

By: Coleman

H.B. No. 3015

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to payment of excess losses and operating expenses  
3 incurred by the Texas Windstorm Insurance Association, including  
4 funding for certain catastrophic events through the issuance of  
5 public securities.

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

7 SECTION 1. Section 2210.058, Insurance Code, is amended to  
8 read as follows:

9 Sec. 2210.058. PAYMENT OF EXCESS LOSSES; PREMIUM TAX  
10 CREDIT. (a) If, in any calendar year, an occurrence or series of  
11 occurrences in a catastrophe area results in insured losses and  
12 operating expenses of the association in excess of premium and  
13 other revenue of the association, the excess losses and operating  
14 expenses shall be paid as provided by this section.

15 (b) For each occurrence, [~~follows:~~

16 [~~(1)~~] \$100 million shall be assessed against the  
17 members of the association as provided by Subsection (f).

18 (c) Losses [~~(b)~~,

19 [~~(2) losses~~] in excess of \$100 million shall be paid  
20 from the catastrophe reserve trust fund established under  
21 Subchapter J and any reinsurance program established by the  
22 association.

23 (d) Losses[~~,~~

24 [~~(3) for losses~~] in excess of those paid under

1 Subsections (b) and (c) [~~Subdivisions (1) and (2)~~, an additional  
2 \$200 million] shall be paid with proceeds from pre-event public  
3 securities issued by the association in accordance with Subchapter  
4 M before the date of any occurrence that results in insured losses  
5 under Subsection (a), as provided by Subsection (g).

6 (e) Any [~~assessed against the members of the association, as~~  
7 provided by Subsection (b), and

8 [(4)] losses in excess of those paid under Subsections (b),  
9 (c), and (d) [~~Subdivisions (1), (2), and (3)~~] shall be paid from  
10 proceeds from post-event public securities issued by the  
11 association in accordance with Subchapter M on or after the date of  
12 any occurrence that results in insured losses under Subsection (a)  
13 [~~assessed against members of the association, as provided by~~  
14 Subsection (b)].

15 (f) [(b)] The proportion of the losses allocable to each  
16 insurer under Subsection (b) [~~Subsections (a)(1), (3), and (4)~~]  
17 shall be determined in the manner used to determine each insurer's  
18 participation in the association for the year under Section  
19 2210.052.

20 (g) Public securities described by Subsection (d) may be  
21 issued in principal amounts not to exceed \$1 billion. Any public  
22 securities proceeds received under Subsection (d) must be used  
23 before the proceeds of any public securities that the association  
24 authorizes to be issued under Subsection (e) on or after any  
25 catastrophic event, and may not be used to fund losses of any  
26 catastrophic event occurring before the date on which public  
27 securities described by Subsection (d) are authorized to be issued.

1           (h) [~~(e)~~] An insurer may credit an amount paid in accordance  
2 with Subsection (b) [~~(a)(4)~~] in a calendar year against the  
3 insurer's premium tax under Chapter 221. The tax credit authorized  
4 under this subsection shall be allowed at a rate not to exceed 20  
5 percent per year for five or more successive years beginning the  
6 calendar year that the assessments under this section are paid. The  
7 balance of payments made by the insurer and not claimed as a premium  
8 tax credit may be reflected in the books and records of the insurer  
9 as an admitted asset of the insurer for all purposes, including  
10 exhibition in an annual statement under Section 862.001.

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

14           SECTION 2. Chapter 2210, Insurance Code, is amended by  
15 adding Subchapter M to read as follows:

16                           SUBCHAPTER M. PUBLIC SECURITIES PROGRAM

17           Sec. 2210.601. PURPOSE. The legislature finds that  
18 authorizing the issuance of public securities to provide a method  
19 to raise funds to provide windstorm and hail insurance through the  
20 association in certain designated portions of the state is for the  
21 benefit of the public and in furtherance of a public purpose.

22           Sec. 2210.602. DEFINITIONS. In this subchapter:

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

25                   (2) "Credit agreement" has the meaning assigned by  
26 Chapter 1371, Government Code.

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

1 authorized to engage in the business of property and casualty  
2 insurance in this state and an affiliate of such an insurer, as  
3 described by Section 823.003, including an affiliate that is not  
4 authorized to engage in the business of property and casualty  
5 insurance in this state.

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

8 (5) "Pre-event public securities" means public  
9 securities authorized to be issued before the occurrence of a  
10 catastrophic event by Section 2210.058(d).

11 (6) "Post-event public securities" means public  
12 securities authorized to be issued on or after the occurrence of a  
13 catastrophic event by Section 2210.058(e).

14 (7) "Public security administrative expenses" means  
15 expenses incurred to administer public securities issued under this  
16 subchapter, including fees for paying agents, trustees, and  
17 attorneys, and for other professional services necessary to ensure  
18 compliance with applicable state or federal law.

19 (8) "Public security obligations" means the principal  
20 of a public security and any premium and interest on a public  
21 security issued under this subchapter, together with any amount  
22 owed under a related credit agreement.

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

26 (10) "Public security resolution" means the  
27 resolution or order authorizing public securities to be issued

1 under this subchapter.

2 Sec. 2210.603. APPLICABILITY OF OTHER LAWS. The board  
3 shall issue the public securities as described by Section 2210.604  
4 in accordance with and subject to the requirements of Chapter 1232,  
5 Government Code, and other provisions of Title 9, Government Code,  
6 that apply to issuance of a public security by a state agency. In  
7 the event of a conflict, this subchapter controls.

8 Sec. 2210.604. ISSUANCE OF PUBLIC SECURITIES AUTHORIZED.

9 (a) At the request of the association and with the approval of the  
10 commissioner, the Texas Public Finance Authority shall issue  
11 pre-event or post-event public securities.

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

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

19 (1) pay the costs related to issuance of the public  
20 securities;

21 (2) provide a public security reserve fund; and

22 (3) capitalize interest for the period determined  
23 necessary by the association, not to exceed two years.

24 Sec. 2210.605. TERMS OF ISSUANCE. (a) The board shall  
25 determine the method of sale, type and form of public security,  
26 maximum interest rates, and other terms of the public securities  
27 that, in the board's judgment, best achieve the goals of the

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

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

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

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

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

24 (1) pay incurred claims and operating expenses of the  
25 association;

26 (2) purchase reinsurance for the association;

27 (3) pay the costs of issuing the public securities,

1 and public security administrative expenses, if any;

2 (4) provide a public security reserve; and

3 (5) pay capitalized interest and principal on the  
4 public securities for the period determined necessary by the  
5 association, not to exceed two years.

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

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

20 (b) The board shall notify the association of the amount of  
21 the public security obligations and the estimated amount of public  
22 security administrative expenses, if any, each year in a period  
23 sufficient, as determined by the association, to permit the  
24 association to determine the availability of funds and assess a  
25 premium surcharge if necessary.

26 (c) The association shall deposit all revenue collected  
27 under Sections 2210.612 and 2210.613 in the public security

1 obligation revenue fund. Money deposited in the fund may be  
2 invested as permitted by general law. Money in the fund required to  
3 be used to pay public security obligations and public security  
4 administrative expenses, if any, shall be transferred to the  
5 appropriate funds in the manner and at the time specified in the  
6 proceedings authorizing the public securities to ensure timely  
7 payment of obligations and expenses.

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

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

20 Sec. 2210.610. PUBLIC SECURITY PAYMENTS. (a) Revenues  
21 received from the premium surcharges under Section 2210.612 or  
22 2210.613 may be applied only as provided by this subchapter.

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

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

27 Sec. 2210.611. EXCESS REVENUE COLLECTIONS AND INVESTMENT



1 EARNINGS. Revenue collected in any year from a premium surcharge  
2 under Section 2210.612 or 2210.613 that exceeds the amount of the  
3 public security obligations and public security administrative  
4 expenses payable in that year and interest earned on the public  
5 security obligation fund may, in the discretion of the association,  
6 be:

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

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

13           (3) deposited in the catastrophe reserve trust fund.

14           Sec. 2210.612. PRE-EVENT PREMIUM SURCHARGE. (a) Each  
15 insurer and the association may collect from their policyholders a  
16 surcharge in addition to any premiums to pay public security  
17 obligations and public security administrative expenses, if any, on  
18 pre-event public securities.

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

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

26           (d) The association shall collect the premium surcharge  
27 from its policyholders. Each insurer shall collect the premium

1 surcharge from the insurer's policyholders who have a property or  
2 casualty policy that provides coverage for premises, locations,  
3 operations, or property located in the catastrophe area and shall  
4 remit the premium surcharge to the association as required by  
5 commissioner rule.

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

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

20 Sec. 2210.613. POST-EVENT PREMIUM SURCHARGE. (a) Each  
21 insurer and the association shall collect from their policyholders  
22 a premium surcharge to pay public security obligations and public  
23 security administrative expenses, if any, on post-event public  
24 securities.

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

27 (c) On approval by the commissioner, each insurer and the

1 association shall assess a premium surcharge to its policyholders  
2 as provided by this section. The premium surcharge must be set in  
3 an amount sufficient to pay all debt service and all related  
4 expenses on the public securities. The premium surcharge assessed  
5 under this section may not exceed six percent of premium and  
6 cumulatively may not exceed 10 percent of premium over a 12-month  
7 period beginning on the date the surcharge is first assessed.

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

14 (e) A premium surcharge under this section shall apply to  
15 all policies that provide coverage on any premises, locations,  
16 operations, or property located in this state for all property and  
17 casualty lines of insurance, other than workers' compensation  
18 insurance, accident and health insurance, and medical malpractice  
19 insurance. The premium surcharge does not apply to premiums  
20 charged for any premises, locations, operations, or property  
21 located outside this state.

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

27 Sec. 2210.614. SOURCE OF PAYMENT; STATE DEBT NOT CREATED.

1 (a) A public security or credit agreement is payable solely from  
2 revenue as provided by this subchapter.

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

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

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

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

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

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

25 (2) in any way impair the rights and remedies of the  
26 public security owners until the public securities are fully  
27 discharged.

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

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

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

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

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

- 20           (1) Subchapter B, Chapter 424;  
21           (2) Subchapter C, Chapter 425; and  
22           (3) Sections 425.203-425.213.

23       SECTION 3. This Act takes effect immediately if it receives  
24 a vote of two-thirds of all the members elected to each house, as  
25 provided by Section 39, Article III, Texas Constitution. If this  
26 Act does not receive the vote necessary for immediate effect, this  
27 Act takes effect September 1, 2009.