

By: Smithee

H.B. No. 4733

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the operation and funding of the Texas Windstorm
3 Insurance Association, including funding of coverage for certain
4 catastrophic events through the issuance of public securities.

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

6 SECTION 1. Section 2210.001, Insurance Code, is amended to
7 read as follows:

8 Sec. 2210.001. PURPOSE. (a) An adequate market for
9 windstorm and~~[]~~ hail~~[]~~~~and fire~~ insurance in the seacoast
10 territory is necessary to the economic welfare of this state, and
11 without that insurance, the orderly growth and development of this
12 state would be severely impeded. This chapter provides a method by
13 which adequate windstorm and~~[]~~ hail~~[]~~~~and fire~~ insurance may be
14 obtained in certain designated portions of the seacoast territory
15 of this state.

16 (b) The purpose of the Texas Windstorm Insurance
17 Association is to serve as a residual insurer of last resort for
18 windstorm and hail insurance in the seacoast territory. The
19 association shall function in such a manner as to not be a direct
20 competitor in the private market and shall provide insurance
21 coverage to persons who are unable to obtain insurance coverage in
22 the private market.

23 SECTION 2. Section 2210.003(6), Insurance Code, is amended
24 to read as follows:

1 (6) "Insurance" means Texas ~~[fire and explosion~~
2 ~~insurance and Texas]~~ windstorm and hail insurance.

3 SECTION 3. Sections 2210.004(a) and (g), Insurance Code,
4 are amended to read as follows:

5 (a) Except as provided by Subsection (h), for purposes of
6 this chapter and subject to this section, "insurable property"
7 means immovable property at a fixed location in a catastrophe area
8 or corporeal movable property located in that immovable property,
9 as designated in the plan of operation, that is determined by the
10 association according to the criteria specified in the plan of
11 operation to be in an insurable condition against windstorm and
12 hail ~~[or fire and explosion, as appropriate]~~, as determined by
13 normal underwriting standards. The term includes property
14 described by Section 2210.209.

15 (g) For purposes of this chapter, a residential structure is
16 insurable property if:

17 (1) the residential structure is not:

18 (A) a condominium, apartment, duplex, or other
19 multifamily residence; or

20 (B) a hotel or resort facility; and

21 (2) the residential structure is located within an
22 area designated as a unit under the Coastal Barrier Resources Act
23 (Pub. L. No. 97-348) ~~[, and~~

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

27 SECTION 4. Section 2210.005, Insurance Code, is amended to

1 read as follows:

2 Sec. 2210.005. DESIGNATION AS CATASTROPHE AREA [~~OR~~
3 ~~INADEQUATE FIRE INSURANCE AREA~~]; REVOCATION OF DESIGNATION. (a)
4 After at least 10 days' notice and a hearing, the commissioner may
5 designate an area of the seacoast area of this state as a
6 catastrophe area if the commissioner determines that windstorm and
7 hail insurance is not reasonably available to a substantial number
8 of the owners of insurable property located in that territory
9 because the territory is subject to unusually frequent and severe
10 damage resulting from windstorms or hailstorms.

11 (b) [~~After at least 10 days' notice and a hearing, the~~
12 ~~commissioner may designate an area of this state as an inadequate~~
13 ~~fire insurance area if the commissioner determines that fire and~~
14 ~~explosion insurance is not reasonably available to a substantial~~
15 ~~number of owners of insurable property located in that area.~~

16 [~~(c)~~] The commissioner shall revoke a designation made under
17 Subsection (a) [~~or (b)~~] if the commissioner determines, after at
18 least 10 days' notice and a hearing, that the applicable insurance
19 coverage is no longer reasonably unavailable to a substantial
20 number of owners of insurable property within the designated
21 territory.

22 (c) [~~(d)~~] If the association determines that windstorm and
23 hail insurance [~~or fire and explosion insurance~~] is no longer
24 reasonably unavailable to a substantial number of owners of
25 insurable property in a territory designated as a catastrophe area
26 [~~or inadequate fire insurance area, as applicable~~], the association
27 may request in writing that the commissioner revoke the

1 designation. After at least 10 days' notice and a hearing, but not
2 later than the 30th day after the date of the hearing, the
3 commissioner shall:

- 4 (1) approve the request and revoke the designation; or
- 5 (2) reject the request.

6 SECTION 5. Subchapter A, Chapter 2210, Insurance Code, is
7 amended by adding Section 2210.009 to read as follows:

8 Sec. 2210.009. LIST OF PRIVATE INSURERS; INCENTIVE PLAN.

9 (a) The department shall maintain a list of all insurers that
10 engage in the business of property and casualty insurance in the
11 voluntary market in the seacoast territory.

12 (b) The department shall develop incentive programs in the
13 manner described by Section 2210.053(b) to encourage authorized
14 insurers to write insurance on a voluntary basis and to minimize the
15 use of the association as a means to obtain insurance.

16 SECTION 6. Sections 2210.052(a), (c), and (d), Insurance
17 Code, are amended to read as follows:

18 (a) Each member of the association shall participate in
19 insured losses and operating expenses of the association, in excess
20 of premium and other revenue [~~the writings, expenses, profits, and~~
21 ~~losses~~] of the association, in the proportion that the net direct
22 premiums of that member during the preceding calendar year bears to
23 the aggregate net direct premiums by all members of the
24 association, as determined using the information provided under
25 Subsection (b).

26 (c) Each member's participation in the association shall be
27 determined annually in the manner provided by the plan of

1 operation. For purposes of determining participation in the
2 association, two or more members that are subject to common
3 ownership or that operate in this state under common management or
4 control shall be treated as a single member. [~~The determination
5 shall also include the net direct premiums of an affiliate that is
6 under that common management or control, including an affiliate
7 that is not authorized to engage in the business of property
8 insurance in this state.~~]

9 (d) Notwithstanding Subsection (a), a member, in accordance
10 with the plan of operation, is entitled to receive credit for
11 similar insurance voluntarily written in an area designated by the
12 commissioner. The member's participation in the insured losses and
13 operating expenses of the association in excess of premium and
14 other revenue [~~writings~~] of the association shall be reduced in
15 accordance with the plan of operation. Incentives adopted under
16 the plan of operation must include a minimum level of participation
17 for an insurer voluntarily writing coverage in a catastrophe area,
18 and may not include a maximum level to cap a member's actual
19 statewide writings compared with other members.

20 SECTION 7. Section 2210.058, Insurance Code, is amended to
21 read as follows:

22 Sec. 2210.058. PAYMENT OF EXCESS LOSSES [~~, PREMIUM TAX
23 CREDIT~~]. (a) If, in any calendar year, an occurrence or series of
24 occurrences in a catastrophe area results in insured losses and
25 operating expenses of the association in excess of premium and
26 other revenue of the association, the excess losses shall be paid as
27 provided by this section.

1 (b) The association shall pay excess losses from available
2 reserves of the association and available amounts in [follows:

3 ~~[(1) \$100 million shall be assessed against the~~
4 ~~members of the association as provided by Subsection (b);~~

5 ~~[(2) losses in excess of \$100 million shall be paid~~
6 ~~from] the catastrophe reserve trust fund established under~~
7 ~~Subchapter J.~~

8 (c) For [and any reinsurance program established by the
9 association;

10 ~~[(3) for] losses in excess of those paid under~~
11 Subsection (b), catastrophe area public securities may be issued in
12 the manner prescribed by Subchapter M. Catastrophe area public
13 securities issued under this subsection may be issued before or on
14 or after the occurrence of a catastrophic event in amounts
15 necessary to fund not more than 45 percent of the required solvency
16 level determined under Subchapter N. All catastrophe area public
17 securities obligations shall be paid in the manner prescribed by
18 Section 2210.609, if applicable, and Section 2210.611.

19 (d) For [Subdivisions (1) and (2), an additional \$200
20 million shall be assessed against the members of the association,
21 as provided by Subsection (b); and

22 ~~[(4)] losses in excess of those paid under~~ Subsections
23 (b) and (c), Class 1 public securities may be issued before or on or
24 after the occurrence of a catastrophic event in the manner
25 prescribed by Subchapter M. Class 1 post-event public securities
26 may be issued only on or after a named storm has caused damage in the
27 seacoast territory and the board of directors has determined that

1 the combination of association reserves, amounts available in the
2 catastrophe reserve trust fund, catastrophe area public
3 securities, and Class 1 pre-event public securities, if any, are
4 insufficient to pay the losses. The board of directors may request
5 the commissioner to authorize Class 1 public securities in an
6 amount sufficient to pay projected losses up to an amount not to
7 exceed 50 percent of the required solvency level determined under
8 Subchapter N. All Class 1 public securities obligations shall be
9 paid in the manner prescribed by Section 2210.609, if applicable,
10 and Section 2210.612.

11 (e) For losses in excess of those paid under Subsections
12 (b)-(d), the board of directors of the association may request the
13 commissioner to authorize member company public securities, in an
14 amount not to exceed \$500 million, to be issued after a catastrophic
15 event in the manner prescribed by Subchapter M. Member company
16 public securities obligations shall be paid in the manner
17 prescribed by Section 2210.613.

18 (f) For losses in excess of those paid under Subsections
19 (b)-(e), the board of directors may request the commissioner to
20 authorize Class 2 post-event public securities to be issued under
21 this subsection on or after a catastrophic event in the manner
22 prescribed by Subchapter M. The commissioner may authorize Class 2
23 post-event public securities under this subsection to pay losses
24 above the required solvency level determined under Subchapter N, in
25 an amount sufficient to pay losses but not to exceed \$3 billion.
26 All Class 2 post-event public securities obligations shall be paid
27 in the manner prescribed by Section 2210.614.

1 (g) Notwithstanding any other provision of this section,
2 the association may pay losses in excess of premium and other
3 revenue of the association with reinsurance proceeds from
4 reinsurance purchased by the association. [~~Subdivisions (1), (2),~~
5 ~~and (3) shall be assessed against members of the association, as~~
6 ~~provided by Subsection (b).~~

7 [~~(b) The proportion of the losses allocable to each insurer~~
8 ~~under Subsections (a)(1), (3), and (4) shall be determined in the~~
9 ~~manner used to determine each insurer's participation in the~~
10 ~~association for the year under Section 2210.052.~~

11 [~~(c) An insurer may credit an amount paid in accordance with~~
12 ~~Subsection (a)(4) in a calendar year against the insurer's premium~~
13 ~~tax under Chapter 221. The tax credit authorized under this~~
14 ~~subsection shall be allowed at a rate not to exceed 20 percent per~~
15 ~~year for five or more successive years beginning the calendar year~~
16 ~~that the assessments under this section are paid. The balance of~~
17 ~~payments made by the insurer and not claimed as a premium tax credit~~
18 ~~may be reflected in the books and records of the insurer as an~~
19 ~~admitted asset of the insurer for all purposes, including~~
20 ~~exhibition in an annual statement under Section 862.001.]~~

21 SECTION 8. Section 2210.060(c), Insurance Code, is amended
22 to read as follows:

23 (c) Subsection (a) does not authorize the association to
24 indemnify a member of the association for participating in the
25 assessments made by [~~writings, expenses, profits, and losses of~~]
26 the association in the manner provided by this chapter.

27 SECTION 9. Subchapter B, Chapter 2210, Insurance Code, is

1 amended by adding Section 2210.061 to read as follows:

2 Sec. 2210.061. ELIGIBLE SURPLUS LINES INSURERS. (a) An
3 eligible surplus lines insurer may not be a member of the
4 association and is not subject to assessment as a member of the
5 association.

6 (b) Each surplus lines agent placing property insurance
7 through an eligible surplus lines insurer shall collect from the
8 policyholder and shall remit to the association a surplus lines
9 policy fee on all premiums collected after January 1, 2010, for all
10 insurance written by the surplus lines agent for a policy from an
11 eligible surplus lines insurer for all risks on real property and
12 contents in first tier coastal counties. By procuring or selling
13 insurance on property in this state through an eligible surplus
14 lines insurer, each surplus lines agent described by this
15 subsection agrees to be subject to the provisions of this chapter,
16 and to collect and remit the surplus lines policy fee described by
17 this section.

18 (c) The surplus lines policy fee shall be five percent of
19 the total policy premium, but the fee may not be considered premium
20 and is not subject to premium taxes or commissions. Failure to pay
21 the surplus lines policy fee shall be treated as a failure to pay
22 premium. For purposes of this subsection, "total policy premium"
23 includes taxes and commissions.

24 (d) Not later than the 20th day after the last day of each
25 calendar quarter, each surplus lines agent placing insurance
26 through an eligible surplus lines insurer shall remit directly to
27 the association all surplus lines policy fees collected in the

1 preceding quarter.

2 SECTION 10. The heading to Subchapter C, Chapter 2210,
3 Insurance Code, is amended to read as follows:

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

6 SECTION 11. Section 2210.101, Insurance Code, is amended to
7 read as follows:

8 Sec. 2210.101. ACCOUNTABLE TO GOVERNOR AND COMMISSIONER.
9 The board of directors is responsible and accountable to the
10 governor and the commissioner.

11 SECTION 12. Section 2210.102, Insurance Code, is amended to
12 read as follows:

13 Sec. 2210.102. COMPOSITION. (a) The board of directors is
14 composed of seven [~~the following nine~~] members appointed by the
15 governor in accordance with this section.

16 (b) Three members must be employed by or affiliated with,
17 other than as agents, [+

18 [(1) five representatives of different] insurers who
19 are members of the association.

20 (c) Two members must be [~~, elected by the members as~~
21 ~~provided by the plan of operation,~~

22 [(2) two] public representatives, one of whom [~~who are~~
23 ~~nominated by the office of public insurance counsel and who~~], as of
24 the date of the appointment, resides [+

25 [(A) reside] in or owns property in the seacoast
26 territory, and one of whom, as of the date of the appointment, does
27 not reside in or own property in the seacoast territory.

1 (d) At least two members must be, but not more than two
2 members may be, general [~~a catastrophe area, and~~
3 [~~(B) are policyholders of the association, and~~
4 [~~(3) two~~] property and casualty agents or personal
5 lines property and casualty agents licensed under this code, one of
6 whom, as of the date of the appointment, maintains the agent's
7 principal office in the seacoast territory, and one of whom, as of
8 the date of the appointment, does not maintain the agent's
9 principal office in the seacoast territory.

10 (e) All members must [~~, each of whom must.~~
11 [~~(A)~~] have demonstrated experience in insurance,
12 general business, or actuarial principles sufficient to make the
13 success of the association probable [~~+~~

14 [~~(B) maintain the agent's principal office, as of~~
15 ~~the date of the appointment, in a catastrophe area, and~~

16 [~~(C) hold a license under Chapter 4051 as a~~
17 ~~general property and casualty agent or a personal lines property~~
18 ~~and casualty agent.~~

19 [~~(b) The persons appointed under Subsections (a)(2) and (3)~~
20 ~~must be from different counties].~~

21 SECTION 13. Section 2210.103, Insurance Code, is amended to
22 read as follows:

23 Sec. 2210.103. TERMS. (a) Members of the board of
24 directors serve two-year [~~three-year staggered~~] terms [~~, with the~~
25 ~~terms of three members expiring on the third Tuesday of March of~~
26 ~~each year].~~

27 (b) A person may serve on the board of directors for not more

1 than three consecutive full terms[~~, not to exceed nine years~~].

2 (c) The governor shall appoint a replacement in the manner
3 provided by Section 2210.102 for a member who leaves or is removed
4 from the board of directors.

5 SECTION 14. Section 2210.104, Insurance Code, is amended to
6 read as follows:

7 Sec. 2210.104. OFFICERS. The board of directors shall
8 elect from the board's membership an executive committee consisting
9 of a presiding officer, assistant presiding officer, and
10 secretary-treasurer. [~~At least one of the officers must be a member~~
11 ~~appointed under Section 2210.102(a)(2) or (3).~~]

12 SECTION 15. Subchapter C, Chapter 2210, Insurance Code, is
13 amended by adding Section 2210.1051 to read as follows:

14 Sec. 2210.1051. MEETINGS THROUGH TELECOMMUNICATION
15 METHODS. (a) Notwithstanding Chapter 551, Government Code, or any
16 other law, members of the board of directors may meet by telephone
17 conference call, videoconference, or other similar
18 telecommunication method. The board may use telephone conference
19 call, videoconference, or other similar telecommunication method
20 for purposes of establishing a quorum or voting or for any other
21 meeting purpose in accordance with this subsection and Subsection
22 (b). This subsection applies without regard to the subject matter
23 discussed 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 16. Subchapter C, Chapter 2210, Insurance Code, is
13 amended by adding Section 2210.107 to read as follows:

14 Sec. 2210.107. PRIMARY BOARD OBJECTIVES. The primary
15 objectives of the board of directors are to ensure that the
16 association:

17 (1) operates in accordance with this chapter and
18 commissioner rules;

19 (2) complies with sound insurance principles; and

20 (3) meets the solvency standards imposed under this
21 chapter.

22 SECTION 17. Section 2210.151, Insurance Code, is amended to
23 read as follows:

24 Sec. 2210.151. ADOPTION OF PLAN OF OPERATION. With the
25 advice of the board of directors, the commissioner by rule shall
26 adopt the plan of operation to provide[+]

27 [~~(1)~~] Texas windstorm and hail insurance in a

1 catastrophe area[, and
2 ~~[(2) Texas fire and explosion insurance in an~~
3 ~~inadequate fire insurance area]~~.

4 SECTION 18. Section 2210.202(a), Insurance Code, is amended
5 to read as follows:

6 (a) A person who has an insurable interest in insurable
7 property may apply to the association for insurance coverage
8 provided under the plan of operation and an inspection of the
9 property, subject to any rules [~~, including any inspection fee,~~]
10 established by the board of directors and approved by the
11 commissioner. In order to be eligible for insurance through the
12 association, an applicant must demonstrate, in the manner
13 established in the plan of operation, inability to obtain insurance
14 coverage from insurers authorized to engage in the business of
15 property and casualty insurance in this state.

16 SECTION 19. Section 2210.203, Insurance Code, is amended by
17 adding Subsection (a-1) to read as follows:

18 (a-1) Notwithstanding Subsection (a), if all or any part of
19 the property for which an application for new or renewal insurance
20 coverage is made is located in Zone V or another similar zone with
21 an additional hazard associated with storm waves, as defined by the
22 National Flood Insurance Program, and if flood insurance under that
23 federal program is available, the association may not issue a new or
24 renewal insurance policy unless evidence that the property is
25 covered by a flood insurance policy is submitted to the
26 association. If that flood insurance is unavailable in any portion
27 of the seacoast territory, an association policy insuring a

1 residential structure described by Section 2210.004(g) is subject
2 to a premium surcharge for the insurance coverage obtained through
3 the association in an amount equal to not less than 10 percent of
4 the premium, as set by the commissioner after notice and a hearing.

5 SECTION 20. Subchapter E, Chapter 2210, Insurance Code, is
6 amended by adding Section 2210.210 to read as follows:

7 Sec. 2210.210. NOTICE TO APPLICANTS FOR INSURANCE AND
8 POLICYHOLDERS; CONSUMER INFORMATION. (a) Each application for
9 insurance and each policy issued by the association must include a
10 notice as provided by this section. The commissioner by rule may
11 prescribe specific requirements for the notice. The notice must be
12 substantially as follows:

13 IMPORTANT NOTICE TO TEXAS WINDSTORM INSURANCE

14 ASSOCIATION POLICYHOLDERS

15 Insurance policies issued by the Texas Windstorm Insurance
16 Association are not guaranteed by the state or federal government.
17 In the event of a major catastrophe, the association may not have
18 sufficient funding resources to pay all losses to all policyholders
19 suffering damage. In such an event, you may be paid less than the
20 full amount of damages that you suffer. You may obtain additional
21 information as to the association's potential exposure and its
22 available funding resources at www.tdi.state.tx.us.

23 (b) The department shall establish a link on the
24 department's Internet website through which applicants for
25 insurance coverage through the association and association
26 policyholders may obtain information in a format easily understood
27 about the association's exposure and available resources.

1 SECTION 21. Sections 2210.251(a) through (f), Insurance
2 Code, are amended to read as follows:

3 (a) Except as provided by this section, to be considered
4 insurable property eligible for windstorm and hail insurance
5 coverage from the association, a structure that is constructed or
6 repaired or to which additions are made on or after January 1, 1988,
7 must be inspected ~~[or approved]~~ by the association ~~[department]~~ for
8 compliance with the plan of operation.

9 (b) After January 1, 2004, for geographic areas specified by
10 the commissioner, the board of directors ~~[commissioner by rule]~~
11 shall recognize for the purposes of this chapter ~~[adopt]~~ the 2003
12 International Residential Code for one- and two-family dwellings
13 published by the International Code Council. For those geographic
14 areas, the board of directors ~~[commissioner by rule]~~ may recognize
15 ~~[adopt]~~ a subsequent edition of that code and ~~[may adopt]~~ any
16 supplements published by the International Code Council and
17 amendments to that code.

18 (c) After January 1, 2004, a person must submit a notice of a
19 windstorm inspection to the association ~~[unit responsible for
20 certification of windstorm inspections at the department]~~ before
21 beginning to construct, alter, remodel, enlarge, or repair a
22 structure.

23 (d) A structure constructed or repaired or to which
24 additions were made before January 1, 1988, that is located in an
25 area that was governed at the time of the construction, repair, or
26 addition by a building code recognized by the association is
27 insurable property eligible for windstorm and hail insurance

1 coverage from the association without compliance with the
2 inspection [~~or approval~~] requirements of this section or the plan
3 of operation.

4 (e) A structure constructed or repaired or to which
5 additions were made before January 1, 1988, that is located in an
6 area not governed by a building code recognized by the association
7 is insurable property eligible for windstorm and hail insurance
8 coverage from the association without compliance with the
9 inspection [~~or approval~~] requirements of this section or the plan
10 of operation if the structure was previously insured by an insurer
11 authorized to engage in the business of insurance in this state and
12 the structure is in essentially the same condition as when
13 previously insured, except for normal wear and tear, and is without
14 any structural change other than a change made according to code.
15 For purposes of this subsection, evidence of previous insurance
16 coverage includes:

- 17 (1) a copy of a previous insurance policy;
18 (2) copies of canceled checks or agent's records that
19 show payments for previous policies; and
20 (3) a copy of the title to the structure or mortgage
21 company records that show previous policies.

22 (f) The association [~~department~~] shall issue a certificate
23 of compliance for each structure that qualifies for coverage. The
24 certificate is evidence of insurability of the structure by the
25 association.

26 SECTION 22. Section 2210.252, Insurance Code, is amended to
27 read as follows:

1 Sec. 2210.252. INTERNATIONAL RESIDENTIAL CODE BUILDING
2 SPECIFICATIONS. (a) After January 1, 2004, for geographic areas
3 specified by the commissioner, the association [~~commissioner by~~
4 ~~rule~~] may supplement the plan of operation building specifications
5 with the structural provisions of the International Residential
6 Code for one- and two-family dwellings, as published by the
7 International Code Council or an analogous entity recognized by the
8 board of directors [~~department~~].

9 (b) For a geographic area specified under Subsection (a),
10 the board of directors [~~commissioner by rule~~] may recognize [~~adopt~~]
11 a subsequent edition of the International Residential Code for
12 one- and two-family dwellings and [~~may adopt~~] a supplement
13 published by the International Code Council or an amendment to that
14 code.

15 SECTION 23. Sections 2210.254(a) and (b), Insurance Code,
16 are amended to read as follows:

17 (a) For purposes of this chapter, a "qualified inspector"
18 includes:

19 (1) a person determined by the board of directors
20 [~~department~~] to be qualified because of training or experience to
21 perform building inspections;

22 (2) a licensed professional engineer who meets the
23 requirements specified by the board of directors [~~commissioner~~
24 ~~rule~~] for appointment to conduct windstorm inspections; and

25 (3) an inspector who:

26 (A) is certified by the International Code
27 Council, the Building Officials and Code Administrators

1 International, Inc., the International Conference of Building
2 Officials, or the Southern Building Code Congress International,
3 Inc.;

4 (B) has certifications as a buildings inspector
5 and coastal construction inspector; and

6 (C) complies with other requirements specified
7 by the board of directors [~~commissioner rule~~].

8 (b) A windstorm inspection may be performed only by a
9 qualified inspector who is employed by or under contract with the
10 association.

11 SECTION 24. Section 2210.255, Insurance Code, is amended to
12 read as follows:

13 Sec. 2210.255. APPOINTMENT OF LICENSED ENGINEER AS
14 INSPECTOR. (a) On request of an engineer licensed by the Texas
15 Board of Professional Engineers, the association may [~~commissioner~~
16 ~~shall~~] appoint the engineer as an inspector under this subchapter
17 on receipt of information satisfactory to the board of directors
18 [~~not later than the 10th day after the date the engineer delivers to~~
19 ~~the commissioner information demonstrating~~] that the engineer is
20 qualified to perform windstorm inspections under this subchapter.

21 (b) The board of directors shall consult with the
22 commissioner regarding [~~shall adopt rules establishing~~] the
23 information to be considered in appointing engineers under this
24 section.

25 SECTION 25. Subchapter F, Chapter 2210, Insurance Code, is
26 amended by adding Section 2210.258 to read as follows:

27 Sec. 2210.258. SURCHARGE FOR CERTAIN NONCOMPLIANT

1 CONSTRUCTION. (a) For purposes of this section, property is not in
2 compliance with mandatory building codes if:

3 (1) the property has not been inspected for compliance
4 with the plan of operation in accordance with Section 2210.251(a);
5 or

6 (2) a certificate of compliance has not been issued in
7 accordance with Section 2210.251(f).

8 (b) An applicant for coverage from the association or a
9 policyholder of the association whose property is determined to not
10 be in compliance as provided by Subsection (a) is subject to a
11 premium surcharge for insurance coverage obtained through the
12 association. The surcharge shall be an amount not less than an
13 amount equal to 10 percent of the premium, as determined by the
14 commissioner after notice and a hearing.

15 SECTION 26. Sections 2210.351(a), (c), and (d), Insurance
16 Code, are amended to read as follows:

17 (a) The association shall [~~must~~] file with the department in
18 the manner prescribed by Section 2251.101 each manual of
19 classifications, rules, rates, including condition charges, and
20 each rating plan, and each modification of those items that the
21 association proposes to use.

22 (c) After the filing has been made, the association may use
23 a filed rate, and a filed rate is subject to disapproval by the
24 commissioner in the manner prescribed by Subchapter C, Chapter
25 2251. [~~As soon as reasonably possible after the filing has been~~
26 ~~made, the commissioner in writing shall approve, modify, or~~
27 ~~disapprove the filing. A filing is considered approved unless~~

1 ~~modified or disapproved on or before the 30th day after the date of~~
2 ~~the filing.]~~

3 (d) If at any time the commissioner determines that a filing
4 in effect ~~[approved]~~ under Subsection (c) no longer meets the
5 requirements of this chapter, the commissioner may disapprove ~~[~~
6 ~~after a hearing held on at least 20 days' notice to the association~~
7 ~~that specifies the matters to be considered at the hearing, issue an~~
8 ~~order withdrawing approval of]~~ the filing in the manner prescribed
9 by Section 2251.104 for disapproval of a rate. ~~[The order must~~
10 ~~specify in what respects the commissioner determines that the~~
11 ~~filing no longer meets the requirements of this chapter. An order~~
12 ~~issued under this subsection may not take effect before the 30th day~~
13 ~~after the date of issuance of the order.]~~

14 SECTION 27. Sections 2210.355(b) and (g), Insurance Code,
15 are amended to read as follows:

16 (b) In adopting rates under this chapter, the association
17 shall:

18 (1) comply with the rate standards adopted under
19 Section 2251.052, to the extent that those standards are determined
20 by the commissioner to be applicable to the purposes of the
21 association;

22 (2) ensure that the rates are actuarially sound; and

23 (3) include rating factors as necessary to:

24 (A) fund the catastrophe reserve trust fund;

25 (B) pay any public security obligations in
26 accordance with Subchapter M; and

27 (C) pay all losses and expenses of the

1 association, regardless of the ultimate source of funding for those
2 losses and expenses [~~following must be considered:~~

3 [~~(1) the past and prospective loss experience within~~
4 ~~and outside this state of hazards for which insurance is made~~
5 ~~available through the plan of operation, if any;~~

6 [~~(2) expenses of operation, including acquisition~~
7 ~~costs;~~

8 [~~(3) a reasonable margin for profit and contingencies;~~
9 ~~and~~

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

12 (g) A commission paid to an agent for a windstorm and hail
13 insurance policy from the association must be reasonable, adequate,
14 not unfairly discriminatory, and nonconfiscatory. The commission
15 may not exceed 10 percent of the premium amount for the policy, with
16 a refund required for any unearned portion of the premium.

17 SECTION 28. Section 2210.356, Insurance Code, is amended by
18 amending Subsection (b) and adding Subsection (b-1) to read as
19 follows:

20 (b) The catastrophe element used to develop rates under this
21 subchapter [~~applicable to risks written by the association must be~~
22 ~~uniform throughout the seacoast territory. The catastrophe element~~
23 ~~of the rates]~~ must be developed using industry data, association
24 data, and catastrophe models approved by the department for use in
25 association filings[+]

26 [~~(1) 90 percent of both the monoline extended coverage~~
27 ~~loss experience and related premium income for all insurers, other~~

1 ~~than the association, for covered property located in the seacoast~~
2 ~~territory, using not less than the most recent 30 years of~~
3 ~~experience available; and~~

4 ~~[(2) 100 percent of both the loss experience and~~
5 ~~related premium income for the association for covered property,~~
6 ~~using not less than the most recent 30 years of experience~~
7 ~~available].~~

8 (b-1) The commissioner shall adopt rules establishing:

9 (1) the procedure for approval by the department of
10 catastrophe models used by the association in the development of
11 its rates; and

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

13 SECTION 29. Subchapter H, Chapter 2210, Insurance Code, is
14 amended by adding Section 2210.364 to read as follows:

15 Sec. 2210.364. REVIEW OF RATES. A person who is aggrieved
16 by a rate under this subchapter may proceed as provided by Chapter
17 2251.

18 SECTION 30. Sections 2210.452(a), (c), and (d), Insurance
19 Code, are amended to read as follows:

20 (a) The commissioner shall adopt rules under which the
21 association makes ~~[members relinquish their net equity on an annual~~
22 ~~basis as provided by those rules by making]~~ payments to the
23 catastrophe reserve trust fund. The trust fund may be used only to
24 fund~~+~~

25 ~~[(1)]~~ the obligations of the trust fund under Section
26 2210.058 ~~[2210.058(a); and~~

27 ~~[(2) the mitigation and preparedness plan established~~

1 ~~under Section 2210.454 to reduce the potential for payments by~~
2 ~~association members that give rise to tax credits in the event of~~
3 ~~loss].~~

4 (c) At the end of each calendar year or policy year, the
5 association shall pay the net gain from operations ~~[equity]~~ of the
6 association ~~[a member]~~, including all premium and other revenue of
7 the association in excess of incurred losses and operating
8 expenses, to the trust fund or a reinsurance program approved by the
9 commissioner.

10 (d) The commissioner by rule shall establish the procedure
11 relating to the disbursement of money from the trust fund to
12 policyholders in the event of an occurrence or series of
13 occurrences within a catastrophe area that results in a
14 disbursement under Section 2210.058 ~~[2210.058(a)]~~.

15 SECTION 31. Section 2210.453, Insurance Code, is amended to
16 read as follows:

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

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

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

27 SECTION 32. Section 2210.454(b), Insurance Code, is amended

1 to read as follows:

2 (b) Each state fiscal year, the department may fund the
3 mitigation and preparedness plan using available funds [~~the~~
4 ~~investment income of the trust fund in an amount not less than \$1~~
5 ~~million and not more than 10 percent of the investment income of the~~
6 ~~prior fiscal year. From that amount and as part of that plan, the~~
7 ~~department may use in each fiscal year \$1 million for the windstorm~~
8 ~~inspection program established under Section 2210.251].~~

9 SECTION 33. Section 2210.504(b), Insurance Code, is amended
10 to read as follows:

11 (b) Notwithstanding Subsection (a) and Sections
12 2210.501(c), 2210.502(a) and (b) [~~2210.502(a)-(c)~~], and 2210.503,
13 the commissioner may not approve adjustments of maximum liability
14 limits to amounts lower than the amounts prescribed under Section
15 2210.501(b).

16 SECTION 34. Section 2210.551, Insurance Code, is amended by
17 adding Subsection (a-1) and amending Subsections (c) and (d) to
18 read as follows:

19 (a-1) This section does not apply to a matter subject to
20 Section 2210.364.

21 (c) If the association or any interested party is aggrieved
22 by the action of the commissioner with respect to a ruling, order,
23 or determination of the commissioner, the association or interested
24 party may, not later than the 30th day after the date of the action,
25 make a written request to the commissioner for a hearing on the
26 action.

27 (d) On 10 days' written notice of the time and place of the

1 hearing, the commissioner shall conduct a hearing on the
2 [~~association's~~] request of the association or interested party or
3 the appeal from an act, ruling, or decision of the association, not
4 later than the 30th day after the date of receipt of the request or
5 appeal.

6 SECTION 35. Chapter 2210, Insurance Code, is amended by
7 adding Subchapters M and N to read as follows:

8 SUBCHAPTER M. PUBLIC SECURITIES PROGRAM

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

14 Sec. 2210.602. DEFINITIONS. In this subchapter:

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

17 (2) "Catastrophe area public security" means public
18 securities authorized to be issued before or on or after the
19 occurrence of a catastrophic event by Section 2210.058(c).

20 (3) "Class 1 public securities" means public
21 securities authorized to be issued before or on or after the
22 occurrence of a catastrophic event by Section 2210.058(d).

23 (4) "Class 2 public securities" means public
24 securities authorized to be issued on or after the occurrence of a
25 catastrophic event by Section 2210.058(f).

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

1 (6) "Credit agreement obligation" means any premium,
2 periodic payment, termination payment, or similar obligation under
3 a credit agreement.

4 (7) "Insurer" means each property and casualty insurer
5 authorized to engage in the business of property and casualty
6 insurance in this state. The term specifically includes a county
7 mutual insurance company, a Lloyd's plan, and a reciprocal or
8 interinsurance exchange.

9 (8) "Member company public security" means public
10 securities authorized to be issued after the occurrence of a
11 catastrophic event by Section 2210.058(e).

12 (9) "Public security" means a debt instrument or other
13 public security obligation issued by the Texas Public Finance
14 Authority for the purposes described by this subchapter and any
15 credit agreement.

16 (10) "Public security administrative expenses" means
17 expenses incurred in issuing and administering public securities
18 issued under this subchapter, including insurance costs and fees
19 for paying agents, trustees, and attorneys, and for other
20 professional services necessary to ensure compliance with
21 applicable state or federal law.

22 (11) "Public security obligations" means the
23 principal, any premium, and interest on a public security, periodic
24 payments or termination payments, or similar obligations with
25 respect to a public security.

26 (12) "Public security obligation revenue fund" means
27 the dedicated trust fund established by the association outside the

1 state treasury under this subchapter.

2 (13) "Public security resolution" means the
3 resolution or order authorizing public securities to be issued
4 under this subchapter.

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

11 Sec. 2210.604. ISSUANCE OF PUBLIC SECURITIES AUTHORIZED.

12 (a) At the request of the board of directors of the association and
13 with the approval of the commissioner, the board shall issue public
14 securities to:

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

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

19 (B) pay incurred claims;

20 (C) pay operating expenses; and

21 (D) purchase reinsurance;

22 (2) provide a reserve fund for the public securities;

23 (3) capitalize interest for the period determined by
24 the association, not to exceed two years;

25 (4) pay public security administrative expenses; and

26 (5) pay other costs related to the public securities

27 as may be determined by the board.

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

7 Sec. 2210.605. TERMS OF ISSUANCE. (a) The board shall
8 determine the method of sale, type and form of public security,
9 maximum interest rates, and other terms of the public securities
10 that, in the board's judgment, best achieve the goals of the
11 association and effect the borrowing at the lowest practicable
12 cost. The board may enter into a credit agreement in connection
13 with the public securities.

14 (b) Public securities must include the name of the
15 association.

16 Sec. 2210.606. CONTENTS OF PUBLIC SECURITY RESOLUTION;
17 ADMINISTRATION OF ACCOUNTS. (a) In a public security resolution,
18 the board may:

19 (1) provide for the flow of funds and the
20 establishment, maintenance, and investment of funds and special
21 accounts with regard to the public securities; and

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

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

27 Sec. 2210.607. PUBLIC SECURITY PROCEEDS. (a) The proceeds

1 of public securities may be deposited with a trustee selected by the
2 association in consultation with the commissioner or if no trustee
3 is selected, held by the comptroller in a dedicated trust fund
4 outside the state treasury in the custody of the comptroller.

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

12 Sec. 2210.608. SOURCE OF PAYMENT; REVENUE FUND. (a) Public
13 security obligations are payable only from the public security
14 obligation revenue fund, into which the following are deposited:

15 (1) the service fees on assessments established under
16 Section 2210.611, 2210.612, 2210.613, or 2210.614, as applicable;
17 or

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

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

26 (c) The association shall deposit all revenue collected
27 under Sections 2210.611 through 2210.614 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 administrative expenses and public
4 security obligations shall be transferred to the appropriate funds
5 in the manner and at the time specified in the public security
6 resolution to ensure timely payment of obligations and expenses.

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

14 (e) Revenue deposited into the public security obligation
15 revenue fund that exceeds the amount of the public security
16 obligations payable in that year and interest earned on the public
17 security obligation fund may, in the discretion of the association,
18 be:

19 (1) used to pay public security obligations payable in
20 the subsequent year, offsetting the amount of the premium surcharge
21 or assessment that would otherwise be required to be levied for the
22 year under this subchapter;

23 (2) used to redeem, purchase, or defease outstanding
24 public securities; or

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

26 (f) The public securities are obligations solely of the
27 association and do not create a pledge, gift, or loan of the faith,

1 credit, or taxing authority of this state.

2 (g) Each public security must:

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

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

8 (A) is payable solely from the revenue pledged
9 for that purpose; and

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

12 Sec. 2210.609. PAYMENT OF INTEREST; PAYMENT OF PRE-EVENT
13 PUBLIC SECURITY OBLIGATIONS. (a) Except as provided by
14 Subsection (b), the association shall pay all interest, and may pay
15 principal, on any pre-event public security issued as described by
16 Section 2210.058(c) or (d) from the existing premiums of the
17 association.

18 (b) If the association is unable to pay the public security
19 obligations described by Subsection (a) with existing premiums,
20 those public security obligations shall be paid from the service
21 fees collected in accordance with Sections 2210.611 and 2210.612.

22 Sec. 2210.610. REFINANCING PUBLIC SECURITIES. The
23 association may request the board to refinance any public
24 securities issued in accordance with Section 2210.058, whether
25 pre-event or post-event public securities, with the refinanced
26 public securities payable from the same sources as the original
27 public securities.

1 Sec. 2210.611. CATASTROPHE AREA PUBLIC SECURITY SERVICE
2 FEE; PREMIUM SURCHARGE AND ASSESSMENT. (a) The catastrophe area
3 public security obligations and administrative expenses shall be
4 serviced as provided by this section.

5 (b) For public securities, the proceeds of which are used to
6 fund excess losses under Section 2210.058(c), the public security
7 obligations and administrative expenses shall be collected from
8 association policyholders each year until all outstanding public
9 security obligations and administrative expenses have been
10 satisfied and paid.

11 (c) The service fee imposed on association policyholders
12 under this section shall be determined and collected as provided by
13 this subsection. The association shall determine the amount of a
14 service fee imposed under this section at least annually. On
15 approval by the commissioner of the amount of a service fee after at
16 least 10 days' notice and a hearing, if a hearing is requested by
17 any person within the 10-day notice period, the association shall
18 charge the service fee to its policyholders. The service fee must
19 be set in an amount sufficient to pay all public security
20 obligations and administrative expenses. The service fee shall be
21 collected in the form of a premium surcharge and shall be remitted
22 to the association as required by the commissioner by rule. The
23 service fees collected under this subsection are separate charges
24 in addition to premiums collected and are not subject to premium
25 taxes or commissions. For purposes of policy cancellation, failure
26 by a policyholder to pay a premium surcharge imposed under this
27 subsection is equivalent to failure to pay premium.

1 Sec. 2210.612. SERVICE FEE: CLASS 1 PUBLIC SECURITIES;
2 PREMIUM SURCHARGE. (a) A fee to service Class 1 public securities
3 issued by the association in accordance with Section 2210.058(d)
4 shall be collected by each insurer, the association, and the FAIR
5 Plan Association from policyholders who reside or have operations
6 in, or whose insured property is located in, a catastrophe area.

7 (b) The association shall determine the amount of a service
8 fee imposed under Subsection (a) at least annually.

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

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

24 (e) For purposes of policy cancellation, failure by a
25 policyholder to pay a premium surcharge imposed under this section
26 is equivalent to failure to pay premium.

27 Sec. 2210.613. POST-EVENT ASSESSMENT: MEMBER COMPANY

1 PUBLIC SECURITIES. (a) An assessment to service member company
2 public security obligations and administrative expenses issued by
3 the association after a catastrophic event shall be assessed to and
4 collected from each member company.

5 (b) The association shall determine the amount of each
6 member company assessment at least annually. The assessment must be
7 set in an amount sufficient to pay all public security obligations
8 and administrative expenses.

9 (c) Each member company shall be assessed with the
10 proportion of the loss allocable to each member company determined
11 in the same manner as its participation in the association has been
12 determined for the year under Section 2210.052.

13 Sec. 2210.614. POST-EVENT SERVICE FEE: CLASS 2 PUBLIC
14 SECURITIES; PREMIUM SURCHARGE. (a) A fee to service Class 2 public
15 securities issued by the association after a catastrophic event
16 shall be collected by each insurer, the association, and the FAIR
17 Plan Association from policyholders who reside or have operations
18 in, or whose insured property is located in, this state.

19 (b) The association shall determine the amount of a service
20 fee imposed under Subsection (a) at least annually.

21 (c) On approval by the commissioner after at least 10 days'
22 notice and a hearing, if a hearing is requested by any person within
23 the 10-day notice period, each insurer, the association, and the
24 FAIR Plan Association shall charge the service fee to the
25 policyholders described by Subsection (a). The service fee must be
26 set in an amount sufficient to pay all public security obligations
27 and administrative expenses. The service fee shall be collected in

1 the form of a premium surcharge and shall be remitted to the
2 association as required by the commissioner by rule.

3 (d) The premium surcharge shall apply to all insurance
4 policies for all property and casualty lines other than workers'
5 compensation, accident and health, and medical malpractice. The
6 service fees collected in the form of a premium surcharge under this
7 section are separate charges in addition to premiums collected and
8 are not subject to premium taxes or commissions.

9 (e) For purposes of policy cancellation, failure by a
10 policyholder to pay a premium surcharge imposed under this section
11 is equivalent to failure to pay premium.

12 Sec. 2210.615. EXEMPTION FROM TAXATION. Public securities
13 issued under this subchapter, any interest from those public
14 securities, and all assets pledged to secure the payment of the
15 public securities are free from taxation by the state or a political
16 subdivision of this state.

17 Sec. 2210.616. AUTHORIZED INVESTMENTS. Public securities
18 issued under this subchapter are authorized investments under
19 Subchapter B, Chapter 424, and Subchapters C and D, Chapter 425.

20 Sec. 2210.617. STATE PLEDGE REGARDING PUBLIC SECURITY OWNER
21 RIGHTS AND REMEDIES. (a) The state pledges to and agrees with the
22 owners of public securities issued in accordance with this
23 subchapter that the state will not limit or alter the rights vested
24 in the association to fulfill the terms of agreements made with the
25 owners or in any way impair the rights and remedies of those owners
26 until the public security obligations are fully discharged.

27 (b) The board may include the state's pledge and agreement

1 under Subsection (a) in a public security resolution.

2 Sec. 2210.618. PAYMENT ENFORCEABLE BY MANDAMUS. A writ of
3 mandamus from any Travis County district court and any other legal
4 or equitable remedy are available to a party in interest to require
5 the association or another party to fulfill an agreement or perform
6 a function or duty under:

7 (1) this subchapter;

8 (2) the Texas Constitution; or

9 (3) a public security resolution.

10 Sec. 2210.619. NO PERSONAL LIABILITY. The members of the
11 association, association employees, the board, the employees of the
12 Texas Public Finance Authority, the commissioner, and department
13 employees are not personally liable as a result of exercising the
14 rights and responsibilities granted under this subchapter.

15 SUBCHAPTER N. ASSOCIATION SOLVENCY REQUIREMENTS

16 Sec. 2210.651. SOLVENCY DUTIES. The board of directors
17 shall maintain the required solvency level of the association.

18 Sec. 2210.652. REQUIRED SOLVENCY LEVEL; FUNDING SOURCES.

19 (a) For purposes of this chapter, the "required solvency level" is
20 the level of available internal association funding necessary to
21 pay 100 percent of losses for which the association is liable and
22 that result from a probable maximum loss determined by the board of
23 directors under Section 2210.654.

24 (b) The board of directors shall maintain the funding of the
25 association at a level sufficient to achieve the required solvency
26 level.

27 (c) The association shall derive the funding to maintain the

1 required solvency level from a combination of:

2 (1) association reserves;

3 (2) available funds in the catastrophe reserve trust
4 fund;

5 (3) reinsurance purchased at any level;

6 (4) catastrophe area public securities under
7 Subchapter M; and

8 (5) Class 1 pre-event and post-event public securities
9 under Subchapter M, to be issued only as required in accordance with
10 Section 2210.058(d).

11 (d) As prescribed by Section 2210.058(d), Class 1 pre-event
12 and post-event public securities may not be used to achieve more
13 than 50 percent of the required solvency level.

14 Sec. 2210.653. CERTIFICATION; ANNUAL SOLVENCY REPORT. (a)
15 The board of directors shall certify to the governor, the
16 lieutenant governor, the speaker of the house of representatives,
17 and the commissioner, not later than April 15 of each calendar year,
18 that the required solvency level of the association is satisfied
19 for that calendar year.

20 (b) The board of directors shall make the certification in
21 the manner prescribed by commissioner rule.

22 (c) After calendar year 2010, in any calendar year, the
23 association may not issue any new coverage after April 15 if the
24 board of directors has not certified the required solvency level in
25 the annual solvency report. This subsection does not apply to
26 renewal of a policy issued through the association.

27 Sec. 2210.654. DETERMINATION OF PROBABLE MAXIMUM LOSS. (a)

1 Not later than April 1 of each calendar year, to establish the
2 required solvency level under Section 2210.652, the board of
3 directors shall determine the association's current probable
4 maximum loss, based on an average of at least two recognized
5 catastrophe models, as follows:

6 (1) for calendar years 2009 and 2010, at not less than
7 a one in 50 year occurrence;

8 (2) for calendar year 2011, at not less than a one in
9 75 year occurrence; and

10 (3) for each calendar year after calendar year 2011,
11 at not less than a one in 100 year occurrence.

12 (b) The board of directors must ensure the ability of the
13 association to generate funding sufficient to cover the probable
14 maximum loss without reliance on any member company public
15 securities or Class 2 post-event public securities under Subchapter
16 M.

17 SECTION 36. Section 2251.003, Insurance Code, is amended by
18 adding Subsection (a-1) to read as follows:

19 (a-1) Except as otherwise provided by Chapter 2210,
20 Subchapters B and C apply to the Texas Windstorm Insurance
21 Association.

22 SECTION 37. The following laws are repealed:

23 (1) Sections 2210.003(5) and (12), Insurance Code;

24 (2) Section 2210.059, Insurance Code;

25 (3) Section 2210.351(b), Insurance Code;

26 (4) Sections 2210.352, 2210.353, and 2210.354,

27 Insurance Code;

1 (5) Sections 2210.355(c), (d), and (e), Insurance
2 Code;

3 (6) Sections 2210.356(a), (c), and (d), Insurance
4 Code;

5 (7) Section 2210.359, Insurance Code;

6 (8) Section 2210.360, Insurance Code; and

7 (9) Section 2210.502(c), Insurance Code.

8 SECTION 38. (a) The board of directors of the Texas
9 Windstorm Insurance Association established under Section
10 2210.102, Insurance Code, as that section existed before amendment
11 by this Act, is abolished effective December 31, 2009.

12 (b) The governor shall appoint the members of the board of
13 directors of the Texas Windstorm Insurance Association under
14 Section 2210.102, Insurance Code, as amended by this Act, for terms
15 beginning on January 1, 2010.

16 (c) The term of a person who is serving as a member of the
17 board of directors of the Texas Windstorm Insurance Association
18 immediately before the abolition of that board under Subsection (a)
19 of this section expires on December 31, 2009. Such a person is
20 eligible for appointment by the governor to the new board of
21 directors of the Texas Windstorm Insurance Association under
22 Section 2210.102, Insurance Code, as amended by this Act.

23 SECTION 39. The commissioner of insurance shall adopt rules
24 as required by Section 2210.356(b-1), Insurance Code, as added by
25 this Act, not later than the 180th day after the effective date of
26 this Act.

27 SECTION 40. An assessment may not be made before the end of

1 the 2009-2010 state fiscal biennium under Chapter 2210, Insurance
2 Code, as amended by this Act, against any member of the Texas
3 Windstorm Insurance Association until the comptroller has
4 certified that any tax credits allowable to that member under
5 Chapter 2210, Insurance Code, as that chapter existed immediately
6 before amendment by this Act, may be taken within available revenue
7 that has been certified by the comptroller.

8 SECTION 41. (a) Except as provided by Subsection (b) of
9 this section, this Act takes effect immediately if it receives a
10 vote of two-thirds of all the members elected to each house, as
11 provided by Section 39, Article III, Texas Constitution. If this
12 Act does not receive the vote necessary for immediate effect, this
13 Act takes effect September 1, 2009.

14 (b) The change in law made by this Act to Sections 2210.251,
15 2210.252, 2210.254, and 2210.255, Insurance Code, takes effect
16 September 1, 2010.