

By: Eiland

H.B. No. 3853

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the operation of the Texas Windstorm Insurance
3 Association.

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

5 SECTION 1. Section 2210.005, Insurance Code, is amended to
6 read as follows:

7 Sec. 2210.005. DESIGNATION AS CATASTROPHE AREA OR
8 INADEQUATE FIRE INSURANCE AREA; REVOCATION OF DESIGNATION. (a)
9 After at least 10 days' notice and a hearing, if a hearing is
10 requested by any person within the 10-day notice period, the
11 commissioner may designate an area of this state as a catastrophe
12 area if the commissioner determines that windstorm and hail
13 insurance is not reasonably available to a substantial number of
14 the owners of insurable property located in that territory because
15 the territory is subject to unusually frequent and severe damage
16 resulting from windstorms or hailstorms.

17 (b) After at least 10 days' notice and a hearing, if a
18 hearing is requested by any person within the 10-day notice period,
19 the commissioner may designate an area of this state as an
20 inadequate fire insurance area if the commissioner determines that
21 fire and explosion insurance is not reasonably available to a
22 substantial number of owners of insurable property located in that
23 area.

24 (c) The commissioner shall revoke a designation made under

1 Subsection (a) or (b) if the commissioner determines, after at
2 least 10 days' notice and a hearing, if a hearing is requested by
3 any person within the 10-day notice period, that the applicable
4 insurance coverage is no longer reasonably unavailable to a
5 substantial number of owners of insurable property within the
6 designated territory.

7 (d) If the association determines that windstorm and hail
8 insurance or fire and explosion insurance is no longer reasonably
9 unavailable to a substantial number of owners of insurable property
10 in a territory designated as a catastrophe area or inadequate fire
11 insurance area, as applicable, the association may request in
12 writing that the commissioner revoke the designation. After at
13 least 10 days' notice and a hearing, if a hearing is requested by
14 any person within the 10-day notice period, but not later than the
15 30th day after the date of the hearing or the expiration of the
16 notice period if a hearing is not requested, the commissioner
17 shall:

18 (1) approve the request and revoke the designation;

19 or

20 (2) reject the request.

21 SECTION 2. Section 2210.008, Insurance Code, is amended to
22 read as follows:

23 Sec. 2210.008. DEPARTMENT ORDERS. (a) After notice and an
24 opportunity for a hearing as provided by Subsection (b), the
25 commissioner may issue any orders that the commissioner considers
26 necessary to implement this chapter [~~including orders~~] regarding
27 maximum rates, competitive rates, and policy forms.

1 (b) Before the commissioner adopts an order under
2 Subsection (a), the department shall post notice of the [~~hearing on~~
3 ~~the~~] order at the secretary of state's office in Austin and shall
4 hold a hearing to consider the proposed order if a hearing is
5 requested by any person not later than the 10th day after the date
6 on which the notice is posted. Any person may appear at such a [~~the~~]
7 hearing and testify for or against the adoption of the order.

8 SECTION 3. Sections 2210.052(a) and (d), Insurance Code,
9 are amended to read as follows:

10 (a) Each member of the association shall participate in the
11 assessments [~~writings, expenses, profits, and losses~~] of the
12 association in the proportion that the net direct premiums of that
13 member during the preceding calendar year bears to the aggregate
14 net direct premiums by all members of the association, as
15 determined using the information provided under Subsection (b).

16 (d) Notwithstanding Subsection (a), a member, in accordance
17 with the plan of operation, is entitled to receive credit for
18 similar insurance voluntarily written in an area designated by the
19 commissioner. The member's participation in the assessments
20 [~~writings~~] of the association shall be reduced in accordance with
21 the plan of operation.

22 SECTION 4. Section 2210.056(c), Insurance Code, is amended
23 to read as follows:

24 (c) On dissolution of the association, all assets of the
25 association revert to this state and shall be deposited in the
26 general revenue fund.

27 SECTION 5. Section 2210.058, Insurance Code, is amended to

1 read as follows:

2 Sec. 2210.058. PAYMENT OF EXCESS LOSSES [~~, PREMIUM TAX~~
3 ~~CREDIT~~]. (a) If [~~, in any calendar year,~~] an occurrence or series
4 of occurrences, as defined in the plan of operation, in a
5 catastrophe area results in insured losses and operating expenses
6 of the association in excess of premium and other revenue of the
7 association, the excess losses shall be paid as provided by this
8 section.

9 (b) An amount not to exceed [follows:]

10 [~~(1)~~] \$100 million for each occurrence shall be
11 assessed against the members of the association and the Texas FAIR
12 Plan Association. The loss allocable to the Texas FAIR Plan
13 Association shall be based on the proportion that the net direct
14 premiums written by the Texas FAIR Plan Association during the
15 preceding calendar year bears to the total net direct premiums
16 written in this state by all members of the association for the same
17 period, as determined under Section 2210.052. The remainder of the
18 assessments shall be allocated to each member insurer in the manner
19 used to determine each insurer's participation in the association
20 for the year under Section 2210.052. Assessments made under this
21 subsection are not reimbursable under Subsection (g).

22 (c) For each occurrence, any [as provided by Subsection (b),

23 [~~(2)~~] losses in excess of \$100 million shall be paid as
24 provided by this subsection from the catastrophe reserve trust fund
25 established under Subchapter J. Not more than 50 percent of the
26 amount in the catastrophe reserve trust fund as of the date of the
27 occurrence, reduced by anticipated payments from prior

1 occurrences, may be used to pay losses under this subsection unless
2 the commissioner determines that a greater percentage should be
3 applied after at least 10 days' notice and a hearing, if a hearing
4 is requested by any person within the 10-day notice period.

5 (d) Any [~~and any reinsurance program established by the~~
6 ~~association;~~

7 [~~(3) for~~] losses in excess of the amounts determined
8 under Subsections (b) and (c) [~~those paid under Subdivisions (1)~~
9 ~~and (2), an additional \$200 million] shall be paid in accordance
10 with a plan developed by the association and approved by the
11 commissioner after at least 10 days' notice and a hearing if a
12 hearing is requested by any person within the 10-day notice period,
13 from any or a combination of the following sources:~~

14 (1) additional assessments to the members of the
15 association and the Texas FAIR Plan Association, not to exceed \$300
16 million per calendar year, which shall be based on the proportion of
17 the member's or the Texas FAIR Plan Association's net direct
18 premiums for the lines of insurance used to compute member
19 participation in the association's assessments under Section
20 2210.052 as reported in the association's annual statement filed
21 with the department for the calendar year immediately preceding the
22 year in which the assessment is made, to the total reported net
23 direct premiums for those insurance lines in this state;

24 (2) any reinsurance proceeds recoverable by the
25 association; and

26 (3) any proceeds from public securities received by
27 the association under Subchapter M.

1 (e) Any [assessed against the members of the association, as
2 provided by Subsection (b), and

3 [(4)] losses of the association that are not [in
4 excess of those] paid by assessments and the catastrophe reserve
5 trust fund as provided by Subsections (b) and (c) or are not paid by
6 the plan approved by the commissioner under Subsection (d)
7 [Subdivisions (1), (2), and (3)] shall be paid from the proceeds
8 from public securities received by the association under Subchapter
9 M [assessed against members of the association, as provided by
10 Subsection (b)].

11 (f) Assessments under Subsection (d)(1) are reimbursable in
12 accordance with Subsection (g) [(b) The proportion of the losses
13 allocable to each insurer under Subsections (a)(1), (3), and (4)
14 shall be determined in the manner used to determine each insurer's
15 participation in the association for the year under Section
16 2210.052].

17 (g) [(e)] An insurer, including the Texas FAIR Plan
18 Association, that has been assessed and has paid the assessments
19 under Subsection (d)(1) may charge a premium surcharge for
20 reimbursement of the assessment. The premium surcharge must be a
21 charge separate from and in addition to premiums collected. The
22 premium surcharge applies to each insurance policy for the lines
23 used to compute the assessment issued by the insurer or the Texas
24 FAIR Plan Association in this state, the effective date of which is
25 within the five-year period beginning on the 90th day after the date
26 of the assessment. The amount of the surcharge shall be computed on
27 the basis of a uniform percentage of the premium on those policies,

1 not to exceed 20 percent per year, of the amount of the assessment,
2 such that over the five-year period the aggregate of all surcharges
3 by the insurer or the Texas FAIR Plan Association equals but does
4 not exceed the amount of the assessment. The amount of an
5 assessment paid and recoverable under this subsection ~~[may credit~~
6 ~~an amount paid in accordance with Subsection (a)(4) in a calendar~~
7 ~~year against the insurer's premium tax under Chapter 221. The tax~~
8 ~~credit authorized under this subsection shall be allowed at a rate~~
9 ~~not to exceed 20 percent per year for five or more successive years~~
10 ~~beginning the calendar year that the assessments under this section~~
11 ~~are paid. The balance of payments made by the insurer and not~~
12 ~~claimed as a premium tax credit]~~ may be reflected in the books and
13 records of the insurer or the Texas FAIR Plan Association as an
14 admitted asset of the insurer for all purposes, including
15 exhibition in an annual statement under Section 862.001.

16 (h) If losses are paid by the procedures under Subsection
17 (d)(1), the association shall develop and implement a plan for
18 collection of a premium surcharge from policyholders of the
19 association. The premium surcharge must be a charge separate from
20 and in addition to premiums collected. The association shall
21 establish the premium surcharge in an amount at least 100 percent
22 and not more than 150 percent of the average per-policy surcharge
23 percentage established under Subsection (g) on any policy issued or
24 renewed by the association. The period for collection of the
25 premium surcharge under this subsection may not exceed five years.
26 Each surcharge collected under this subsection shall be deposited
27 in the catastrophe reserve trust fund.

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

5 (j) The commissioner may adopt rules as necessary to
6 implement this section.

7 SECTION 6. Section 2210.059, Insurance Code, is amended to
8 read as follows:

9 Sec. 2210.059. NOTIFICATION REGARDING CERTAIN LOSSES [~~TAX~~
10 ~~CREDITS~~]. (a) The association shall immediately notify the
11 department if an occurrence or series of occurrences in a
12 catastrophe area results in insured losses that result in
13 assessments, payments from the trust fund established under Section
14 2210.452, or claims under a reinsurance contract approved under
15 Section 2210.453 [~~a tax credit under Section 2210.058(c) in a~~
16 ~~calendar year~~].

17 (b) On receipt of notice under Subsection (a), the
18 department shall immediately notify the governor and the
19 appropriate committees of each house of the legislature of the
20 amount of insured losses eligible for payments using assessment
21 funds, catastrophe reserve trust funds, or reinsurance proceeds
22 [~~tax credits under Section 2210.058(c)~~].

23 SECTION 7. Section 2210.060(c), Insurance Code, is amended
24 to read as follows:

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

1 the association in the manner provided by this chapter.

2 SECTION 8. Section 2210.102, Insurance Code, is amended by
3 amending Subsection (a) and adding Subsection (c) to read as
4 follows:

5 (a) The board of directors is composed of the following 11
6 ~~[nine]~~ members appointed by the commissioner:

7 (1) five members who represent the interests of
8 ~~[representatives of different]~~ insurers who are members of the
9 association~~[, elected by the members as provided by the plan of~~
10 ~~operation];~~

11 (2) four members who represent the interests of the
12 ~~[two]~~ public, [representatives] who are nominated by the office of
13 public insurance counsel, and who, as of the date of the
14 appointment:

15 (A) reside in a catastrophe area; and

16 (B) are policyholders of the association; and

17 (3) two members who are property and casualty agents,
18 each of whom must:

19 (A) have demonstrated experience in the
20 association;

21 (B) maintain the agent's principal office, as of
22 the date of the appointment, in a catastrophe area; and

23 (C) hold a license under Chapter 4051 as a
24 general property and casualty agent or a personal lines property
25 and casualty agent.

26 (c) To be eligible to serve on the board of directors as a
27 representative of insurers, a person must be a full-time employee

1 of an authorized insurer that is a member of the association.

2 SECTION 9. Section 2210.103, Insurance Code, is amended by
3 amending Subsection (a) and adding Subsection (c) to read as
4 follows:

5 (a) Members of the board of directors serve three-year
6 staggered terms, with the terms of three or four members expiring on
7 the third Tuesday of March of each year.

8 (c) A member of the board of directors serves at the
9 pleasure of the commissioner. The commissioner shall appoint a
10 replacement for a member who leaves or is removed from the board of
11 directors in the manner provided by Section 2210.102.

12 SECTION 10. Subchapter C, Chapter 2210, Insurance Code, is
13 amended by adding Section 2210.1051 to read as follows:

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

24 (b) A meeting held by telephone conference call,
25 videoconference, or other similar telecommunication method:

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

1 (2) may not be held unless notice of the meeting
2 specifies the location of the meeting;

3 (3) must be audible to the public at the location
4 specified in the notice under Subdivision (2); and

5 (4) must provide two-way audio communication between
6 all members of the board attending the meeting during the entire
7 meeting, and if the two-way audio communication link with members
8 attending the meeting is disrupted so that a quorum of the board is
9 no longer participating in the meeting, the meeting may not
10 continue until the two-way audio communication link is
11 reestablished.

12 SECTION 11. Section 2210.152, Insurance Code, is amended by
13 adding Subsection (c) to read as follows:

14 (c) The plan of operation may contain provisions allowing
15 the association to change its methods and procedures for doing
16 business in ways that allow the association to implement new
17 technologies designed to make the association up to date and
18 efficient in its operations.

19 SECTION 12. Section 2210.153(a), Insurance Code, is amended
20 to read as follows:

21 (a) The association may present a recommendation for a
22 change in the plan of operation to the department [~~at:~~

23 ~~[(1) periodic hearings conducted by the department for~~
24 ~~that purpose, or~~

25 ~~[(2) hearings relating to property and casualty~~
26 ~~insurance rates].~~

27 SECTION 13. Section 2210.202(b), Insurance Code, is amended

1 to read as follows:

2 (b) A general property and casualty agent or a personal
3 lines property and casualty agent must submit an application for
4 the insurance coverage on behalf of the applicant on forms
5 prescribed by the association. [~~The application must contain a~~
6 ~~statement as to whether the applicant has submitted or will submit~~
7 ~~the premium in full from personal funds or, if not, to whom a~~
8 ~~balance is or will be due.~~]

9 SECTION 14. Section 2210.207(e), Insurance Code, is amended
10 to read as follows:

11 (e) Notwithstanding this chapter or any other law, the
12 commissioner [~~, after notice and hearing,~~] may adopt rules to:

13 (1) authorize the association to provide actual cash
14 value coverage instead of replacement cost coverage on the roof
15 covering of a building insured by the association; and

16 (2) establish:

17 (A) the conditions under which the association
18 may provide that actual cash value coverage;

19 (B) the appropriate premium reductions when
20 coverage for the roof covering is provided on an actual cash value
21 basis; and

22 (C) the disclosure that must be provided to the
23 policyholder, prominently displayed on the face of the windstorm
24 and hail insurance policy.

25 SECTION 15. Sections 2210.256(a), (b), (d), and (f),
26 Insurance Code, are amended to read as follows:

27 (a) After notice and an opportunity for a hearing, the

1 department may revoke an appointment made under Section 2210.254 if
2 the appointee is found to be in violation of this subchapter or a
3 rule of the commissioner adopted under this subchapter.

4 (b) The commissioner, instead of revocation, may impose
5 sanctions and penalties under Chapter 82, including one or more of
6 the following sanctions if the commissioner determines from the
7 facts that the sanction would be fair, reasonable, or equitable:

8 (1) suspension of the appointment for a specific
9 period, not to exceed one year;

10 (2) issuance of an order directing the appointee to
11 cease and desist from the specified activity or failure to act
12 determined to be in violation of this subchapter or rules of the
13 commissioner adopted under this subchapter; or

14 (3) if the commissioner finds that the appointee
15 knowingly, wilfully, fraudulently, or with gross negligence failed
16 to file the required inspection reports, or signed or caused to be
17 prepared an inspection report that contains a false or fraudulent
18 statement, issuance of an order directing the appointee to pay
19 within a specified time, not to exceed 60 days, a fine not to exceed
20 \$5,000 for the violation.

21 (d) If it is found [~~after a hearing~~] that an appointee has
22 failed to comply with an order issued under Subsection (b), the
23 department shall, unless the order is stayed, revoke the
24 appointment of the person.

25 (f) If an appointee is an engineer licensed by the Texas
26 Board of Professional Engineers who is found by the department to
27 have knowingly, wilfully, fraudulently, or with gross negligence

1 failed to file the required inspection reports, or signed or caused
2 to be prepared an inspection report that contains a false or
3 fraudulent statement, the commissioner may take action against the
4 appointee in the manner provided by Subsections (a) and (b) but may
5 not assess a fine against the appointee. The commissioner shall
6 notify the Texas Board of Professional Engineers of an order issued
7 by the commissioner against an appointee who is an engineer
8 licensed by that board, including an order suspending or revoking
9 the appointment of the person.

10 SECTION 16. Section 2210.307(h), Insurance Code, is amended
11 to read as follows:

12 (h) The advisory committee shall submit to the commissioner
13 the committee's recommendation on each proposal. The commissioner
14 shall notify the advisory committee of the acceptance or rejection
15 of each recommendation not later than the 30th day after the date of
16 receipt by the commissioner. Acceptance of a recommendation by the
17 commissioner means that the commissioner will consider adoption of
18 that recommendation at a rulemaking proceeding [~~hearing~~]. Before
19 adopting a recommendation, the commissioner must determine that the
20 proposal, if adopted, will not weaken the integrity or diminish the
21 effectiveness of a procedure.

22 SECTION 17. Section 2210.351(d), Insurance Code, is amended
23 to read as follows:

24 (d) If at any time the commissioner determines that a filing
25 approved under Subsection (c) no longer meets the requirements of
26 this chapter, the commissioner may, after [~~a hearing held on~~] at
27 least 10 days' notice and a hearing, if a hearing is requested by

1 any person within the 10-day notice period [~~20 days' notice to the~~
2 ~~association that specifies the matters to be considered at the~~
3 ~~hearing~~], issue an order withdrawing approval of the filing. The
4 order must specify in what respects the commissioner determines
5 that the filing no longer meets the requirements of this chapter.
6 An order issued under this subsection may not take effect before the
7 30th day after the date of issuance of the order.

8 SECTION 18. Sections 2210.352(a) and (c), Insurance Code,
9 are amended to read as follows:

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

14 [~~(1) a filing made under this subsection; or~~
15 [~~(2) a department action with respect to the filing.~~]

16 (c) On request, the [~~The~~] commissioner shall schedule an
17 open meeting not later than the 45th day after the date the
18 department receives a filing at which interested persons may
19 present written or oral comments relating to the filing.

20 SECTION 19. Section 2210.355(b), Insurance Code, is amended
21 to read as follows:

22 (b) In adopting rates under this chapter, the following must
23 be considered:

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

27 (2) recognized catastrophe models;

1 (3) expenses of operation, including acquisition
2 costs;

3 (4) [~~(3)~~] a reasonable margin for profit and
4 contingencies; and

5 (5) [~~(4)~~] all other relevant factors, within and
6 outside this state.

7 SECTION 20. Section 2210.356(b), Insurance Code, is amended
8 to read as follows:

9 (b) The catastrophe element used to develop rates under this
10 subchapter applicable to risks written by the association must be
11 uniform throughout the seacoast territory. The catastrophe element
12 of the rates must be developed using:

13 (1) 90 percent of both the monoline extended coverage
14 loss experience and related premium income for all insurers, other
15 than the association, for covered property located in the seacoast
16 territory, using not less than the most recent 30 years of
17 experience available; [~~and~~]

18 (2) 100 percent of both the loss experience and
19 related premium income for the association for covered property,
20 using not less than the most recent 30 years of experience
21 available; and

22 (3) recognized catastrophe models and any other
23 relevant factors as identified under Section 2210.355(b).

24 SECTION 21. Section 2210.359(b), Insurance Code, is amended
25 to read as follows:

26 (b) The commissioner may [~~after notice and hearing,~~]
27 suspend this section on a finding that a catastrophe loss or series

1 of occurrences resulting in losses in the catastrophe area justify
2 a need to ensure:

- 3 (1) rate adequacy in the catastrophe area; and
4 (2) availability of insurance outside the catastrophe
5 area.

6 SECTION 22. Section 2210.361(b), Insurance Code, is amended
7 to read as follows:

8 (b) After notice and hearing, if a hearing is requested by
9 any person not later than the 10th day after the date on which the
10 notice is posted, the commissioner may accept, modify, or reject a
11 recommendation made by the association under this section. Chapter
12 40 does not apply to an action taken under this section.

13 SECTION 23. Sections 2210.452(a), (c), and (d), Insurance
14 Code, are amended to read as follows:

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

20 (1) the obligations of the trust fund under Section
21 2210.058 [~~2210.058(a)~~]; and

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

26 (c) At the end of each calendar year or policy year, the
27 association shall pay the net gain from operations [~~equity~~] of the

1 association [a member], including all premium and other revenue of
2 the association in excess of incurred losses and operating
3 expenses, to the trust fund or a reinsurance program approved by the
4 commissioner. For the purposes of this subsection, "operating
5 expenses" includes the cost of any reinsurance.

6 (d) The commissioner by rule shall establish the procedure
7 relating to the disbursement of money from the trust fund [~~to~~
8 ~~policyholders in the event of an occurrence or series of~~
9 ~~occurrences within a catastrophe area that results in a~~
10 ~~disbursement under Section 2210.058(a)]]. The rules may provide
11 that money from the trust fund may be used to purchase reinsurance
12 to protect the trust fund or to reimburse the association for the
13 payment of policyholder claims. Any reinsurance purchases under
14 this subsection must be included in the reinsurance approved under
15 Section 2210.453.~~

16 SECTION 24. Section 2210.453, Insurance Code, is amended to
17 read as follows:

18 Sec. 2210.453. REINSURANCE PROGRAM. (a) The association may
19 [~~shall~~]:

20 (1) make payments into the trust fund; and [~~or~~]
21 (2) purchase [establish a] reinsurance as part of the
22 association's annual operating expenses to the extent [program]
23 approved by the department.

24 (b) With the approval of the department, the association may
25 use [establish a] reinsurance [program] that operates in addition
26 to or in concert with the trust fund and with assessments authorized
27 by this chapter.

1 SECTION 25. Section 2210.504(a), Insurance Code, is amended
2 to read as follows:

3 (a) Not later than the 60th day after the date of receipt of
4 a filing under Section 2210.503, [~~and after notice and hearing,~~]
5 the commissioner by order shall approve, disapprove, or modify the
6 proposed adjustment to the maximum liability limits.

7 SECTION 26. Chapter 2210, Insurance Code, is amended by
8 adding Subchapter M to read as follows:

9 SUBCHAPTER M. PUBLIC SECURITIES PROGRAM

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

15 Sec. 2210.602. DEFINITIONS. In this subchapter:

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

18 (2) "Insurer" means each property and casualty insurer
19 authorized to engage in the business of property and casualty
20 insurance in this state. The term specifically includes a county
21 mutual insurance company, a Lloyd's plan, and a reciprocal or
22 interinsurance exchange. The term does not include a county mutual
23 insurance company described by Section 912.310.

24 (3) "Public security" means a debt instrument or other
25 public security issued by the Texas Public Finance Authority.

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

1 subchapter.

2 Sec. 2210.603. APPLICABILITY OF OTHER LAWS. (a) To the
3 extent consistent with this subchapter, Chapter 1232, Government
4 Code, applies to public securities issued under this subchapter.
5 In the event of a conflict, this subchapter controls.

6 (b) The following laws also apply to public securities
7 issued under this subchapter to the extent consistent with this
8 subchapter:

9 (1) Chapters 1201, 1202, 1204, 1205, 1231, and 1371,
10 Government Code; and

11 (2) Subchapter A, Chapter 1206, Government Code.

12 Sec. 2210.604. ISSUANCE OF PUBLIC SECURITIES AUTHORIZED.

13 (a) At the request of the association and with the approval of the
14 commissioner, the Texas Public Finance Authority shall issue public
15 securities to:

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

18 (A) establish and maintain reserves to pay
19 claims;

20 (B) pay incurred claims;

21 (C) pay operating expenses; and

22 (D) purchase reinsurance;

23 (2) pay costs related to issuance of the public
24 securities; and

25 (3) pay other costs related to the public securities
26 as may be determined by the board.

27 (b) The Texas Public Finance Authority may issue, on behalf

1 of the association, public securities in an amount sufficient to
2 fund the insured losses and operating expenses of the association
3 as determined by the association and approved by the commissioner
4 after at least 10 days' notice and a hearing if a hearing is
5 requested by any person within the 10-day notice period.

6 Sec. 2210.605. TERMS OF ISSUANCE. (a) Public securities
7 issued under this subchapter may be issued at a public or private
8 sale.

9 (b) Public securities must:

10 (1) be issued in the name of the association; and

11 (2) mature not more than 10 years after the date
12 issued.

13 Sec. 2210.606. CONTENTS OF PUBLIC SECURITY RESOLUTION;
14 ADMINISTRATION OF ACCOUNTS. (a) In a public security resolution,
15 the board may:

16 (1) provide for the flow of funds and the
17 establishment, maintenance, and investment of funds and special
18 accounts with regard to the public securities, including an
19 interest and sinking fund account, a reserve account, and other
20 accounts; and

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

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

26 Sec. 2210.607. SOURCE OF PAYMENT. (a) Public securities
27 issued under this subchapter are payable only from:

1 (1) the service fees established under Section
2 2210.609, as applicable; or

3 (2) other amounts that the association is authorized
4 to levy, charge, and collect.

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

8 (c) Each public security must:

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

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

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

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

18 Sec. 2210.608. PAYMENT OF INTEREST. (a) Except as provided
19 by Subsection (b), all interest on a public security issued as
20 described by Section 2210.058(d) or (e) shall be paid by the
21 association from the existing premiums of the association.

22 (b) If the association is unable to pay the interest on a
23 public security described by Subsection (a) with existing premiums,
24 the interest on the public securities shall be paid from the service
25 fees collected in accordance with Section 2210.609.

26 Sec. 2210.609. SERVICE FEES; PREMIUM SURCHARGE. (a) A fee
27 to service public securities issued by the association prior or

1 subsequent to a catastrophic event may be collected by each
2 insurer, the association, and the FAIR Plan Association from
3 policyholders who reside or have operations in, or whose insured
4 property is located in, the catastrophe area.

5 (b) A fee to service public securities issued by the
6 association may be collected by each insurer, the association, and
7 the FAIR Plan Association from policyholders who reside or have
8 operations in, or whose insured property is located in, this state.

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

11 (d) On approval by the commissioner after at least 10 days'
12 notice and a hearing, if a hearing is requested by any person within
13 the 10-day notice period, each insurer, the association, and the
14 FAIR Plan Association shall charge the service fee to its
15 policyholders. The service fee must be set in an amount sufficient
16 to pay all debt service and all related expenses on the public
17 securities. The service fee shall be collected in the form of a
18 premium surcharge and shall be remitted to the association as
19 required by the commissioner by rule.

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

26 (f) For purposes of policy cancellation, failure by a
27 policyholder to pay a premium surcharge imposed under this section

1 is equivalent to failure to pay premium.

2 Sec. 2210.610. EXEMPTION FROM TAXATION. Public securities
3 issued under this subchapter, any interest from those public
4 securities, and all assets pledged to secure the payment of the
5 public securities are free from taxation by the state or a political
6 subdivision of this state.

7 Sec. 2210.611. AUTHORIZED INVESTMENTS. Public securities
8 issued under this subchapter are authorized investments under
9 Subchapter B, Chapter 424, and Subchapters C and D, Chapter 425.

10 Sec. 2210.612. STATE PLEDGE REGARDING PUBLIC SECURITY OWNER
11 RIGHTS AND REMEDIES. (a) The state pledges to and agrees with the
12 owners of public securities issued in accordance with this
13 subchapter that the state will not limit or alter the rights vested
14 in the association to fulfill the terms of agreements made with the
15 owners or in any way impair the rights and remedies of those owners
16 until the following obligations are fully discharged:

17 (1) the public securities;
18 (2) any bond premium;
19 (3) interest; and
20 (4) all costs and expenses related to an action or
21 proceeding by or on behalf of the owners.

22 (b) The association may include the state's pledge and
23 agreement under Subsection (a) in an agreement with the owners of
24 the public securities.

25 Sec. 2210.613. PAYMENT ENFORCEABLE BY MANDAMUS. A writ of
26 mandamus and any other legal or equitable remedy are available to a
27 party in interest to require the association or another party to

1 fulfill an agreement or perform a function or duty under:

2 (1) this subchapter;

3 (2) the Texas Constitution; or

4 (3) a public security resolution.

5 SECTION 27. Section 941.003, Insurance Code, is amended by
6 adding Subsection (e) to read as follows:

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

9 SECTION 28. Section 942.003, Insurance Code, is amended by
10 adding Subsection (f) to read as follows:

11 (f) An exchange is subject to Chapter 2210, as provided by
12 that chapter.

13 SECTION 29. The following laws are repealed:

14 (1) Section 2210.207(f), Insurance Code;

15 (2) Sections 2210.353(d), (e), and (f), Insurance
16 Code; and

17 (3) Section 2210.506, Insurance Code.

18 SECTION 30. (a) The board of directors of the Texas
19 Windstorm Insurance Association established under Section
20 2210.102, Insurance Code, as that section existed before amendment
21 by this Act, is abolished on the 30th day after the effective date
22 of this Act.

23 (b) The commissioner of insurance shall appoint the members
24 of the board of directors of the Texas Windstorm Insurance
25 Association under Section 2210.102, Insurance Code, as amended by
26 this Act, for terms beginning on the 31st day after the effective
27 date of this Act.

1 (c) The term of a person who is serving as a member of the
2 board of directors of the Texas Windstorm Insurance Association
3 immediately before the abolition of that board under Subsection (a)
4 of this section expires on the 30th day after the effective date of
5 this Act. Such a person is eligible for appointment by the
6 commissioner of insurance to the new board of directors of the Texas
7 Windstorm Insurance Association under Section 2210.102, Insurance
8 Code, as amended by this Act.

9 SECTION 31. This Act takes effect immediately if it
10 receives a vote of two-thirds of all the members elected to each
11 house, as provided by Section 39, Article III, Texas Constitution.
12 If this Act does not receive the vote necessary for immediate
13 effect, this Act takes effect September 1, 2009.