as provided by this section. Requires that the premium surcharge be set in an amount sufficient to pay all debt service and all related expenses on the public securities or financial instruments, as applicable.

(d) Requires each insurer, TWIA, and FAIR to 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 to remit the premium surcharge to TWIA as required by commissioner rule.

(e) Requires that a premium surcharge under this section apply 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 federal flood insurance, workers' compensation insurance, accident and health insurance, and medical malpractice insurance. Provides that the premium surcharge does not apply to premiums charged for any premises, locations, operations, or property located outside this state.

(f) Requires that 70 percent of a premium surcharge relating to Subsection (a)(1), (2), (4), or (5) be assessed on policyholders who have a property or casualty policy that provides coverage for premises, locations, operations, or property located in a catastrophe area.

(g) Requires that the percent of premium assessed as surcharges to all policies issued or renewed by TWIA, with respect to the premium surcharge assessed under Subsection (a)(1), (2), (4), or (5) in accordance with Subsection (f), be at least twice the percent of premium assessed as surcharges to all other new or renewal policies.

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

Sec. 2210.614. REFINANCING PUBLIC SECURITIES. Authorizes TWIA to request the TPF board to refinance any public securities issued in accordance with Subchapter B-1, whether Class 1 or Class 2 public securities, with the refinanced public securities payable from the same sources as the original public securities.

Sec. 2210.615. SOURCE OF PAYMENT; STATE DEBT NOT CREATED. (a) Provides that a public security or credit agreement is payable solely from revenue as provided by this subchapter.

(b) Provides that 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) Requires that each public security, and any related credit agreement, issued under this subchapter, state on the security's face that 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 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. 2210.616. STATE NOT TO IMPAIR PUBLIC SECURITY OBLIGATIONS. Prohibits the state, if public securities under this subchapter are outstanding, from taking action to limit or restrict the rights of TWIA to fulfill its responsibility to pay public security obligations, or in any way impair the rights and remedies of the public security owners until the public securities are fully discharged.

Sec. 2210.617. ENFORCEMENT BY MANDAMUS. Provides that a writ of mandamus and any other legal and equitable remedies are available to a party at interest to require TWIA or another party to fulfill an agreement and to perform functions and duties under this subchapter, the Texas Constitution, or a relevant public security resolution.

Sec. 2210.618. EXEMPTION FROM TAXATION. Provides that 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.

Sec. 2210.619. NO PERSONAL LIABILITY. Provides that the members of TWIA, members of the TWIA board of directors, TWIA employees, TPFAs, the employees of TPFAs, the commissioner, and TDI employees are not personally liable as a result of exercising the rights and responsibilities granted under this subchapter.

Sec. 2210.620. AUTHORIZED INVESTMENTS. Provides that public securities issued under this subchapter are authorized investments under Subchapter B (Investment of Funds in Excess of Minimum Capital and Surplus), Chapter 424 (Investments for Certain Insurers); Subchapter C (Authorized Investments and Transactions for Capital Stock Life, Health, and Accident Insurers), Chapter 425 (Reserves and Investments For Life Insurance); and Sections 425.203 (Limitation on Funds and Other Assets), 425.204 (Approval of Investments and Loans Required), 425.205 (Authorized Investments for All Funds: Government Bonds), 425.206 (Authorized Investments for All Funds: Corporate Bonds, Notes, and Debentures), 425.207 (Authorized Investments for All Funds: Shares of Savings and Loan Associations), 425.208 (Authorized Investments for All Funds: Bank and Bank Holding Company Stocks), 425.209 (Authorized Investments for All Funds: Debentures of Public Utility Corporations), 425.210 (Authorized Investments for All Funds: Preferred Stock of Public Utility Corporations), 425.211 (Authorized Investments for All Funds: Bonds Issued, Assumed, or Guaranteed in International Market), 425.212 (Authorized Investments for All Funds: Securities or Investments Authorized or Described by Specific Statutory Provision), and 425.213 (Authorized Investments for All Funds: Other Securities Specifically Authorized by Law).

SECTION 43. Amends Section 941.003, Insurance Code, by adding Subsection (e), to provide that a Lloyd's plan is subject to Chapter 2210, as provided by that chapter.

SECTION 44. Amends Section 942.003, Insurance Code, by adding Subsection (f), to provide that an exchange is subject to Chapter 2210, as provided by that chapter.

SECTION 45. Repealer: Sections 2210.003 (5) (relating to the definition of "inadequate fire insurance area") and (12) (relating to the definition of "Texas fire and explosion insurance"), Insurance Code.

Repealer: Sections 2210.058 (Payment of Excess Losses; Premium Tax Credit) and 2210.059 (Notification Regarding Tax Credits), Insurance Code.

Repealer: Sections 2210.205 (Deletion of Insurance Coverage from Other Policies) and 2210.206 (Insurance Coverage for Certain Governmental Entities), Insurance Code.

Repealer: Sections 2210.256 (Disciplinary Proceedings Regarding Appointed Inspectors) and 2210.257 (Deposit of Fees), Insurance Code.

Repealer: Sections 2210.356 (Uniform Rate Requirements; Information Used in Developing Rates), 2210.359 (Limitation on Certain Rate Changes), 2210.360 (Use of Certain Surcharges in Developing Rates), and Section 2210.363 (Effect on Rates of Certain Other Insurance Coverage), Insurance Code.

Repealer: Subchapter G (Windstorm Building Code Advisory Committee), Chapter 2210, Insurance Code.

SECTION 46. (a) Provides that the TWIA board established under Section 2210.102 (Composition), Insurance Code, as that section existed before amendment by this Act, is abolished effective December 31, 2009.

(b) Requires the commissioner to appoint the members of the TWIA board under Section 2210.102, Insurance Code, as amended by this Act, not later than December 31, 2009.

(c) Provides that the term of person who is serving as member of the TWIA board immediately before the abolition of that board under Subsection (a) of this section expires on December 31, 2009. Provides that such a person is eligible for appointment by the commissioner to the new TWIA board under Section 2210.102, Insurance Code, as amended by this Act.

SECTION 47. (a) Requires the commissioner to adopt rules as required by Chapter 2210, Insurance Code, as amended by this Act, as soon as possible after the effective date of this Act, but not later than 30th day after the effective date of this Act.

(b) Requires TWIA, through the TWIA board, to propose to the commissioner amendments to TWIA's plan of operation as required by Chapter 2210, Insurance Code, as amended by this Act, not later than March 1, 2010.

SECTION 48. Makes application of Sections 2210.202 and 2210.203, Insurance Code, prospective.

SECTION 49. Makes application of Section 2210.251, Insurance Code, prospective. Provides that 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 TDI under Section 2210.251(g), Insurance Code, as that section existed immediately before September 1, 2009, is not required to obtain an inspection certificate from TWIA to remain eligible for insurance coverage through TWIA unless the structure is altered, remodeled, enlarged, or repaired on or after September 1, 2009.

SECTION 50. Provides that the changes in law made by this Act in amending Sections 2210.251, 2210.254, and 2210.255, Insurance Code, adding Section 2210.2565, Insurance Code, and repealing Section 2210.256, Insurance Code, take effect September 1, 2009.

SECTION 51. (a) Requires TWIA to assess its members for the 2009 reserves solvency assessment under Section 2210.071, Insurance Code, as added by this Act, not later than the 30th day after the effective date of this Act.

(b) Requires TWIA to assess its members for the 2010 reserves solvency assessment under Section 2210.071, Insurance Code, as added by this Act, not later than January 1, 2010.

(c) Requires that the initial premium surcharge assessed under Section 2210.071, Insurance Code, as added by this Act, be remitted to TWIA not later than the 60th day after the effective date of this Act.

SECTION 52. Makes application of Section 2210.552, Insurance Code, as amended by this Act, prospective.

SECTION 53. Provides that the amount of \$500 million is appropriated for use during fiscal year 2009 from the general revenue fund to the comptroller to be used, subject to the prior written approval of the governor and the Legislative Budget Board, to provide emergency financing to the commissioner for the support of the financial integrity of TWIA consistent with rules adopted by the commissioner as provided under this Act and consistent with the law of this state.

SECTION 54. Effective date: upon passage or September 1, 2009