

By: Fraser

S.B. No. 14

Substitute the following for S.B. No. 14:

By: Smithee

C.S.S.B. No. 14

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the operation of the Texas Windstorm Insurance  
3 Association and the Texas FAIR Plan Association; making an  
4 appropriation.

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. The primary purpose of the Texas  
9 Windstorm Insurance Association is the provision of an [An]  
10 adequate market for windstorm and[7] hail[7, and fire] insurance in  
11 the seacoast territory of this state. The legislature finds that  
12 the provision of adequate windstorm and hail insurance is necessary  
13 to the economic welfare of this state, and without that insurance,  
14 the orderly growth and development of this state would be severely  
15 impeded. This chapter provides a method by which adequate  
16 windstorm and[7] hail[7, and fire] insurance may be obtained in  
17 certain designated portions of the seacoast territory of this  
18 state. The association is intended to serve as a residual insurer  
19 of last resort for windstorm and hail insurance in the seacoast  
20 territory. The association shall:

21 (1) function in such a manner as to not be a direct  
22 competitor in the private market; and

23 (2) provide windstorm and hail insurance coverage to  
24 those who are unable to obtain that coverage in the private market.

1 SECTION 2. Section 2210.002, Insurance Code, is amended to  
2 read as follows:

3 Sec. 2210.002. SHORT TITLE; SUNSET PROVISION. (a) This  
4 chapter may be cited as the Texas Windstorm Insurance Association  
5 Act.

6 (b) The association is subject to review under Chapter 325,  
7 Government Code (Texas Sunset Act), but is not abolished under that  
8 chapter. The association shall be reviewed during the period in  
9 which state agencies abolished in 2015 are reviewed. The  
10 association shall pay the costs incurred by the Sunset Advisory  
11 Commission in performing the review of the association under this  
12 subsection. The Sunset Advisory Commission shall determine the  
13 costs of the review performed under this subsection, and the  
14 association shall pay the amount of those costs promptly on receipt  
15 of a statement from the Sunset Advisory Commission regarding those  
16 costs. This subsection expires September 1, 2015.

17 SECTION 3. Subchapter A, Chapter 2210, Insurance Code, is  
18 amended by adding Section 2210.0025 to read as follows:

19 Sec. 2210.0025. BIENNIAL REPORT TO LEGISLATURE. On or  
20 before December 31 of each even-numbered year, the board of  
21 directors shall submit to the commissioner, the appropriate  
22 committees of each house of the legislature, and the Sunset  
23 Advisory Commission a written report relating to the operations of  
24 the association during the preceding biennium. The report must  
25 include:

26 (1) any proposed changes in the laws relating to  
27 regulation of the association and a statement of the reasons for the

1 changes; and

2 (2) any information regarding association operations  
3 or procedures that is requested by the department to be addressed in  
4 the report.

5 SECTION 4. Section 2210.003, Insurance Code, is amended by  
6 adding Subdivisions (3-a) and (3-b) and amending Subdivision (6) to  
7 read as follows:

8 (3-a) "Catastrophe reserve trust fund" means the trust  
9 fund established under Subchapter J.

10 (3-b) "Financial instruments" means insurance and  
11 other financial devices, as approved by the commissioner, that may  
12 be used to provide funding for payment of excess losses of the  
13 association.

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

16 SECTION 5. Subsection (a), Section 2210.004, Insurance  
17 Code, is amended to read as follows:

18 (a) Except as provided by Subsection (h), for purposes of  
19 this chapter and subject to this section, "insurable property"  
20 means immovable property at a fixed location in a catastrophe area  
21 or corporeal movable property located in that immovable property,  
22 as designated in the plan of operation, that is determined by the  
23 association according to the criteria specified in the plan of  
24 operation to be in an insurable condition against windstorm and  
25 hail ~~[or fire and explosion, as appropriate]~~, as determined by  
26 normal underwriting standards. The term includes property  
27 described by Section 2210.209.

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

3 Sec. 2210.005. DESIGNATION AS CATASTROPHE AREA [~~OR~~  
4 ~~INADEQUATE FIRE INSURANCE AREA~~]; REVOCATION OF DESIGNATION.

5 (a) After at least 10 days' notice and a hearing, the commissioner  
6 may designate an area of the seacoast territory of this state as a  
7 catastrophe area if the commissioner determines, unless such a  
8 determination results in an adverse impact to the exposure of the  
9 association, that windstorm and hail insurance is not reasonably  
10 available to a substantial number of the owners of insurable  
11 property located in that territory because the territory is subject  
12 to unusually frequent and severe damage resulting from windstorms  
13 or hailstorms.

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

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

25 (c) [(d)] If the association determines that windstorm and  
26 hail insurance [~~or fire and explosion insurance~~] is no longer  
27 reasonably unavailable to a substantial number of owners of

1 insurable property in a territory designated as a catastrophe area  
2 [~~or inadequate fire insurance area, as applicable~~], the association  
3 may request in writing that the commissioner revoke the  
4 designation. After at least 10 days' notice and a hearing, but not  
5 later than the 30th day after the date of the hearing, the  
6 commissioner shall:

- 7 (1) approve the request and revoke the designation; or  
8 (2) reject the request.

9 SECTION 7. Section 2210.008, Insurance Code, is amended to  
10 read as follows:

11 Sec. 2210.008. DEPARTMENT ORDERS; GENERAL RULEMAKING  
12 AUTHORITY. (a) After notice and hearing as provided by Subsection  
13 (b), the commissioner may issue any orders that the commissioner  
14 considers necessary to implement this chapter [~~, including orders~~  
15 ~~regarding maximum rates, competitive rates, and policy forms~~].

16 (b) Before the commissioner adopts an order, the department  
17 shall post notice of the hearing on the order at the secretary of  
18 state's office in Austin and shall hold a hearing to consider the  
19 proposed order. Any person may appear at the hearing and testify  
20 for or against the adoption of the order.

21 (c) The commissioner may adopt rules in the manner  
22 prescribed by Subchapter A, Chapter 36, as reasonable and necessary  
23 to implement this chapter.

24 SECTION 8. Subchapter A, Chapter 2210, Insurance Code, is  
25 amended by adding Sections 2210.009 and 2210.010 to read as  
26 follows:

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

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

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

8 Sec. 2210.010. AUDIT. The state auditor shall conduct an  
9 audit of the association at least once every four years.

10 SECTION 9. Section 2210.052, Insurance Code, is amended by  
11 amending Subsections (a) and (d) and adding Subsection (e) to read  
12 as follows:

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

21 (d) Notwithstanding Subsection (a), a member, in accordance  
22 with the plan of operation, is entitled to receive credit for  
23 similar insurance voluntarily written in areas [~~an area~~]  
24 by the commissioner. The member's participation in the insured  
25 losses and operating expenses of the association in excess of  
26 premium and other revenue [~~writings~~] of the association shall be  
27 reduced in accordance with the plan of operation.

1        (e) Notwithstanding Subsections (a)-(d), an insurer that  
2 becomes a member of the association and that has not previously been  
3 a member of the association is not subject to participation in any  
4 insured losses and operating expenses of the association in excess  
5 of premium and other revenue of the association until the second  
6 anniversary of the date on which the insurer first becomes a member  
7 of the association.

8        SECTION 10. Subsection (b), Section 2210.056, Insurance  
9 Code, is amended to read as follows:

10        (b) The association's assets may not be used for or diverted  
11 to any purpose other than to:

12            (1) satisfy, in whole or in part, the liability of the  
13 association on claims made on policies written by the association;

14            (2) make investments authorized under applicable law;

15            (3) pay reasonable and necessary administrative  
16 expenses incurred in connection with the operation of the  
17 association and the processing of claims against the association;  
18 [~~or~~]

19            (4) satisfy, in whole or in part, the obligations of  
20 the association incurred in connection with Subchapters B-1, J, and  
21 M, including reinsurance and public securities, and any financial  
22 instruments; or

23            (5) make remittance under the laws of this state to be  
24 used by this state to:

25            (A) pay claims made on policies written by the  
26 association;

27            (B) purchase reinsurance covering losses under

1 those policies; or

2 (C) prepare for or mitigate the effects of  
3 catastrophic natural events.

4 SECTION 11. Subsection (c), Section 2210.060, Insurance  
5 Code, is amended to read as follows:

6 (c) Subsection (a) does not authorize the association to  
7 indemnify a member of the association for participating in the  
8 assessments made by [writings, expenses, profits, and losses of]  
9 the association in the manner provided by this chapter.

10 SECTION 12. Chapter 2210, Insurance Code, is amended by  
11 adding Subchapter B-1 to read as follows:

12 SUBCHAPTER B-1. PAYMENT OF LOSSES

13 Sec. 2210.071. PAYMENT OF EXCESS LOSSES; PAYMENT FROM  
14 RESERVES AND TRUST FUND. (a) If an occurrence or series of  
15 occurrences in a catastrophe area results in insured losses and  
16 operating expenses of the association in excess of premium and  
17 other revenue of the association, the excess losses and operating  
18 expenses shall be paid as provided by this subchapter.

19 (b) The association shall pay losses in excess of premium  
20 and other revenue of the association from available reserves of the  
21 association.

22 (c) Losses in excess of the available reserves of the  
23 association shall be paid from available amounts in the catastrophe  
24 reserve trust fund.

25 Sec. 2210.072. PAYMENT FROM CLASS 1 PUBLIC SECURITIES. (a)  
26 Losses not paid under Section 2210.071 shall be paid as provided by  
27 this section from the proceeds from Class 1 public securities



1 authorized to be issued in accordance with Subchapter M before the  
2 date of any occurrence that results in insured losses.

3 (b) Public securities described by Subsection (a) may be  
4 issued if the board of directors determines, before the date of any  
5 occurrence, that the amount available from premium and other  
6 revenue, in combination with the amounts available from the  
7 catastrophe reserve trust fund, may be insufficient to pay insured  
8 losses. The public securities shall be issued as necessary in a  
9 principal amount not to exceed \$300 million per occurrence.

10 (c) Any public securities proceeds received under this  
11 section from Class 1 public securities authorized in accordance  
12 with Subchapter M before the date of any occurrence that results in  
13 insured losses under Subsection (a):

14 (1) must be used before the proceeds of any public  
15 securities that the association authorizes to be issued under  
16 Section 2210.073 on or after any catastrophic event; and

17 (2) may not be used to fund losses of any catastrophic  
18 event occurring before the date public securities described by this  
19 section are authorized to be issued.

20 (d) If the losses are paid with public securities described  
21 by this section, the public securities shall be repaid as  
22 prescribed by Subchapter M.

23 Sec. 2210.073. PAYMENT FROM CLASS 2 PUBLIC SECURITIES. (a)  
24 Losses not paid under Sections 2210.071 and 2210.072 shall be paid  
25 as provided by this section from proceeds from Class 2 public  
26 securities authorized to be issued in accordance with Subchapter M  
27 on or after the date of any occurrence that results in insured

1 losses under this subsection.

2 (b) Public securities described by Subsection (a) may be  
3 issued as necessary in a principal amount not to exceed \$300 million  
4 per occurrence.

5 (c) If the losses are paid with public securities described  
6 by this section, the public securities shall be repaid as  
7 prescribed by Subchapter M.

8 Sec. 2210.074. PAYMENT THROUGH NONRECOUPABLE MEMBER  
9 ASSESSMENTS. (a) Losses not paid under Sections 2210.071,  
10 2210.072, and 2210.073 shall be paid through member assessments as  
11 provided by this section. The association shall assess the members  
12 of the association an amount not to exceed \$300 million per  
13 occurrence for the payment of the losses. The association shall  
14 notify each member of the association of the amount of the member's  
15 assessment under this section.

16 (b) The proportion of the losses allocable to each insurer  
17 under this section shall be determined in the manner used to  
18 determine each insurer's participation in the association for the  
19 year under Section 2210.052.

20 (c) A member of the association may not recoup an assessment  
21 paid under this section through a premium surcharge or tax credit.

22 Sec. 2210.075. PAYMENT THROUGH RECOUPABLE MEMBER  
23 ASSESSMENTS. (a) Losses not paid under Sections 2210.071-2210.074  
24 shall be paid through member assessments as provided by this  
25 section. The association shall assess the members of the  
26 association an amount not to exceed \$100 million per occurrence for  
27 the payment of the losses. The association shall notify each member

1 of the association of the amount of the member's assessment under  
2 this section.

3 (b) The proportion of the losses allocable to each insurer  
4 under this section shall be determined in the manner used to  
5 determine each insurer's participation in the association for the  
6 year under Section 2210.052.

7 (c) The assessments shall be repaid by a nonrefundable  
8 premium surcharge collected under this section in an amount set by  
9 the commissioner. The association and each insurer shall collect  
10 from each of its policyholders who reside in or have operations in,  
11 or whose insured property is located in, a catastrophe area, the  
12 nonrefundable premium surcharge for each Texas windstorm and hail  
13 insurance policy and each property and casualty insurance policy  
14 issued by the insurer for property located in the catastrophe area.

15 (d) A premium surcharge under this section applies to all  
16 policies that provide coverage on any premises, locations,  
17 operations, or property located in the area described by Subsection  
18 (c) for all property and casualty lines of insurance, other than  
19 federal flood insurance, workers' compensation insurance, accident  
20 and health insurance, and medical malpractice insurance.

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

26 Sec. 2210.076. PAYMENT THROUGH REINSURANCE. (a) Losses  
27 not paid under Sections 2210.071-2210.075 shall be paid through

1 reinsurance as provided by this section.

2 (b) The association shall purchase reinsurance in an amount  
3 not to exceed \$1 billion. The cost of the reinsurance purchased  
4 under this section shall be paid from premium paid by the  
5 policyholders of the association and other revenue of the  
6 association.

7 Sec. 2210.077. PAYMENT FROM ADDITIONAL ASSOCIATION  
8 ASSESSMENTS. (a) Losses not paid under Sections 2210.071-2210.076  
9 shall be paid through member assessments as provided by this  
10 section.

11 (b) The association shall assess the members of the  
12 association an amount not to exceed \$750 million per occurrence for  
13 the payment of losses described by this section. The association  
14 shall notify each member of the association of the amount of the  
15 member's assessments under this section, with the proportion of the  
16 assessment allocable to each insurer determined in the manner used  
17 to determine each member's participation in the association under  
18 Section 2210.052.

19 (c) A member of the association may not recoup an assessment  
20 paid under this section through a premium surcharge.

21 (d) A member of the association may credit an amount paid in  
22 accordance with this section in a calendar year against the  
23 insurer's premium tax under Chapter 221. The tax credit authorized  
24 under this subsection shall be allowed at a rate not to exceed 20  
25 percent per year for five or more successive years beginning the  
26 calendar year that the assessments under this section are paid. The  
27 balance of payments made by the insurer and not claimed as a premium

1 tax credit may be reflected in the books and records of the insurer  
2 as an admitted asset of the insurer for all purposes, including  
3 exhibition in an annual statement under Section 862.001.

4 Sec. 2210.078. NOTIFICATION REGARDING TAX CREDITS. (a)  
5 The association shall immediately notify the department if an  
6 occurrence or series of occurrences in a catastrophe area results  
7 in insured losses that result in a tax credit under Section  
8 2210.077(d) in a calendar year.

9 (b) On receipt of notice under Subsection (a), the  
10 department shall immediately notify the governor and the  
11 appropriate committees of each house of the legislature of the  
12 amount of insured losses eligible for tax credits under Section  
13 2210.077(d).

14 Sec. 2210.079. COMBINATION OF FINANCING MECHANISMS.  
15 Notwithstanding any other provision of this subchapter, if the  
16 board of directors determines that the sale of public securities or  
17 the purchase of reinsurance is not possible, or that other  
18 financing mechanisms described by this subchapter are fiscally  
19 appropriate or economically beneficial to this state, the board of  
20 directors, with the approval of the commissioner, may use any  
21 combination of the financing arrangements described by this  
22 subchapter as necessary to pay the excess losses.

23 SECTION 13. The heading to Subchapter C, Chapter 2210,  
24 Insurance Code, is amended to read as follows:

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

27 SECTION 14. Section 2210.102, Insurance Code, is amended to

1 read as follows:

2           Sec. 2210.102. COMPOSITION. (a) The board of directors is  
3 composed of [~~the following~~] nine members appointed by the  
4 commissioner in accordance with this section.

5           (b) Four members must be [~~+(1) five~~] representatives of  
6 the insurance industry.

7           (c) Four members must [~~different insurers who are members of~~  
8 ~~the association, elected by the members as provided by the plan of~~  
9 ~~operation;~~

10                   [~~(2) two public representatives who are nominated by~~  
11 ~~the office of public insurance counsel and who~~], as of the date of  
12 the appointment, [~~+~~

13                   [~~(A)~~] reside in the first tier coastal counties. At  
14 least one of the members appointed under this subsection must be a  
15 [~~catastrophe area; and~~

16                                   [~~(B) are policyholders of the association; and~~

17                   [~~(3) two~~] property and casualty agent who is licensed  
18 under this code and is not a captive agent.

19           (d) One member must be a representative of an area of this  
20 state that is not located in the seacoast territory with  
21 demonstrated expertise in insurance and actuarial principles.

22           (e) All members must [~~agents, each of whom must:~~

23                                   [~~(A)~~] have demonstrated experience in insurance,  
24 general business, or actuarial principles sufficient to make the  
25 success of the association probable[~~+~~

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

1                    [~~(C) hold a license under Chapter 4051 as a~~  
2 ~~general property and casualty agent or a personal lines property~~  
3 ~~and casualty agent~~].

4            (f) Insurers who are members of the association shall  
5 nominate, from among those members, persons to fill any vacancy in  
6 the four board of director seats reserved for representatives of  
7 the insurance industry. The board of directors shall solicit  
8 nominations from the members and submit the nominations to the  
9 commissioner. The nominee slate submitted to the commissioner  
10 under this subsection must include at least three more names than  
11 the number of vacancies. The commissioner shall appoint  
12 replacement insurance industry representatives from the nominee  
13 slate.

14            (g) The commissioner shall appoint one person to serve as a  
15 nonvoting member of the board to advise the board regarding issues  
16 relating to the inspection process. The commissioner may give  
17 preference in an appointment under this subsection to a person who  
18 is a qualified inspector under Section 2210.254. The nonvoting  
19 member appointed under this section must:

20                    (1) be an engineer licensed by, and in good standing  
21 with, the Texas Board of Professional Engineers;

22                    (2) reside in a first tier coastal county; and

23                    (3) be knowledgeable of, and have professional  
24 expertise in, wind-related design and construction practices in  
25 coastal areas that are subject to high winds and hurricanes.

26            (h) [~~(b)~~] The persons appointed under Subsection (c)  
27 [~~Subsections (a)(2) and (3)~~] must be from different counties.

1 SECTION 15. Section 2210.103, Insurance Code, is amended by  
2 adding Subsection (c) to read as follows:

3 (c) A member of the board of directors may be removed by the  
4 commissioner for misconduct, refusal to serve, or other failure to  
5 comply with this chapter or rules adopted under this chapter. The  
6 cause of the removal must be stated in writing and posted on the  
7 association's website. The commissioner shall appoint a  
8 replacement in the manner provided by Section 2210.102 for a member  
9 who leaves or is removed from the board of directors.

10 SECTION 16. Section 2210.104, Insurance Code, is amended to  
11 read as follows:

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

17 SECTION 17. Section 2210.105, Insurance Code, is amended by  
18 adding Subsection (d) to read as follows:

19 (d) Except for an emergency meeting, a meeting of the board  
20 of directors shall be held at a location as determined by the board  
21 of directors.

22 SECTION 18. Subchapter C, Chapter 2210, Insurance Code, is  
23 amended by adding Section 2210.1051 to read as follows:

24 Sec. 2210.1051. MEETINGS OF BOARD OF DIRECTORS.

25 (a) Notwithstanding Chapter 551, Government Code, or any other  
26 law, members of the board of directors may meet by telephone  
27 conference call, videoconference, or other similar



1 telecommunication method. The board may use telephone conference  
2 call, videoconference, or other similar telecommunication method  
3 for purposes of establishing a quorum or voting or for any other  
4 meeting purpose in accordance with this subsection and Subsection  
5 (b). This subsection applies without regard to the subject matter  
6 discussed or considered by the members of the board at the meeting.

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

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

11 (2) may not be held unless notice of the meeting  
12 specifies the location of the meeting, which shall be located in a  
13 tier one county; a recording of these meetings shall be posted on  
14 the association's website;

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

17 (4) must provide two-way audio communication between  
18 all members of the board attending the meeting during the entire  
19 meeting, and if the two-way audio communication link with members  
20 attending the meeting is disrupted so that a quorum of the board is  
21 no longer participating in the meeting, the meeting may not  
22 continue until the two-way audio communication link is  
23 reestablished.

24 SECTION 19. Subchapter C, Chapter 2210, Insurance Code, is  
25 amended by adding Section 2210.107 to read as follows:

26 Sec. 2210.107. PRIMARY BOARD OBJECTIVES. The primary  
27 objectives of the board of directors are to ensure that the

1 association:

2 (1) operates in accordance with this chapter and

3 commissioner rules;

4 (2) complies with sound insurance principles; and

5 (3) meets all standards imposed under this chapter.

6 SECTION 20. Section 2210.151, Insurance Code, is amended to  
7 read as follows:

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

11 [~~(1)~~] Texas windstorm and hail insurance in a  
12 catastrophe area[+, and

13 [~~(2)~~ Texas fire and explosion insurance in an  
14 inadequate fire insurance area].

15 SECTION 21. Subsection (a), Section 2210.152, Insurance  
16 Code, is amended to read as follows:

17 (a) The plan of operation must:

18 (1) provide for the efficient, economical, fair, and  
19 nondiscriminatory administration of the association; and

20 (2) include:

21 (A) a plan for the equitable assessment of the  
22 members of the association to defray losses and expenses;

23 (B) underwriting standards;

24 (C) procedures for accepting and ceding  
25 reinsurance;

26 (D) procedures for obtaining and repaying  
27 amounts under any financial instruments authorized under this

1 chapter;

2                   (E) procedures for determining the amount of  
3 insurance to be provided to specific risks;

4                   (F) [~~(E)~~] time limits and procedures for  
5 processing applications for insurance; and

6                   (G) [~~(F)~~] other provisions as considered  
7 necessary by the department to implement the purposes of this  
8 chapter.

9           SECTION 22. Section 2210.202, Insurance Code, is amended to  
10 read as follows:

11           Sec. 2210.202. APPLICATION FOR COVERAGE. (a) A person who  
12 has an insurable interest in insurable property may apply to the  
13 association for insurance coverage provided under the plan of  
14 operation and an inspection of the property, subject to any rules[  
15 ~~including any inspection fee,~~] established by the board of  
16 directors and approved by the commissioner. The association shall  
17 make insurance available to each applicant in the catastrophe area  
18 whose property is insurable property but who, after diligent  
19 efforts, is unable to obtain property insurance through the  
20 voluntary market, as evidenced by one declination from an insurer  
21 authorized to engage in the business of, and writing, property  
22 insurance providing windstorm and hail coverage in the first tier  
23 coastal counties. For purposes of this section, "declination" has  
24 the meaning assigned by the plan of operation and shall include a  
25 refusal to offer coverage for the perils of windstorm and hail and  
26 the inability to obtain substantially equivalent insurance  
27 coverage for the perils of windstorm and hail. Notwithstanding

1 Section 2210.203(c), evidence of one declination is also required  
2 with an application for renewal of an association policy.

3 (b) A [~~general~~] property and casualty agent [~~or a personal~~  
4 ~~lines property and casualty agent~~] must submit an application for  
5 the insurance coverage on behalf of the applicant on forms  
6 prescribed by the association. The application must contain a  
7 statement as to whether the applicant has submitted or will submit  
8 the premium in full from personal funds or, if not, to whom a  
9 balance is or will be due. Each application for initial or renewal  
10 coverage must also contain a statement that the agent possesses  
11 proof of the declination described by Subsection (a) and proof of  
12 flood insurance coverage or unavailability of that coverage as  
13 described by Section 2210.203(a-1).

14 SECTION 23. Section 2210.203, Insurance Code, is amended by  
15 adding Subsection (a-1) to read as follows:

16 (a-1) This subsection applies only to a structure  
17 constructed, remodeled, or enlarged on or after the effective date  
18 of S.B. No. 14, Acts of the 81st Legislature, Regular Session, 2009,  
19 and only for insurable property located in areas designated by the  
20 commissioner. Notwithstanding Subsection (a), if all or any part  
21 of the property to which this subsection applies is located in Zone  
22 V or another similar zone with an additional hazard associated with  
23 storm waves, as defined by the National Flood Insurance Program,  
24 and if flood insurance under that federal program is available, the  
25 association may not issue an insurance policy for initial coverage  
26 unless evidence that the property is covered by a flood insurance  
27 policy is submitted to the association. An agent offering or

1 selling a Texas windstorm and hail insurance policy in any area  
2 designated by the commissioner under this subsection shall offer  
3 flood insurance coverage to the prospective insured, if that  
4 coverage is available.

5 SECTION 24. Section 2210.204, Insurance Code, is amended by  
6 amending Subsection (d) and adding Subsection (e) to read as  
7 follows:

8 (d) If an insured requests cancellation of the insurance  
9 coverage, the association shall refund the unearned premium, less  
10 any minimum retained premium set forth in the plan of operation,  
11 payable to the insured and the holder of an unpaid balance. The  
12 property and casualty agent who submitted the application shall  
13 refund the agent's commission on any unearned premium in the same  
14 manner.

15 (e) For cancellation of insurance coverage under this  
16 section, the minimum retained premium in the plan of operation must  
17 be for a period of not less than 180 days, except for events  
18 specified in the plan of operation that reflect a significant  
19 change in the exposure or the policyholder concerning the insured  
20 property, including:

21 (1) the purchase of similar coverage in the voluntary  
22 market;

23 (2) sale of the property to an unrelated party;

24 (3) death of the policyholder; or

25 (4) total loss of the property.

26 SECTION 25. Subchapter E, Chapter 2210, Insurance Code, is  
27 amended by adding Section 2210.2041 to read as follows:

1        Sec. 2210.2041. NONREFUNDABLE SURCHARGE. A nonrefundable  
2 surcharge established under this chapter is not refundable under  
3 this code for any reason or purpose.

4        SECTION 26. Section 2210.251, Insurance Code, is amended to  
5 read as follows:

6        Sec. 2210.251. INSPECTION REQUIREMENTS. (a) Except as  
7 provided by this section, to be considered insurable property  
8 eligible for windstorm and hail insurance coverage from the  
9 association, a structure that is constructed, remodeled, enlarged,  
10 or repaired or to which additions are made on or after January 1,  
11 1988, must be inspected [~~or approved~~] by the association  
12 [~~department~~] for compliance with the plan of operation.

13        (b) After January 1, 2004, for geographic areas specified by  
14 the commissioner, the commissioner by rule shall adopt the 2003  
15 International Residential Code for one- and two-family dwellings  
16 published by the International Code Council. For those geographic  
17 areas, the commissioner by rule may adopt a subsequent edition of  
18 that code and may adopt any supplements published by the  
19 International Code Council and amendments to that code.

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

25        (d) A structure constructed, remodeled, enlarged, or  
26 repaired or to which additions were made before January 1, 1988,  
27 that is located in an area that was governed at the time of the

1 construction, remodeling, enlargement, repair, or addition by a  
2 building code recognized by the association is insurable property  
3 eligible for windstorm and hail insurance coverage from the  
4 association without compliance with the inspection [~~or approval~~]  
5 requirements of this section or the plan of operation.

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

- 22 (1) a copy of a previous insurance policy;
- 23 (2) copies of canceled checks or agent's records that  
24 show payments for previous policies; and
- 25 (3) a copy of the title to the structure or mortgage  
26 company records that show previous policies.

27 (f) Notwithstanding any other provision of this section, a

1 residential structure insured by the association as of June 1,  
2 2009, may continue coverage through the association subject to the  
3 inspection requirements imposed under Section 2210.258.

4 (g) The association [department] shall issue a certificate  
5 of compliance for each structure that qualifies for coverage. The  
6 certificate is evidence of insurability of the structure by the  
7 association.

8 ~~[(g) The department may enter into agreements and contracts~~  
9 ~~as necessary to implement this section.]~~

10 (h) The association [department] may charge a reasonable  
11 fee to cover the cost of making building requirements and  
12 inspection standards available to the public.

13 (i) The association shall charge a reasonable fee for each  
14 inspection of each structure in an amount set by the board of  
15 directors. The association may use fees collected under  
16 this section for operating expenses or for the purchase of  
17 reinsurance.

18 (j) Without limitation of the department's authority to  
19 otherwise enforce this chapter, the department shall monitor the  
20 association's compliance with this subchapter.

21 (k) Except as otherwise provided by this subchapter, the  
22 association may not consider any request that a structure be  
23 certified as insurable property if, within six months after the  
24 final inspection of a structure, the association has not received:

25 (1) fully completed documentation verifying that the  
26 structure has been constructed, remodeled, enlarged, or repaired,  
27 or any addition to the structure has been made, in compliance with



1 the plan of operation; and

2 (2) full payment of all inspection fees owed to the  
3 association, including any fees related to prior association  
4 inspections.

5 (1) If a structure is rejected for coverage under Subsection  
6 (k), a person may make a new request for certification and the  
7 structure may be reinspected for compliance with the plan of  
8 operation. A request for certification brought under this  
9 subsection must meet the requirements of Subsection (k).

10 SECTION 27. Subsections (a), (c), and (d), Section  
11 2210.254, Insurance Code, are amended to read as follows:

12 (a) For purposes of this chapter, a "qualified inspector"  
13 includes:

14 (1) a person determined by the association  
15 [~~department~~] to be qualified because of training or experience to  
16 perform building inspections;

17 (2) a licensed professional engineer who meets the  
18 requirements specified by the association [~~commissioner rule~~] for  
19 appointment to conduct windstorm inspections; and

20 (3) an inspector who:

21 (A) is certified by the International Code  
22 Council, the Building Officials and Code Administrators  
23 International, Inc., the International Conference of Building  
24 Officials, or the Southern Building Code Congress International,  
25 Inc.;

26 (B) has certifications as a buildings inspector  
27 and coastal construction inspector; and

1 (C) complies with other requirements specified  
2 by the association [~~commissioner rule~~].

3 (c) Before performing building inspections, a qualified  
4 inspector must be approved and appointed or employed by the  
5 association [~~department~~].

6 (d) The association [~~department~~] may charge a reasonable  
7 fee for the filing of applications by and determining the  
8 qualifications of persons for appointment as qualified inspectors.

9 SECTION 28. Section 2210.255, Insurance Code, is amended to  
10 read as follows:

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

19 (b) The association shall consult with the commissioner  
20 regarding [~~shall adopt rules establishing~~] the information to be  
21 considered in appointing engineers under this section.

22 SECTION 29. Subchapter F, Chapter 2210, Insurance Code, is  
23 amended by adding Section 2210.2565 to read as follows:

24 Sec. 2210.2565. PROCEDURES REGARDING APPOINTMENT OF  
25 INSPECTORS. The association shall develop procedures for the  
26 appointment and oversight of qualified inspectors appointed under  
27 Sections 2210.254 and 2210.255, including procedures relating to

1 the suspension or revocation of an appointment made by the  
2 association.

3 SECTION 30. Subchapter F, Chapter 2210, Insurance Code, is  
4 amended by adding Sections 2210.258 and 2210.259 to read as  
5 follows:

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

15 (b) The association may not insure a structure described by  
16 Subsection (a) until:

17 (1) the structure has been inspected for compliance  
18 with the plan of operation in accordance with Section 2210.251(a);  
19 and

20 (2) a certificate of compliance has been issued for  
21 the structure in accordance with Section 2210.251(g).

22 Sec. 2210.259. SURCHARGE FOR CERTAIN NONCOMPLIANT  
23 STRUCTURES. (a) A noncompliant residential structure insured by  
24 the association as of June 1, 2009, under Section 2210.251(f) that  
25 had been approved for insurability under the approval process  
26 regulations in effect on June 1, 2009, is subject to an annual  
27 premium surcharge in an amount equal to 15 percent of the premium

1 for insurance coverage obtained through the association. The  
2 surcharge under this subsection applies to each policy issued or  
3 renewed by the association on or after the effective date of S.B.  
4 No. 14, Acts of the 81st Legislature, Regular Session, 2009, and is  
5 due on the issuance or renewal of the policy.

6 (b) A premium surcharge collected under this section shall  
7 be deposited in the catastrophe reserve trust fund. A premium  
8 surcharge under this section is a separate nonrefundable charge in  
9 addition to the premiums collected and is not subject to premium tax  
10 or commissions. Failure to pay the surcharge by a policyholder  
11 constitutes failure to pay premium for purposes of policy  
12 cancellation.

13 SECTION 31. Subsections (c) and (d), Section 2210.351,  
14 Insurance Code, are amended to read as follows:

15 (c) Except as provided by Subsection (d), as [As] soon as  
16 reasonably possible after the filing has been made, the  
17 commissioner in writing shall approve[, modify,] or disapprove the  
18 filing. A filing is considered approved unless [modified or]  
19 disapproved on or before the 30th day after the date of the filing.  
20 If the commissioner disapproves a filing, the commissioner shall  
21 state in writing the reasons for the disapproval and the criteria  
22 the association is required to meet to obtain approval.

23 (d) The association may use a rate filed by the association  
24 without prior commissioner approval if:

25 (1) the filing is made not later than the 30th day  
26 before the date of any use or delivery for use of the rate;

27 (2) the filed rate does not exceed 105 percent of the

1 rate in effect on the date on which the filing is made;

2 (3) the filed rate does not reflect a rate change for  
3 an individual rating class that is 10 percent higher than the rate  
4 in effect for that rating class on the date on which the filing is  
5 made; and

6 (4) the commissioner has not disapproved the filing in  
7 writing, advising of the reasons for the disapproval and the  
8 criteria the association is required to meet to obtain approval [~~If~~  
9 ~~at any time the commissioner determines that a filing approved~~  
10 ~~under Subsection (c) no longer meets the requirements of this~~  
11 ~~chapter, the commissioner may, after a hearing held on at least 20~~  
12 ~~days' notice to the association that specifies the matters to be~~  
13 ~~considered at the hearing, issue an order withdrawing approval of~~  
14 ~~the filing. The order must specify in what respects the~~  
15 ~~commissioner determines that the filing no longer meets the~~  
16 ~~requirements of this chapter. An order issued under this~~  
17 ~~subsection may not take effect before the 30th day after the date of~~  
18 ~~issuance of the order].~~

19 SECTION 32. Section 2210.352, Insurance Code, is amended to  
20 read as follows:

21 Sec. 2210.352. MANUAL RATE FILINGS: ANNUAL FILING.

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

26 [~~(1) a filing made under this subsection; or~~

27 [~~(2) a department action with respect to the filing].~~

1        (a-1) The association may use a rate filed by the  
2 association under this section without prior commissioner approval  
3 if:

4            (1) the filing is made not later than the 30th day  
5 before the date of any use or delivery for use of the rate;

6            (2) the filed rate does not exceed 105 percent of the  
7 rate used by the association in effect on the date on which the  
8 filing is made; and

9            (3) the filed rate does not reflect a rate change for  
10 an individual rating class that is 10 percent higher than the rate  
11 in effect for that rating class on the date on which the filing is  
12 made.

13        (b) Except as provided by Subsection (a-1), before ~~[Before]~~  
14 approving or ~~[7]~~ disapproving ~~[, or modifying]~~ a filing under this  
15 section, the commissioner shall provide all interested persons a  
16 reasonable opportunity to:

17            (1) review the filing;

18            (2) obtain copies of the filing on payment of any  
19 legally required copying cost; and

20            (3) submit to the commissioner written comments or  
21 information related to the filing.

22        (c) Except as provided by Subsection (a-1), ~~[The~~  
23 ~~commissioner shall schedule an open meeting not later than the 45th~~  
24 ~~day after the date the department receives a filing at which~~  
25 ~~interested persons may present written or oral comments relating to~~  
26 ~~the filing.~~

27        ~~[(d) An open meeting under Subsection (c) is subject to~~

1 ~~Chapter 551, Government Code, but is not a contested case hearing~~  
2 ~~under Chapter 2001, Government Code.~~

3 ~~[(c) The department shall file with the secretary of state~~  
4 ~~for publication in the Texas Register notice that a filing has been~~  
5 ~~made under Subsection (a) not later than the seventh day after the~~  
6 ~~date the department receives the filing. The notice must include~~  
7 ~~information relating to:~~

8 ~~[(1) the availability of the filing for public~~  
9 ~~inspection at the department during regular business hours and the~~  
10 ~~procedures for obtaining copies of the filing;~~

11 ~~[(2) procedures for making written comments related to~~  
12 ~~the filing; and~~

13 ~~[(3) the time, place, and date of the open meeting~~  
14 ~~scheduled under Subsection (c) at which interested persons may~~  
15 ~~present written or oral comments relating to the filing.~~

16 ~~[(f) After the conclusion of the open meeting,~~] the  
17 commissioner shall approve or ~~[7]~~ disapprove ~~[7, or modify]~~ the filing  
18 in writing not later than October ~~[November]~~ 15 of the year in which  
19 the filing was made. If the filing is not approved or ~~[7]~~  
20 disapproved ~~[7, or modified]~~ on or before that date, the filing is  
21 considered approved.

22 (d) Except as provided by Subsection (a-1), if ~~[(g) If]~~ the  
23 commissioner disapproves a filing, the commissioner shall state in  
24 writing the reasons for the disapproval and the criteria the  
25 association is required to meet to obtain approval.

26 SECTION 33. Section 2210.353, Insurance Code, is amended to  
27 read as follows:

1           Sec. 2210.353.   MANUAL RATE FILINGS:   AMENDED ANNUAL FILING.

2   (a) Not later than the 30th day after the date the association  
3 receives the commissioner's written disapproval under Section  
4 2210.352(c) [~~2210.352(f)~~], the association may file with the  
5 commissioner an amended annual filing that conforms to all criteria  
6 stated in that written disapproval.

7           (b) Not later than the 30th day after the date an amended  
8 filing made under Subsection (a) is received, the commissioner  
9 shall approve [~~the amended filing with or without modifications~~] or  
10 disapprove the amended filing. If the filing is not [~~modified or~~  
11 disapproved on or before the 30th day after the date of receipt, the  
12 filing is considered approved [~~without modification~~]. If the  
13 commissioner disapproves a filing, the commissioner shall state in  
14 writing the reasons for the disapproval and the criteria the  
15 association is required to meet to obtain approval.

16           (c) Before approving or disapproving an amended annual  
17 filing under this section, the commissioner shall, in the manner  
18 provided by Section 2210.352(b), provide all interested persons a  
19 reasonable opportunity to:

- 20                   (1) review the amended annual filing;
- 21                   (2) obtain copies of the amended annual filing on  
22 payment of any legally required copying cost; and
- 23                   (3) submit to the commissioner written comments or  
24 information related to the amended annual filing.

25           ~~[(d) The commissioner may, in the manner provided by~~  
26 ~~Sections 2210.352(c) and (d), hold a hearing regarding an amended~~  
27 ~~filing not later than the 20th day after the date the department~~



1 ~~receives the amended filing.~~

2 ~~[(e) Not later than the 10th day after the date the hearing~~  
3 ~~is concluded, the commissioner shall approve or disapprove the~~  
4 ~~amended filing.~~

5 ~~[(f) The requirements imposed under Subsection (a) and~~  
6 ~~under Sections 2210.352(e), (f), and (g) apply to a hearing~~  
7 ~~conducted under this section and the commissioner's decision~~  
8 ~~resulting from that hearing.]~~

9 SECTION 34. Subsections (a), (c), and (d), Section  
10 2210.354, Insurance Code, are amended to read as follows:

11 (a) In conjunction with the review of a filing under Section  
12 2210.352, other than a filing made under Subsection (a-1) of that  
13 section [or 2210.353]:

14 (1) the commissioner may request the association to  
15 provide additional supporting information relating to the filing;  
16 and

17 (2) the office of public insurance counsel [~~any~~  
18 ~~interested person~~] may file a written request with the commissioner  
19 for additional supporting information relating to the filing.

20 (c) The commissioner shall submit to the association all  
21 requests for additional supporting information made under this  
22 section for the commissioner's use not later than the 21st day after  
23 the date of receipt of the filing [~~and the use of any interested~~  
24 ~~person~~].

25 (d) Unless a different period is requested by the  
26 association and approved by the commissioner, the association shall  
27 provide the information to the commissioner not later than the

1 fifth day after the date the written request for additional  
2 supporting information is delivered to the association. [~~The~~  
3 ~~department shall notify an interested person who has requested~~  
4 ~~additional information of the availability of the information not~~  
5 ~~later than one business day after the date the commissioner~~  
6 ~~receives the information from the association.~~]

7 SECTION 35. Section 2210.355, Insurance Code, is amended by  
8 amending Subsection (c) and adding Subsections (h) and (i) to read  
9 as follows:

10 (c) Rates must be reasonable, adequate, not unfairly  
11 discriminatory, and nonconfiscatory as to any class of insurer.  
12 Rates must be sufficient to pay association operating expenses,  
13 non-catastrophic claim loads, reinsurance, and other funding  
14 requirements of the association as provided by this chapter.

15 (h) In adopting rates under this chapter, recognized  
16 catastrophe models may be considered.

17 (i) The association may establish rating territories and  
18 may vary rates among the territories as provided by this  
19 subsection. A rating territory that subdivides a county may be used  
20 only if the rate for any subdivision in the county is not more than  
21 five percent higher than the rate used by the association in any  
22 other subdivision in the county.

23 SECTION 36. Subsection (b), Section 2210.361, Insurance  
24 Code, is amended to read as follows:

25 (b) After notice and hearing, the commissioner may accept[~~7~~  
26 ~~modify~~], or reject a recommendation made by the association under  
27 this section. [~~Chapter 40 does not apply to an action taken under~~

1 ~~this section.]~~

2 SECTION 37. Subsections (a), (c), and (d), Section  
3 2210.452, Insurance Code, are amended to read as follows:

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

9 ~~[(1)]~~ the obligations of the trust fund under  
10 Subchapter B-1 ~~[Section 2210.058(a); and~~

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

15 (c) At the end of each calendar year or policy year, the  
16 association shall use ~~[pay]~~ the net gain from operations ~~[equity]~~  
17 of the association ~~[a member]~~, including all premium and other  
18 revenue of the association in excess of incurred losses and  
19 operating expenses, to make payments to the trust fund, to procure  
20 ~~[or a]~~ reinsurance, or to make payments to the trust fund and to  
21 procure reinsurance ~~[program approved by the commissioner].~~

22 (d) The commissioner by rule shall establish the procedure  
23 relating to the disbursement of money from the trust fund to  
24 policyholders in the event of an occurrence or series of  
25 occurrences within a catastrophe area that results in a  
26 disbursement under Subchapter B-1 ~~[Section 2210.058(a)].~~

27 SECTION 38. Section 2210.453, Insurance Code, is amended to

1 read as follows:

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

4                   (1) make payments into the trust fund; and [~~or~~]

5                   (2) purchase [~~establish a~~] reinsurance [~~program~~  
6 ~~approved by the department~~].

7           (b) The [~~With the approval of the department, the~~  
8 association may purchase [~~establish a~~] reinsurance [~~program~~] that  
9 operates in addition to or in concert with the trust fund, public  
10 securities, assessments, and any financial instruments authorized  
11 by this chapter.

12           SECTION 39. Subsection (b), Section 2210.454, Insurance  
13 Code, is amended to read as follows:

14           (b) Each state fiscal year, the department may fund the  
15 mitigation and preparedness plan using available funds [~~the~~  
16 ~~investment income of the trust fund in an amount not less than \$1~~  
17 ~~million and not more than 10 percent of the investment income of the~~  
18 ~~prior fiscal year. From that amount and as part of that plan, the~~  
19 ~~department may use in each fiscal year \$1 million for the windstorm~~  
20 ~~inspection program established under Section 2210.251~~].

21           SECTION 40. Section 2210.552, Insurance Code, is amended by  
22 adding Subsection (e) to read as follows:

23                   (e) Notwithstanding Subchapter H, Chapter 74, Government  
24 Code, or any other law, an action brought under this section may not  
25 be transferred by the judicial panel on multidistrict litigation.

26           SECTION 41. Chapter 2210, Insurance Code, is amended by  
27 adding Subchapters M and N to read as follows:

1                   SUBCHAPTER M. PUBLIC SECURITIES PROGRAM

2                   Sec. 2210.601. PURPOSE. The legislature finds that  
3 authorizing the issuance of public securities to provide a method  
4 to raise funds to provide windstorm and hail insurance through the  
5 association in certain designated portions of the state is for the  
6 benefit of the public and in furtherance of a public purpose.

7                   Sec. 2210.602. DEFINITIONS. In this subchapter:

8                   (1) "Board" means the board of directors of the Texas  
9 Public Finance Authority.

10                   (2) "Class 1 public securities" means public  
11 securities authorized to be issued before the occurrence of a  
12 catastrophic event by Section 2210.072.

13                   (3) "Class 2 public securities" means public  
14 securities authorized to be issued on or after the occurrence of a  
15 catastrophic event by Section 2210.073.

16                   (4) "Credit agreement" has the meaning assigned by  
17 Chapter 1371, Government Code.

18                   (5) "Insurer" means each property and casualty insurer  
19 authorized to engage in the business of property and casualty  
20 insurance in this state and an affiliate of such an insurer, as  
21 described by Section 823.003, including an affiliate that is not  
22 authorized to engage in the business of property and casualty  
23 insurance in this state. The term specifically includes a county  
24 mutual insurance company, a Lloyd's plan, and a reciprocal or  
25 interinsurance exchange.

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

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

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

10           (9) "Public security obligation revenue fund" means  
11 the dedicated trust fund established by the association outside the  
12 state treasury under this subchapter.

13           (10) "Public security resolution" means the  
14 resolution or order authorizing public securities to be issued  
15 under this subchapter.

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

22           Sec. 2210.604. ISSUANCE OF PUBLIC SECURITIES AUTHORIZED.  
23 (a) At the request of the association and with the approval of the  
24 commissioner, the Texas Public Finance Authority shall issue Class  
25 1 or Class 2 public securities.

26           (b) The association shall specify in the association's  
27 request to the board the maximum principal amount of the public

1 securities and the maximum term of the public securities.

2 (c) The principal amount determined by the association  
3 under Subsection (b) may be increased to include an amount  
4 sufficient to:

5 (1) pay the costs related to issuance of the public  
6 securities;

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

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

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

17 (b) Public securities must be issued in the name of the  
18 association.

19 Sec. 2210.606. ADDITIONAL COVENANTS. The board may make  
20 additional covenants with respect to the public securities and the  
21 designated income and receipts of the association pledged to their  
22 payment, and provide for the flow of funds and the establishment,  
23 maintenance, and investment of funds and accounts with respect to  
24 the public securities, and the administration of those funds and  
25 accounts, as provided in the proceedings authorizing the public  
26 securities.

27 Sec. 2210.607. PUBLIC SECURITY PROCEEDS. The proceeds of

1 public securities issued by the board under this subchapter may be  
2 deposited with a trustee selected by the association in  
3 consultation with the commissioner or held by the comptroller in a  
4 dedicated trust fund outside the state treasury in the custody of  
5 the comptroller.

6 Sec. 2210.608. USE OF PUBLIC SECURITY PROCEEDS.

7 (a) Public security proceeds, including investment income, shall  
8 be held in trust for the exclusive use and benefit of the  
9 association. The association may use the proceeds to:

10 (1) pay incurred claims and operating expenses of the  
11 association;

12 (2) purchase reinsurance for the association;

13 (3) pay the costs of issuing the public securities,  
14 and public security administrative expenses, if any;

15 (4) provide a public security reserve; and

16 (5) pay capitalized interest and principal on the  
17 public securities for the period determined necessary by the  
18 association.

19 (b) Any excess public security proceeds remaining after the  
20 purposes for which the public securities were issued are satisfied  
21 may be used to purchase or redeem outstanding public securities. If  
22 there are no outstanding public security obligations or public  
23 security administrative expenses, the excess proceeds shall be  
24 transferred to the catastrophe reserve trust fund.

25 Sec. 2210.609. REPAYMENT OF ASSOCIATION'S PUBLIC SECURITY

26 OBLIGATIONS. (a) The association shall pay all public security  
27 obligations from available funds collected by the association and



1 deposited into the public security obligation revenue fund. If the  
2 association determines that it is unable to pay the public security  
3 obligations and public security administrative expenses, if any,  
4 with available funds, the association shall pay those obligations  
5 and expenses in accordance with Sections 2210.612 and 2210.613, as  
6 applicable.

7 (b) The board shall notify the association of the amount of  
8 the public security obligations and the estimated amount of public  
9 security administrative expenses, if any, each year in a period  
10 sufficient, as determined by the association, to permit the  
11 association to determine the availability of funds and assess a  
12 premium surcharge if necessary.

13 (c) The association shall deposit all revenue collected  
14 under Sections 2210.612 and 2210.613 in the public security  
15 obligation revenue fund. Money deposited in the fund may be  
16 invested as permitted by general law. Money in the fund required to  
17 be used to pay public security obligations and public security  
18 administrative expenses, if any, shall be transferred to the  
19 appropriate funds in the manner and at the time specified in the  
20 proceedings authorizing the public securities to ensure timely  
21 payment of obligations and expenses.

22 (d) The association shall provide for the payment of the  
23 public security obligations and the public security administrative  
24 expenses by irrevocably pledging revenues received from premiums,  
25 premium surcharges, and amounts on deposit in the public security  
26 obligation revenue fund, together with any public security reserve  
27 fund, as provided in the proceedings authorizing the public

1 securities and related credit agreements.

2 (e) An amount owed by the board under a credit agreement  
3 shall be payable from and secured by a pledge of revenues received  
4 by the association or amounts from the obligation trust fund to the  
5 extent provided in the proceedings authorizing the credit  
6 agreement.

7 Sec. 2210.610. PUBLIC SECURITY PAYMENTS. (a) Revenues  
8 received from the premium surcharges under Section 2210.612 or  
9 2210.613 may be applied only as provided by this subchapter.

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

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

14 Sec. 2210.611. EXCESS REVENUE COLLECTIONS AND INVESTMENT  
15 EARNINGS. Revenue collected in any year from a premium surcharge  
16 under Section 2210.612 or 2210.613 that exceeds the amount of the  
17 public security obligations and public security administrative  
18 expenses payable in that year and interest earned on the public  
19 security obligation fund may, in the discretion of the association,  
20 be:

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

25 (2) used to redeem or purchase outstanding public  
26 securities; or

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

1       Sec. 2210.612. CLASS 1 PREMIUM SURCHARGE. (a) The  
2 association shall pay interest on pre-event Class 1 public  
3 securities issued under Section 2210.072 from its premium and other  
4 revenue as provided by Section 2210.609.

5       (b) Notwithstanding Section 2210.609, to pay pre-event  
6 principal and post-event principal and interest on the Class 1  
7 public securities, each insurer and the association shall collect  
8 from their policyholders a surcharge in addition to any premiums to  
9 pay public security obligations and public security administrative  
10 expenses, if any, on the Class 1 public securities. The association  
11 shall determine the premium surcharge under this subsection at  
12 least annually.

13       (c) On approval by the commissioner, each insurer and the  
14 association shall assess a premium surcharge under Subsection (b)  
15 to their policyholders who have a property or casualty insurance  
16 policy or Texas windstorm and hail insurance policy that provides  
17 coverage for premises, locations, operations, or property located  
18 in a catastrophe area, first tier coastal county, or that part of a  
19 second tier coastal county that is included in coverage through the  
20 association and shall remit the premium surcharge to the  
21 association as required by commissioner rule. A premium surcharge  
22 under Subsection (b) shall apply to all policies that provide  
23 coverage on any premises, locations, operations, or property  
24 located in a catastrophe area, first tier coastal county, or that  
25 part of a second tier coastal county that is included in coverage  
26 through the association for all property and casualty lines of  
27 insurance, other than federal flood insurance, workers'

1 compensation insurance, accident and health insurance, and medical  
2 malpractice insurance.

3 (d) A premium surcharge under this section is a separate  
4 nonrefundable charge in addition to the premiums collected and is  
5 not subject to premium tax or commissions. Failure by a  
6 policyholder to pay the surcharge constitutes failure to pay  
7 premium for purposes of policy cancellation.

8 Sec. 2210.613. CLASS 2 PREMIUM SURCHARGE. (a) Each insurer  
9 and the association shall collect from their policyholders a  
10 premium surcharge to pay public security obligations and public  
11 security administrative expenses, if any, on Class 2 public  
12 securities issued under Section 2210.073. The premium surcharge  
13 must be set in an amount sufficient to pay all debt service and all  
14 related expenses on the public securities, as applicable.

15 (b) The association shall determine the premium surcharge  
16 under Subsection (a) at least annually. On approval by the  
17 commissioner, each insurer and the association shall assess the  
18 premium surcharge under Subsection (a) to their policyholders who  
19 have a property or casualty insurance policy or Texas windstorm and  
20 hail insurance policy that provides coverage for premises,  
21 locations, operations, or property located in a catastrophe area,  
22 first tier coastal county, or that part of a second tier coastal  
23 county that is included in coverage through the association and  
24 shall remit the premium surcharge to the association as required by  
25 commissioner rule. A premium surcharge under Subsection (a) shall  
26 apply to all policies that provide coverage on any premises,  
27 locations, operations, or property located in a catastrophe area,

1 first tier coastal county, or that part of a second tier coastal  
2 county that is included in coverage through the association for all  
3 property and casualty lines of insurance, other than federal flood  
4 insurance, workers' compensation insurance, accident and health  
5 insurance, and medical malpractice insurance.

6 (c) A premium surcharge under this section is a separate  
7 nonrefundable charge in addition to the premiums collected and is  
8 not subject to premium tax or commissions. Failure to pay the  
9 surcharge by a policyholder constitutes failure to pay premium for  
10 purposes of policy cancellation.

11 Sec. 2210.614. REFINANCING PUBLIC SECURITIES. The  
12 association may request the board to refinance any public  
13 securities issued in accordance with Subchapter B-1, whether Class  
14 1 or Class 2 public securities, with the refinanced public  
15 securities payable from the same sources as the original public  
16 securities.

17 Sec. 2210.615. SOURCE OF PAYMENT; STATE DEBT NOT CREATED.

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

20 (b) A public security issued under this subchapter, and any  
21 related credit agreement, is not a debt of this state or any state  
22 agency or political subdivision of this state, and does not  
23 constitute a pledge of the faith and credit of this state or any  
24 state agency or political subdivision of this state.

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

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

5           (2) neither the faith and credit nor the taxing power  
6 of the state or any state agency, political corporation, or  
7 political subdivision of the state is pledged to the payment of the  
8 principal of or interest on the public security.

9           Sec. 2210.616. STATE NOT TO IMPAIR PUBLIC SECURITY  
10 OBLIGATIONS. If public securities under this subchapter are  
11 outstanding, the state may not:

12           (1) take action to limit or restrict the rights of the  
13 association to fulfill its responsibility to pay public security  
14 obligations; or

15           (2) in any way impair the rights and remedies of the  
16 public security owners until the public securities are fully  
17 discharged.

18           Sec. 2210.617. ENFORCEMENT BY MANDAMUS. A writ of mandamus  
19 and any other legal and equitable remedies are available to a party  
20 at interest to require the association or another party to fulfill  
21 an agreement and to perform functions and duties under:

22           (1) this subchapter;

23           (2) the Texas Constitution; or

24           (3) a relevant public security resolution.

25           Sec. 2210.618. EXEMPTION FROM TAXATION. A public security  
26 issued under this subchapter, any transaction relating to the  
27 public security, and profits made from the sale of the public

1 security are exempt from taxation by this state or by a municipality  
2 or other political subdivision of this state.

3 Sec. 2210.619. NO PERSONAL LIABILITY. The members of the  
4 association, members of the association board of directors,  
5 association employees, the board, the employees of the Texas Public  
6 Finance Authority, the commissioner, and department employees are  
7 not personally liable as a result of exercising the rights and  
8 responsibilities granted under this subchapter.

9 Sec. 2210.620. AUTHORIZED INVESTMENTS. Public securities  
10 issued under this subchapter are authorized investments under:

- 11 (1) Subchapter B, Chapter 424;  
12 (2) Subchapter C, Chapter 425; and  
13 (3) Sections 425.203-425.213.

14 SUBCHAPTER N. LEGISLATIVE OVERSIGHT BOARD

15 Sec. 2210.651. DEFINITION. In this subchapter, "board"  
16 means the windstorm insurance legislative oversight board.

17 Sec. 2210.652. COMPOSITION OF BOARD. The windstorm  
18 insurance legislative oversight board is composed of six members as  
19 follows:

20 (1) three members of the senate appointed by the  
21 lieutenant governor, at least one of whom does not represent a  
22 district in the seacoast territory; and

23 (2) three members of the house of representatives  
24 appointed by the speaker of the house of representatives, at least  
25 one of whom does not represent a district in the seacoast territory.

26 Sec. 2210.653. POWERS AND DUTIES OF BOARD. (a) The board  
27 shall:

1           (1) receive information about rules proposed by the  
2 department relating to windstorm insurance and may submit comments  
3 to the commissioner on the proposed rules;

4           (2) monitor windstorm insurance in this state,  
5 including:

6                   (A) the fairness of rates;

7                   (B) the operation of the association; and

8                   (C) the availability of coverage; and

9           (3) review recommendations for legislation proposed  
10 by the department or the association.

11           (b) The board may request reports and other information from  
12 the department and the association as necessary to implement this  
13 subchapter.

14           Sec. 2210.654. REPORT. (a) Not later than November 15 of  
15 each even-numbered year, the board shall report on the board's  
16 activities under Section 2210.653 to:

17                   (1) the governor;

18                   (2) the lieutenant governor; and

19                   (3) the speaker of the house of representatives.

20           (b) The report must include:

21                   (1) an analysis of any problems identified; and

22                   (2) recommendations for any legislative action  
23 necessary to address those problems and to foster stability,  
24 availability, and competition within the windstorm insurance  
25 industry.

26           SECTION 42. Section 941.003, Insurance Code, is amended by  
27 adding Subsection (e) to read as follows:



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

3       SECTION 43. Section 942.003, Insurance Code, is amended by  
4 adding Subsection (f) to read as follows:

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

7       SECTION 44. The following laws are repealed:

8           (1) Subdivisions (5) and (12), Section 2210.003,  
9 Insurance Code;

10           (2) Sections 2210.058 and 2210.059, Insurance Code;

11           (3) Sections 2210.205 and 2210.206, Insurance Code;

12           (4) Sections 2210.256 and 2210.257, Insurance Code;

13           (5) Sections 2210.356, 2210.360, and 2210.363,  
14 Insurance Code; and

15           (6) Subchapter G, Chapter 2210, Insurance Code.

16       SECTION 45. (a) The board of directors of the Texas  
17 Windstorm Insurance Association established under Section  
18 2210.102, Insurance Code, as that section existed before amendment  
19 by this Act, is abolished effective December 31, 2009.

20       (b) The commissioner of insurance shall appoint the members  
21 of the board of directors of the Texas Windstorm Insurance  
22 Association under Section 2210.102, Insurance Code, as amended by  
23 this Act, not later than December 31, 2009.

24       (c) The term of a person who is serving as a member of the  
25 board of directors of the Texas Windstorm Insurance Association  
26 immediately before the abolition of that board under Subsection (a)  
27 of this section expires on December 31, 2009. Such a person is

1 eligible for appointment by the commissioner of insurance to the  
2 new board of directors of the Texas Windstorm Insurance Association  
3 under Section 2210.102, Insurance Code, as amended by this Act.

4 SECTION 46. (a) The commissioner of insurance shall adopt  
5 rules as required by Chapter 2210, Insurance Code, as amended by  
6 this Act, as soon as possible after the effective date of this Act,  
7 but not later than the 30th day after the effective date of this  
8 Act.

9 (b) The Texas Windstorm Insurance Association, through the  
10 board of directors of that association, shall propose to the  
11 commissioner of insurance amendments to the association's plan of  
12 operation as required by Chapter 2210, Insurance Code, as amended  
13 by this Act, not later than March 1, 2010.

14 SECTION 47. Sections 2210.202 and 2210.203, Insurance Code,  
15 as amended by this Act, apply to an application for insurance  
16 coverage submitted to the Texas Windstorm Insurance Association on  
17 or after the effective date of this Act.

18 SECTION 48. Section 2210.251, Insurance Code, as amended by  
19 this Act, applies to an inspection conducted by the Texas Windstorm  
20 Insurance Association on or after September 1, 2009. Except as  
21 otherwise specifically provided by that section, a structure that  
22 has been inspected and is the subject of a certificate of compliance  
23 issued by the Texas Department of Insurance under Subsection (g),  
24 Section 2210.251, Insurance Code, as that section existed  
25 immediately before September 1, 2009, is not required to obtain an  
26 inspection certificate from the Texas Windstorm Insurance  
27 Association to remain eligible for insurance coverage through that

1 association unless the structure is remodeled, enlarged, or  
2 repaired on or after September 1, 2009.

3 SECTION 49. The changes in law made by this Act in amending  
4 Sections 2210.251, 2210.254, and 2210.255, Insurance Code, adding  
5 Section 2210.2565, Insurance Code, and repealing Section 2210.256,  
6 Insurance Code, take effect September 1, 2009.

7 SECTION 50. Section 2210.552, Insurance Code, as amended by  
8 this Act, applies to a cause of action that accrues on or after the  
9 effective date of this Act. A cause of action that accrues before  
10 the effective date of this Act is governed by the law as it exists  
11 immediately before that date, and that law is continued in effect  
12 for that purpose.

13 SECTION 51. The state auditor shall conduct the initial  
14 audit of the association, as required under Section 2210.010,  
15 Insurance Code, as added by this Act, not later than the fourth  
16 anniversary of the effective date of this Act.

17 SECTION 52. Except as otherwise provided by this Act, this  
18 Act takes effect immediately if it receives a vote of two-thirds of  
19 all the members elected to each house, as provided by Section 39,  
20 Article III, Texas Constitution. If this Act does not receive the  
21 vote necessary for immediate effect, this Act takes effect  
22 September 1, 2009.