

By: Smithee

H.B. No. 911

A BILL TO BE ENTITLED

AN ACT

relating to adoption of a temporary program for the operation and funding of the Texas Windstorm Insurance Association.

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

SECTION 1. Chapter 2210, Insurance Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. OPERATION AND FUNDING OF ASSOCIATION BETWEEN JUNE 1, 2009, AND SEPTEMBER 1, 2013

Sec. 2210.401. CONSTRUCTION WITH OTHER LAW.

Notwithstanding any other provision of this chapter or other law, for the period beginning June 1, 2009, and ending September 1, 2013, the operation and funding of the association is subject to this subchapter.

Sec. 2210.402. INSURABLE PROPERTY. (a) For purposes of this subchapter and subject to this section, "insurable property" means only immovable property at a fixed location in a catastrophe area, or corporeal movable property located in that immovable property, that is determined by the association according to the criteria specified in the plan of operation to be in an insurable condition against windstorm and hail, as determined by normal underwriting standards. A structure located in a catastrophe area that is not built in compliance with applicable building codes or continued in compliance with those building codes does not constitute an insurable risk for purposes of windstorm and hail

1 insurance under this subchapter.

2 (b) Residential property is insurable property for purposes
3 of this subchapter only if the property is classified as the
4 policyholder's residential homestead property under Section 11.13,
5 Tax Code, or is used as the primary residence of a tenant of the
6 policyholder. To be eligible for coverage through the association,
7 the policyholder must certify, in the manner prescribed by the
8 commissioner, that the property to be insured is the policyholder's
9 primary residence or the primary residence of the policyholder's
10 tenant. Residential property that is not used as a primary
11 residence is not insurable property for purposes of this subchapter
12 and is not eligible for coverage through the association.

13 (c) For purposes of this subchapter, a residential
14 structure is insurable property if:

15 (1) the residential structure is not:

16 (A) a condominium, apartment, duplex, or other
17 multifamily residence; or

18 (B) a hotel or resort facility;

19 (2) the residential structure is located within an
20 area designated as a unit under the Coastal Barrier Resources Act
21 (Pub. L. No. 97-348); and

22 (3) a building permit or plat for the residential
23 structure was filed with the municipality, the county, or the
24 United States Army Corps of Engineers before June 11, 2003.

25 (d) Commercial property is eligible for coverage through
26 the association only as provided by this subchapter.

27 (e) Except as otherwise provided by this section, if repair

1 of damage to a structure involves replacement of items covered in
2 the building specifications set forth in the applicable building
3 codes, the repairs must be completed in a manner that complies with
4 those specifications for the structure to continue to be insurable
5 property for windstorm and hail insurance.

6 (f) For purposes of this subchapter, a structure is not
7 insurable property if the commissioner of the General Land Office
8 notifies the association of a determination that the structure is
9 located on the public beach under procedures established under
10 Section 61.011, Natural Resources Code, and that the structure:

11 (1) constitutes an imminent hazard to safety, health,
12 or public welfare; or

13 (2) substantially interferes with the free and
14 unrestricted right of the public to enter or leave the public beach
15 or traverse any part of the public beach.

16 (g) The commissioner, by rule, may adopt inspection
17 requirements for this subchapter to supplement or replace the
18 inspection requirements adopted under Subchapter F.

19 Sec. 2210.403. FLOOD INSURANCE REQUIRED. (a)
20 Notwithstanding Section 2210.402, if all or any part of the
21 property for which an application for new or renewal insurance
22 coverage is made is located in Zone V or another similar zone with
23 an additional hazard associated with storm waves, as defined by the
24 National Flood Insurance Program, and if flood insurance under that
25 federal program is available, the association may not issue a new or
26 renewal insurance policy unless evidence that the property is
27 covered by a flood insurance policy is submitted to the

1 association.

2 (b) If flood insurance described by Subsection (a) is
3 unavailable in any portion of the seacoast territory, an
4 association policy insuring a residential structure described by
5 Section 2210.402(b) is subject to a premium surcharge for the
6 insurance coverage obtained through the association in an amount
7 equal to not less than 10 percent of the premium, as set by the
8 commissioner after notice and a hearing.

9 Sec. 2210.404. MAXIMUM LIABILITY LIMITS. The maximum
10 liability limits for coverage through the association under this
11 subchapter on a single insurable property may not exceed:

12 (1) \$250,000 for a dwelling, and the corporeal movable
13 property located in or about the dwelling, as provided under the
14 policy;

15 (2) \$2,192,000 for a building, and the corporeal
16 movable property located in the building, if the building is:

17 (A) owned by, and at least 75 percent of which is
18 occupied by, a governmental entity; or

19 (B) not owned by, but is wholly and exclusively
20 occupied by, a governmental entity; and

21 (3) \$1 million for a structure other than a dwelling or
22 a public building, and the corporeal movable property located in
23 that structure, as provided under the policy.

24 Sec. 2210.405. ISSUANCE OF COVERAGE; TERM; RENEWAL. (a) If
25 the association determines that the property for which an
26 application for insurance coverage is made is insurable property
27 under this subchapter, the association, on payment of the premium,

1 shall direct the issuance of an insurance policy as provided by the
2 plan of operation and commissioner rules for this subchapter. The
3 policy is subject to the waiting period described by Section
4 2210.406.

5 (b) A policy issued under this section must be for a term of
6 at least 12 months.

7 (c) A policy may be renewed annually on application for
8 renewal as long as the property continues to be insurable property.

9 (d) Coverage under this subchapter does not include
10 coverage for loss of use of insurable property.

11 Sec. 2210.406. WAITING PERIOD. (a) A policy of windstorm
12 and hail insurance issued under this subchapter is subject to a
13 60-day waiting period before the policyholder is eligible to
14 recover for losses under the policy.

15 (b) The waiting period under Subsection (a) begins on the
16 date that the policy is first issued under this chapter.

17 Sec. 2210.407. FILE AND USE RATING. (a) Notwithstanding
18 Subchapter H, rates for coverage issued by the association on and
19 after June 1, 2009, are subject to this section.

20 (b) The association shall file with the department in the
21 manner prescribed by Section 2251.101 each manual of
22 classifications, rules, and rates, including condition charges,
23 and each rating plan, and each modification of those items that the
24 association proposes to use.

25 (c) After the filing has been made, the association may use
26 a filed rate, and a filed rate is subject to disapproval by the
27 commissioner in the manner prescribed by Subchapter C, Chapter

1 2251.

2 (d) If at any time the commissioner determines that a filed
3 rate in effect under Subsection (c) no longer meets the
4 requirements of this chapter, the commissioner may disapprove the
5 filed rate in the manner prescribed by Section 2251.104 for
6 disapproval of a rate.

7 (e) In adopting rates under this chapter, the association
8 shall:

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

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

14 (3) use territorial rating within the catastrophe
15 area, adjusted for relative risks; and

16 (4) include rating factors as necessary to:

17 (A) fund the catastrophe reserve trust fund; and

18 (B) pay the losses and expenses of the
19 association, regardless of the ultimate source of funding for those
20 losses and expenses.

21 (f) The catastrophe element used to develop rates under this
22 subchapter must be developed using industry data, association data,
23 and catastrophe models approved by the department for use in
24 association filings. The commissioner shall adopt rules
25 establishing:

26 (1) the procedure for approval by the department of
27 catastrophe models used by the association in the development of

1 its rates; and

2 (2) the methodology of use for those models.

3 (g) A person who is aggrieved by a rate under this
4 subchapter may proceed as provided by Chapter 2251.

5 Sec. 2210.408. FUNDING OF LOSSES. (a) If, in any calendar
6 year, an occurrence or series of occurrences in a catastrophe area
7 results in insured losses and operating expenses of the association
8 in excess of premium and other revenue of the association, the
9 excess losses shall be paid as provided by this section.

10 (b) Losses in excess of those paid under Subsection (a)
11 shall be paid with the proceeds of \$1.5 billion in loans obtained by
12 the association from the economic stabilization fund established
13 under Section 49-g, Article III, Texas Constitution. Loans
14 obtained by the association under this subsection are subject to
15 the loan terms approved in advance by the Legislative Budget Board.
16 The board of directors shall assess the members of the association
17 for the repayment to the Legislative Budget Board of loan proceeds
18 described by this subsection.

19 (c) Losses in excess of those paid under Subsections (a) and
20 (b) shall be paid through reinsurance as provided by this
21 subsection. Not later than July 1, 2009, the association shall
22 purchase reinsurance for the coverage of losses in a minimum amount
23 of \$2 billion. The initial cost of reinsurance purchased under this
24 subsection shall be paid by assessments on the members of the
25 association. The association may recoup the costs of reinsurance
26 under this subsection through pro-rata assessments on association
27 policyholders made on or before December 31, 2009, in the manner

1 prescribed by Subsection (e).

2 (d) Losses in excess of those paid under Subsections (a),
3 (b), and (c) shall be paid with the proceeds of additional loans
4 obtained by the association from the economic stabilization fund
5 established under Section 49-g, Article III, Texas Constitution.
6 Loans obtained by the association under this subsection are subject
7 to the loan terms approved in advance by the Legislative Budget
8 Board and shall be repaid from the general revenue fund.

9 (e) The commissioner shall notify each member of the
10 association of the amount of the member's assessment to repay loan
11 proceeds described by Subsection (b) and to purchase reinsurance
12 described by Subsection (c). The association may recoup the
13 assessments through premium surcharges on each policy of windstorm
14 and hail insurance written by the association. A premium surcharge
15 under this section is a separate charge in addition to the premiums
16 collected and is not subject to premium tax or commissions. Failure
17 to pay the premium surcharge by a policyholder constitutes failure
18 to pay premium for purposes of policy cancellation.

19 Sec. 2210.409. RULES. The commissioner shall adopt rules
20 in the manner provided by Subchapter A, Chapter 36, as necessary to
21 implement this subchapter.

22 Sec. 2210.410. EXPIRATION. This subchapter expires
23 September 1, 2013.

24 SECTION 2. Subchapter I, Chapter 2210, Insurance Code, as
25 added by this Act, takes effect June 1, 2009.

26 SECTION 3. This Act takes effect immediately if it receives
27 a vote of two-thirds of all the members elected to each house, as

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1 provided by Section 39, Article III, Texas Constitution. If this
2 Act does not receive the vote necessary for immediate effect, this
3 Act takes effect September 1, 2009.