

By: Fraser

S.B. No. 14

A BILL TO BE ENTITLED

AN ACT

relating to the operation of the Texas Windstorm Insurance Association and the Texas FAIR Plan Association.

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

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

Sec. 2210.001. PURPOSE. The primary purpose of the Texas Windstorm Insurance Association is the provision of an [An] adequate market for windstorm and[7] hail[7 and fire] insurance in the seacoast territory of this state. The legislature finds that the provision of adequate windstorm and hail insurance is necessary to the economic welfare of this state, and without that insurance, the orderly growth and development of this state would be severely impeded. This chapter provides a method by which adequate windstorm and[7] hail[7 and fire] insurance may be obtained in certain designated portions of the seacoast territory of this state. The association is intended to serve as a residual insurer of last resort for windstorm and hail insurance in the seacoast territory. The association shall:

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

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

SECTION 2. Section 2210.002, Insurance Code, is amended to

1 read as follows:

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

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

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

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

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

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

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

7 (3-a) "Catastrophe reserve trust fund" means the trust
8 fund established under Subchapter J.

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

11 SECTION 5. Sections 2210.004(a) and (g), Insurance Code,
12 are amended to read as follows:

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

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

25 (1) the residential structure is not:

26 (A) a condominium, apartment, duplex, or other
27 multifamily residence; or

1 (B) a hotel or resort facility; and

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

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

8 SECTION 6. Section 2210.005, Insurance Code, is amended to
9 read as follows:

10 Sec. 2210.005. DESIGNATION AS CATASTROPHE AREA [~~OR~~
11 ~~INADEQUATE FIRE INSURANCE AREA~~]; REVOCATION OF DESIGNATION. (a)
12 After at least 10 days' notice and a hearing, the commissioner may
13 designate an area of the seacoast territory of this state as a
14 catastrophe area if the commissioner determines, unless such a
15 determination results in an adverse impact to the exposure of the
16 association, that windstorm and hail insurance is not reasonably
17 available to a substantial number of the owners of insurable
18 property located in that territory because the territory is subject
19 to unusually frequent and severe damage resulting from windstorms
20 or hailstorms.

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

26 [~~(c)~~] The commissioner shall revoke a designation made
27 under Subsection (a) [~~or (b)~~] if the commissioner determines, after

1 at least 10 days' notice and a hearing, that the applicable
2 insurance coverage is no longer reasonably unavailable to a
3 substantial number of owners of insurable property within the
4 designated territory.

5 (c) [~~(d)~~] If the association determines that windstorm and
6 hail insurance [~~or fire and explosion insurance~~] is no longer
7 reasonably unavailable to a substantial number of owners of
8 insurable property in a territory designated as a catastrophe area
9 [~~or inadequate fire insurance area, as applicable~~], the association
10 may request in writing that the commissioner revoke the
11 designation. After at least 10 days' notice and a hearing, but not
12 later than the 30th day after the date of the hearing, the
13 commissioner shall:

- 14 (1) approve the request and revoke the designation; or
15 (2) reject the request.

16 SECTION 7. Section 2210.008, Insurance Code, is amended to
17 read as follows:

18 Sec. 2210.008. DEPARTMENT ORDERS; GENERAL RULEMAKING
19 AUTHORITY. (a) The [~~After notice and hearing as provided by~~
20 ~~Subsection (b), the~~] commissioner may issue any orders that the
21 commissioner considers necessary to implement this chapter [~~7~~
22 ~~including orders regarding maximum rates, competitive rates, and~~
23 ~~policy forms~~].

24 (b) The commissioner may adopt rules in the manner
25 prescribed by Subchapter A, Chapter 36, as reasonable and necessary
26 to implement this chapter. [~~Before the commissioner adopts an~~
27 ~~order, the department shall post notice of the hearing on the order~~

1 ~~at the secretary of state's office in Austin and shall hold a~~
2 ~~hearing to consider the proposed order. Any person may appear at~~
3 ~~the hearing and testify for or against the adoption of the order.]~~

4 SECTION 8. Subchapter A, Chapter 2210, Insurance Code, is
5 amended by adding Section 2210.009 to read as follows:

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

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

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

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

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

25 (d) Notwithstanding Subsection (a), a member, in accordance
26 with the plan of operation, is entitled to receive credit for
27 similar insurance voluntarily written in areas ~~[an area]~~ designated

1 by the commissioner. The member's participation in the insured
2 losses and operating expenses of the association in excess of
3 premium and other revenue [~~writings~~] of the association shall be
4 reduced in accordance with the plan of operation.

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

12 SECTION 10. Section 2210.056(b), Insurance Code, is amended
13 to read as follows:

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

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

18 (2) make investments authorized under applicable law;

19 (3) pay reasonable and necessary administrative
20 expenses incurred in connection with the operation of the
21 association and the processing of claims against the association;

22 [~~or~~]

23 (4) satisfy, in whole or in part, the obligations of
24 the association incurred in connection with Subchapters B-1, J, and
25 M, including reinsurance, public securities, and financial
26 instruments; or

27 (5) make remittance under the laws of this state to be

1 used by this state to:

2 (A) pay claims made on policies written by the
3 association;

4 (B) purchase reinsurance covering losses under
5 those policies; or

6 (C) prepare for or mitigate the effects of
7 catastrophic natural events.

8 SECTION 11. Section 2210.060(c), Insurance Code, is amended
9 to read as follows:

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

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

16 SUBCHAPTER B-1. PAYMENT OF LOSSES

17 Sec. 2210.071. ANNUAL RESERVES SOLVENCY ASSESSMENT;
18 PREMIUM SURCHARGES. (a) To ensure available reserves and the
19 capacity to pay excess losses, the association annually shall
20 assess the members of the association \$400 million, with the
21 proportion of the assessment allocable to each insurer determined
22 in the manner used to determine each member's participation in the
23 association under Section 2210.052. The association shall notify
24 each member of the association not later than January 1 of each year
25 of the amount of the member's assessment under this subsection. The
26 members shall remit their assessments to the association not later
27 than February 1 of each year. The association shall deposit the

1 remitted assessments into the catastrophe reserve trust fund not
2 later than February 15 of each year. A member of the association may
3 not recoup an assessment paid under this section through a premium
4 surcharge.

5 (b) In addition to the assessment under Subsection (a), the
6 association, each member of the association, and each insurer that
7 engages in the business of property and casualty insurance in this
8 state, including the Texas FAIR Plan Association, shall collect a
9 premium surcharge for one year, as provided by this section from
10 their policyholders who reside or have operations in, or whose
11 insured property is located in a catastrophe area.

12 (c) The association shall collect from its policyholders
13 the nonrefundable premium surcharge in an amount equal to 20
14 percent of the association's annual policy premium. Each insurer
15 and the Texas FAIR Plan Association shall collect from their
16 affected policyholders the nonrefundable premium surcharge in an
17 amount equal to three percent of policy premium.

18 (d) Each insurer and the Texas FAIR Plan Association shall
19 remit the premium surcharge under this section to the association
20 not later than the 20th day after the last day of each calendar
21 quarter. The association shall deposit the remitted premium
22 surcharges in the catastrophe reserve trust fund not later than the
23 30th day after the last day of each calendar quarter.

24 (e) A premium surcharge under this section shall apply to
25 all policies that provide coverage on any premises, locations,
26 operations, or property located in the area described by Subsection
27 (b) for all property and casualty lines of insurance, other than

1 federal flood insurance, workers' compensation insurance, accident
2 and health insurance, and medical malpractice insurance.

3 (f) 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 (g) The commissioner by rule may prescribe procedures and
9 time periods for implementing this section, including for
10 collection of an assessment or a premium surcharge under this
11 section.

12 Sec. 2210.072. PAYMENT OF EXCESS LOSSES; AUTHORIZATION TO
13 REINSURE OR BORROW. (a) If an occurrence or series of occurrences
14 in a catastrophe area results in insured losses and operating
15 expenses of the association in excess of premium and other revenue
16 of the association, the excess losses and operating expenses shall
17 be paid as provided by this subchapter.

18 (b) The association shall pay losses in excess of premium
19 and other revenue of the association from available reserves of the
20 association and available amounts in the catastrophe reserve trust
21 fund.

22 (c) The association may borrow from, or enter into other
23 financing arrangements with, any market sources at prevailing
24 interest rates as authorized by this subchapter and as necessary to
25 pay insured losses.

26 (d) The association may pay losses in excess of premium and
27 other revenue of the association with:

1 (1) reinsurance proceeds, as provided by this
2 subchapter, from reinsurance purchased by the association as
3 authorized under Section 2210.453;

4 (2) the proceeds of Class 1 or Class 2 public
5 securities authorized under Section 2210.074, 2210.075, 2210.077,
6 or 2210.078; and

7 (3) proceeds from financial instruments, including
8 loans or other financing arrangements described by Subsection (c),
9 as authorized under this subchapter.

10 (e) With respect to assessments to members of the
11 association, the proportion of the losses allocable to each insurer
12 under this subchapter shall be determined in the manner used to
13 determine each insurer's participation in the association for the
14 year under Section 2210.052.

15 Sec. 2210.073. PAYMENT FROM TRUST FUND; ASSESSMENT;
16 REINSURANCE. (a) For each occurrence, losses shall be paid from
17 the catastrophe reserve trust fund and any available reinsurance.

18 (b) For each occurrence, if the association's losses and
19 operating expenses result in withdrawals from the catastrophe
20 reserve trust fund, the amounts withdrawn shall be replenished to
21 an amount equal to the lesser of the balance of the trust fund
22 immediately before the withdrawals, reduced by any anticipated
23 payments from prior occurrences, or \$400 million. Not later than
24 the 30th day after an occurrence, the board of directors shall
25 determine if it is necessary to withdraw funds from the catastrophe
26 reserve trust fund and shall assess the members of the association
27 as necessary to replenish the trust fund as required under this

1 subsection. The proportion of the assessment allocable to each
2 insurer shall be determined in the manner used to determine each
3 member's participation in the association under Section 2210.052.

4 (c) Assessments against members of the association under
5 this section may not exceed \$400 million during a calendar year.

6 (d) The amount of an assessment under this section must be:

7 (1) provided to each member of the association not
8 later than the fifth day after the date the assessment is determined
9 by the board of directors under Subsection (b); and

10 (2) paid by each member not later than the 30th day
11 after the date on which the insurer receives notice of the amount of
12 its assessment.

13 (e) A member may not recoup an assessment paid under this
14 section through a premium surcharge.

15 (f) The association may purchase reinsurance in addition to
16 using some or all of the trust fund if, after a cost-benefit
17 analysis or other appropriate examination, the board of directors
18 determines that the use of reinsurance is a fiscally appropriate
19 alternative to other sources of funding or is economically
20 beneficial to this state. If the association purchases reinsurance
21 under this section, the cost of the reinsurance shall be paid from
22 premium paid by policyholders, other revenue of the association,
23 and the catastrophe reserve trust fund.

24 Sec. 2210.074. PAYMENT FROM CLASS 1 PUBLIC SECURITIES;
25 REINSURANCE; FINANCIAL INSTRUMENTS. (a) Losses not paid under
26 Section 2210.073 shall be paid as provided by this section.

27 (b) The losses may be paid with:

1 (1) proceeds from Class 1 public securities authorized
2 to be issued in accordance with Subchapter M before the date of any
3 occurrence that results in insured losses under Subsection (a);

4 (2) available reinsurance described by Subsection
5 (f);

6 (3) proceeds from financial instruments described by
7 Subsection (e); or

8 (4) a combination of reinsurance, public securities,
9 and financial instruments described by Subdivisions (1)-(3).

10 (c) Public securities described by Subsection (b)(1) may be
11 issued if the board of directors determines, before the date of any
12 occurrence, that the amount available from premium and other
13 revenue, in combination with the amounts available from the
14 catastrophe reserve trust fund, any reinsurance, and any financial
15 instruments may be insufficient to pay insured losses. The public
16 securities shall be issued as necessary in a principal amount not to
17 exceed \$500 million per occurrence.

18 (d) Any public securities proceeds received under this
19 section:

20 (1) must be used before the proceeds of any public
21 securities that the association authorizes to be issued under
22 Section 2210.075 on or after any catastrophic event; and

23 (2) may not be used to fund losses of any catastrophic
24 event occurring before the date on which public securities
25 described by this section are authorized to be issued.

26 (e) Under the authority of Section 2210.072(c), the
27 association may borrow from, or enter into other financing

1 arrangements with, any market source, under which the market source
2 makes interest-bearing loans to the association to enable the
3 association to pay losses under this section in lieu of, or in
4 addition to, the issuance of public securities.

5 (f) The association may purchase reinsurance in lieu of, or
6 in addition to, using Class 1 public securities or proceeds of
7 financial instruments authorized under this section if, after a
8 cost-benefit analysis or other appropriate examination, the board
9 of directors determines that the use of reinsurance is a fiscally
10 appropriate alternative to other sources of funding or is
11 economically beneficial to this state. If the association
12 purchases reinsurance under this section, the cost of the
13 reinsurance shall be paid from premium paid by policyholders of the
14 association, other revenue of the association, and the catastrophe
15 reserve trust fund.

16 (g) If the losses are paid with public securities or
17 proceeds from financial instruments described by this section, the
18 public securities or proceeds from financial instruments shall be
19 repaid by premium surcharges in the manner prescribed by Section
20 2210.612.

21 Sec. 2210.075. PAYMENT FROM CLASS 2 PUBLIC SECURITIES;
22 REINSURANCE; FINANCIAL INSTRUMENTS. (a) Losses not paid under
23 Sections 2210.073 and 2210.074 shall be paid as provided by this
24 section.

25 (b) The losses may be paid from:

26 (1) proceeds from Class 2 public securities authorized
27 to be issued in accordance with Subchapter M on or after the date of

1 any occurrence that results in insured losses under Subsection (a);
2 (2) available reinsurance described by Subsection
3 (e);
4 (3) proceeds from financial instruments described by
5 Subsection (d); or
6 (4) a combination of the reinsurance, public
7 securities, and financial instruments described by Subdivisions
8 (1)-(3).

9 (c) Public securities described by Subsection (b)(1) may be
10 issued as necessary in a principal amount not to exceed \$1 billion
11 per occurrence.

12 (d) Under the authority of Section 2210.072(c), the
13 association may borrow from, or enter into other financial
14 arrangements with, any market source, under which the market source
15 makes interest-bearing loans to the association to enable the
16 association to pay losses under this section without the issuance
17 of public securities.

18 (e) The association may purchase reinsurance in lieu of, or
19 in addition to, using Class 2 public securities or proceeds of
20 financial instruments authorized under this section if, after a
21 cost-benefit analysis or other appropriate examination, the board
22 of directors determines that the use of reinsurance is a fiscally
23 appropriate alternative to other sources of funding or is
24 economically beneficial to this state. If the association
25 purchases reinsurance under this section, the cost of the
26 reinsurance shall be paid from premium paid by the policyholders of
27 the association, other revenue of the association, and the

1 catastrophe reserve trust fund.

2 (f) If the losses are paid with public securities or
3 proceeds from financial instruments described by this section, the
4 public securities or proceeds from financial instruments shall be
5 repaid by premium surcharges in the manner prescribed by Section
6 2210.613.

7 Sec. 2210.076. PAYMENT FROM ASSOCIATION ASSESSMENT.

8 (a) Losses not paid under Sections 2210.073-2210.075 shall be paid
9 as provided by this section.

10 (b) The association shall assess the members of the
11 association \$300 million per occurrence for the payment of losses
12 described by this section. The association shall notify each
13 member of the association of the amount of the member's assessment
14 under this subsection. The proportion of the losses allocable to
15 each insurer under this section shall be determined in the manner
16 used to determine each insurer's participation in the association
17 for the year under Section 2210.052.

18 (c) The association may not assess members of the
19 association under this section more than twice in any calendar
20 year.

21 (d) A member of the association may recoup an assessment
22 paid under this section through a premium surcharge collected for
23 one year on each policy of property or casualty insurance written by
24 the member. A premium surcharge under this section shall apply to
25 all policies that provide coverage on any premises, locations,
26 operations, or property located in this state for all property and
27 casualty lines of insurance, other than federal flood insurance,

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

3 (e) 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 to pay the
6 premium surcharge by a policyholder constitutes failure to pay
7 premium for purposes of policy cancellation.

8 Sec. 2210.077. PAYMENT FROM CLASS 2 PUBLIC SECURITIES;
9 REINSURANCE; FINANCIAL INSTRUMENTS. (a) Losses not paid under
10 Sections 2210.073-2210.076 shall be paid as provided by this
11 section.

12 (b) The losses may be paid from:

13 (1) proceeds from Class 2 public securities authorized
14 to be issued in accordance with Subchapter M on or after the date of
15 any occurrence that results in insured losses under Subsection (a);

16 (2) available reinsurance described by Subsection
17 (e);

18 (3) proceeds from financial instruments described by
19 Subsection (d); or

20 (4) a combination of the reinsurance, public
21 securities, and financial instruments described by Subdivisions
22 (1)-(3).

23 (c) Public securities described by Subsection (b)(1) may be
24 issued as necessary in a principal amount not to exceed \$500 million
25 per occurrence.

26 (d) Under the authority of Section 2210.072(c), the
27 association may borrow from, or enter into other financing

1 agreements with, any market source, under which the market source
2 makes interest-bearing loans to the association to enable the
3 association to pay losses under this section in lieu of, or in
4 addition to, the issuance of public securities.

5 (e) The association may purchase reinsurance in lieu of, or
6 in addition to, using Class 2 public securities or proceeds from
7 financial instruments authorized under this section if, after a
8 cost-benefit analysis or other appropriate examination, the board
9 of directors determines that the use of reinsurance is a fiscally
10 appropriate alternative to other sources of funding or is
11 economically beneficial to this state. If the association
12 purchases reinsurance under this section, the cost of the
13 reinsurance shall be paid from premium paid by the policyholders of
14 the association, other revenue of the association, and the
15 catastrophe reserve trust fund.

16 (f) If the losses are paid with public securities or
17 proceeds from financial instruments described by this section, the
18 public securities or proceeds from financial instruments shall be
19 repaid by premium surcharges in the manner prescribed by Section
20 2210.613.

21 Sec. 2210.078. PAYMENT FROM CLASS 2 PUBLIC SECURITIES;
22 REINSURANCE. (a) Losses not paid under Sections 2210.073-2210.077
23 shall be paid as provided by this section.

24 (b) The losses may be paid from:

25 (1) proceeds from Class 2 public securities authorized
26 to be issued in accordance with Subchapter M on or after the date of
27 any occurrence that results in insured losses under Subsection (a);

1 (2) available reinsurance described by Subsection
2 (d); or

3 (3) a combination of the reinsurance and public
4 securities described by Subdivisions (1) and (2).

5 (c) Public securities described by Subsection (b)(1) may be
6 issued as necessary in a principal amount not to exceed \$2.8 billion
7 per occurrence.

8 (d) The association may purchase reinsurance in lieu of, or
9 in addition to, using Class 2 public securities authorized under
10 this section if, after a cost-benefit analysis or other appropriate
11 examination, the board of directors determines that the use of
12 reinsurance is a fiscally appropriate alternative to other sources
13 of funding or is economically beneficial to this state. If the
14 association purchases reinsurance under this section, the cost of
15 the reinsurance shall be paid from premium paid by the
16 policyholders of the association, other revenue of the association,
17 and the catastrophe reserve trust fund.

18 (e) If the losses are paid with public securities described
19 by this section, the public securities shall be repaid by premium
20 surcharges in the manner prescribed by Section 2210.613.

21 Sec. 2210.079. PAYMENT FROM ADDITIONAL ASSOCIATION
22 ASSESSMENTS. (a) Losses not paid under Sections 2210.073-2210.078
23 and any available reinsurance shall be paid as provided by this
24 section.

25 (b) The board of directors shall assess the members of the
26 association for the payment of losses described by this section.
27 The association shall notify each member of the association of the

1 amount of the member's assessments under this subsection, with the
2 proportion of the assessment allocable to each insurer determined
3 in the manner used to determine each member's participation in the
4 association under Section 2210.052.

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

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

9 SUBCHAPTER C. ASSOCIATION BOARD OF DIRECTORS; GENERAL
10 POWERS AND DUTIES OF BOARD OF DIRECTORS

11 SECTION 14. 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 [~~the following~~] nine members appointed by the
15 commissioner in accordance with this section.

16 (b) Four members must be [+
17 [~~(1) five~~] representatives of different insurers who
18 are members of the association.

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

21 [~~(2) two~~] public representatives, at least one of whom
22 [~~who are nominated by the office of public insurance counsel and~~
23 ~~who~~], as of the date of the appointment, does not [+

24 [~~(A)~~] reside in or own property in a first tier
25 coastal county.

26 (d) Two members must be [~~a catastrophe area, and~~

27 [~~(B) are policyholders of the association, and~~

1 ~~[(3) two]~~ property and casualty agents who are
2 licensed under this code and are not captive agents. One of the
3 agents, but not more than one, as of the date of the appointment,
4 must maintain the agent's principal office in a first tier coastal
5 county.

6 (e) All members must ~~[, each of whom must]~~

7 ~~[(A)]~~ have demonstrated experience in insurance,
8 general business, or actuarial principles sufficient to make the
9 success of the association probable ~~[,~~

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

12 ~~[(C) hold a license under Chapter 4051 as a~~
13 ~~general property and casualty agent or a personal lines property~~
14 ~~and casualty agent].~~

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

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

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

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

27 (g) ~~[(b)]~~ The persons appointed under Subsection (c)

1 ~~[Subsections (a)(2) and (3)]~~ must be from different counties.

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

4 (c) A member of the board of directors may be removed by the
5 commissioner without cause. The commissioner shall appoint a
6 replacement in the manner provided by Section 2210.102 for a member
7 who leaves or is removed from the board of directors.

8 SECTION 16. Section 2210.104, Insurance Code, is amended to
9 read as follows:

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

15 SECTION 17. Subchapter C, Chapter 2210, Insurance Code, is
16 amended by adding Section 2210.1051 to read as follows:

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

27 (b) A meeting held by telephone conference call,

1 videoconference, or other similar telecommunication method:

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

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

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

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

15 SECTION 18. Subchapter C, Chapter 2210, Insurance Code, is
16 amended by adding Section 2210.107 to read as follows:

17 Sec. 2210.107. PRIMARY BOARD OBJECTIVES. The primary
18 objectives of the board of directors are to ensure that the
19 association:

20 (1) operates in accordance with this chapter and
21 commissioner rules;

22 (2) complies with sound insurance principles; and

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

24 SECTION 19. Section 2210.151, Insurance Code, is amended to
25 read as follows:

26 Sec. 2210.151. ADOPTION OF PLAN OF OPERATION. With the
27 advice of the board of directors, the commissioner by rule shall

1 adopt the plan of operation to provide[+]

2 [~~(1)~~] Texas windstorm and hail insurance in a
3 catastrophe area[~~, and~~

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

6 SECTION 20. Section 2210.152(a), Insurance Code, is amended
7 to read as follows:

8 (a) The plan of operation must:

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

11 (2) include:

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

14 (B) underwriting standards;

15 (C) procedures for accepting and ceding
16 reinsurance;

17 (D) procedures for obtaining and repaying
18 amounts received under financial instruments authorized under
19 Subchapter B-1;

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

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

24 (G) [~~(F)~~] other provisions as considered
25 necessary by the department to implement the purposes of this
26 chapter.

27 SECTION 21. Section 2210.202, Insurance Code, is amended to

1 read as follows:

2 Sec. 2210.202. APPLICATION FOR COVERAGE. (a) A person who
3 has an insurable interest in insurable property may apply to the
4 association for insurance coverage provided under the plan of
5 operation and an inspection of the property, subject to any rules[~~7~~
6 ~~including any inspection fee,~~] established by the board of
7 directors and approved by the commissioner. The association shall
8 make insurance available to each applicant in the catastrophe area
9 whose property is insurable property but who, after diligent
10 efforts, is unable to obtain property insurance through the
11 voluntary market, as evidenced by two declinations from insurers
12 authorized to engage in the business of, and writing, property
13 insurance in the first tier coastal counties. For purposes of this
14 section, "declination" has the meaning assigned by the plan of
15 operation and shall include a refusal to offer coverage and the
16 inability to obtain substantially equivalent insurance coverage.
17 Notwithstanding Section 2210.203(c), evidence of two declinations
18 is also required with an application for renewal of an association
19 policy.

20 (b) A [~~general~~] property and casualty agent [~~or a personal~~
21 ~~lines property and casualty agent~~] must submit an application for
22 the insurance coverage on behalf of the applicant on forms
23 prescribed by the association. The application must contain a
24 statement as to whether the applicant has submitted or will submit
25 the premium in full from personal funds or, if not, to whom a
26 balance is or will be due. The application must also contain a
27 statement that the agent possesses proof of the declinations

1 described by Subsection (a).

2 SECTION 22. Section 2210.203, Insurance Code, is amended by
3 adding Subsection (a-1) to read as follows:

4 (a-1) Notwithstanding Subsection (a), if all or any part of
5 the property for which an application for new or renewal insurance
6 coverage is made is located in Zone V or another similar zone with
7 an additional hazard associated with storm waves, as defined by the
8 National Flood Insurance Program, and if flood insurance under that
9 federal program is available, the association may not issue a new or
10 renewal insurance policy unless evidence that the property is
11 covered by a flood insurance policy is submitted to the
12 association. If evidence establishes that flood insurance is
13 unavailable for all or any part of the property for which the
14 application for new or renewal coverage is made, an association
15 policy insuring a residential structure described by Section
16 2210.004(g) is subject to a premium surcharge for the insurance
17 coverage obtained through the association in an amount equal to 30
18 percent of the premium. A premium surcharge collected under this
19 subsection shall be deposited in the catastrophe reserve trust
20 fund. A premium surcharge under this subsection is a separate
21 nonrefundable charge in addition to the premiums collected and is
22 not subject to premium tax or commissions. Failure to pay the
23 surcharge by a policyholder constitutes failure to pay premium for
24 purposes of policy cancellation.

25 SECTION 23. Section 2210.251, Insurance Code, is amended to
26 read as follows:

27 Sec. 2210.251. INSPECTION REQUIREMENTS. (a) Except as

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

7 (b) After January 1, 2004, for geographic areas specified by
8 the commissioner, the commissioner by rule shall adopt the 2003
9 International Residential Code for one- and two-family dwellings
10 published by the International Code Council. For those geographic
11 areas, the commissioner by rule may adopt a subsequent edition of
12 that code and may adopt any supplements published by the
13 International Code Council and amendments to that code.

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

19 (d) A structure constructed or repaired or to which
20 additions were made before January 1, 1988, that is located in an
21 area that was governed at the time of the construction, repair, or
22 addition by a building code recognized by the association is
23 insurable property eligible for windstorm and hail insurance
24 coverage from the association without compliance with the
25 inspection [~~or approval~~] requirements of this section or the plan
26 of operation.

27 (e) A structure constructed or repaired or to which

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

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

18 (f) The association ~~[department]~~ shall issue a certificate
19 of compliance for each structure that qualifies for coverage. The
20 certificate is evidence of insurability of the structure by the
21 association.

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

24 ~~[(h)]~~ The association ~~[department]~~ may charge a reasonable
25 fee to cover the cost of making building requirements and
26 inspection standards available to the public.

27 (h) The association may charge a reasonable fee for each

1 inspection in an amount set by commissioner rule. The association
2 may use fees collected under this section for operating expenses or
3 for the purchase of reinsurance.

4 (i) Without limitation of the department's authority to
5 otherwise enforce this chapter, the department shall monitor the
6 association's compliance with this subchapter and may take any
7 disciplinary action available under this code to enforce this
8 subchapter, including an action authorized under Chapters 82, 83,
9 and 84.

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

13 SECTION 24. Sections 2210.254(a), (c), and (d), Insurance
14 Code, are amended to read as follows:

15 (a) For purposes of this chapter, a "qualified inspector"
16 includes:

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

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

23 (3) an inspector who:

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

1 Inc.;

2 (B) has certifications as a buildings inspector
3 and coastal construction inspector; and

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

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

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

12 SECTION 25. Section 2210.255, Insurance Code, is amended to
13 read as follows:

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

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

25 SECTION 26. Subchapter F, Chapter 2210, Insurance Code, is
26 amended by adding Section 2210.2565 to read as follows:

27 Sec. 2210.2565. PROCEDURES REGARDING APPOINTMENT OF

1 INSPECTORS. The association shall develop procedures for the
2 appointment and oversight of qualified inspectors appointed under
3 Sections 2210.254 and 2210.255, including procedures relating to
4 the suspension or revocation of an appointment made by the
5 association.

6 SECTION 27. Subchapter F, Chapter 2210, Insurance Code, is
7 amended by adding Sections 2210.258, 2210.259, 2210.260, and
8 2210.261 to read as follows:

9 Sec. 2210.258. MANDATORY COMPLIANCE WITH BUILDING CODES;
10 ELIGIBILITY. (a) Notwithstanding any other provision of this
11 chapter, to be eligible for insurance through the association, all
12 construction, alteration, remodeling, enlargement, and repair of
13 any structure located in the catastrophe area that is begun on or
14 after January 1, 2010, must be performed in compliance with the
15 applicable building code standards, as set forth in the plan of
16 operation.

17 (b) The association may not insure a structure described by
18 Subsection (a) until:

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

22 (2) a certificate of compliance has been issued for
23 the structure in accordance with Section 2210.251(f).

24 Sec. 2210.259. EXCEPTION; SURCHARGE FOR CERTAIN
25 NONCOMPLIANT STRUCTURES. (a) The association may not insure a
26 structure that has not been inspected for compliance with the plan
27 of operation in accordance with Section 2210.251(a) and for which a

1 certificate of compliance has not been issued on the structure in
2 accordance with Section 2210.251(f), unless the structure:

3 (1) is a residential structure or is the property of a
4 school district or of a public or not-for-profit postsecondary
5 educational institution, including a junior college;

6 (2) was constructed, altered, remodeled, enlarged, or
7 repaired before January 1, 2010, and has not been further altered,
8 remodeled, enlarged, or repaired on or after January 1, 2010; and

9 (3) was a structure:

10 (A) insured in the private market within the
11 12-month period immediately preceding the date of the application;
12 or

13 (B) covered by a self-insured school district or
14 postsecondary educational institution.

15 (b) A structure eligible for insurance under Subsection (a)
16 is subject to a premium surcharge equal to 30 percent of the premium
17 for insurance coverage obtained through the association.

18 (c) A premium surcharge collected under this section shall
19 be deposited in the catastrophe reserve trust fund. A premium
20 surcharge under this section is a separate nonrefundable charge in
21 addition to the premiums collected and is not subject to premium tax
22 or commissions. Failure to pay the surcharge by a policyholder
23 constitutes failure to pay premium for purposes of policy
24 cancellation.

25 Sec. 2210.260. STRUCTURES NOT SUBJECT TO PREMIUM SURCHARGE.
26 Notwithstanding Section 2210.259, the association may insure
27 without a premium surcharge a structure that:

1 (1) was constructed or repaired or to which additions
2 were made before January 1, 1988, and not thereafter, and is
3 eligible for association coverage under Section 2210.251(d) or (e);
4 or

5 (2) is the subject of a certificate of compliance
6 issued by the department and that has not been altered, remodeled,
7 enlarged, or repaired after the date of issuance of the last
8 department certificate.

9 Sec. 2210.261. RULES. The commissioner may adopt rules to
10 implement Sections 2210.258, 2210.259, and 2210.260.

11 SECTION 28. Sections 2210.351(c) and (d), Insurance Code,
12 are amended to read as follows:

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

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

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

25 (2) the filed rate does not exceed 105 percent of the
26 rate used by the association during the preceding 12-month period;

27 (3) the filed rate does not reflect a rate change for

1 an individual rating class that is 10 percent higher than any rate
2 used by the association for that rating class during the preceding
3 12-month period; and

4 (4) the commissioner has not disapproved the filing in
5 writing, advising of the reasons for the disapproval and the
6 criteria the association is required to meet to obtain approval.

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

17 SECTION 29. Section 2210.352, Insurance Code, is amended by
18 amending Subsections (a), (b), (c), (e), and (f) and adding
19 Subsection (a-1) to read as follows:

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

24 (1) a filing made under this subsection; or

25 (2) a department action with respect to the filing.

26 (a-1) The association may use a rate filed by the
27 association under this section without prior commissioner approval

1 if:

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

4 (2) the filed rate does not exceed 105 percent of the
5 rate used by the association during the preceding 12-month period;

6 (3) the filed rate does not reflect a rate change for
7 an individual rating class that is 10 percent higher than any rate
8 used by the association for that rating class during the preceding
9 12-month period; and

10 (4) the commissioner has not provided written notice
11 to the association that the filing will be disapproved under the
12 procedure established under Subsection (g).

13 (b) Except as provided by Subsection (a-1), before ~~[Before]~~
14 approving or ~~[r]~~ 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 ~~[The]~~
23 commissioner shall schedule an open meeting not later than the 45th
24 day after the date the department receives a filing under this
25 section at which interested persons may present written or oral
26 comments relating to the filing.

27 (e) Except as provided by Subsection (a-1), the ~~[The]~~

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

6 (1) the availability of the filing for public
7 inspection at the department during regular business hours and the
8 procedures for obtaining copies of the filing;

9 (2) procedures for making written comments related to
10 the filing; and

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

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

20 SECTION 30. Section 2210.353, Insurance Code, is amended to
21 read as follows:

22 Sec. 2210.353. MANUAL RATE FILINGS: AMENDED ANNUAL
23 FILING. (a) Not later than the 30th day after the date the
24 association receives the commissioner's written disapproval under
25 Section 2210.352(f), the association may file with the commissioner
26 an amended annual filing that conforms to all criteria stated in
27 that written disapproval.

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

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

- 14 (1) review the amended annual filing;
15 (2) obtain copies of the amended annual filing on
16 payment of any legally required copying cost; and
17 (3) submit to the commissioner written comments or
18 information related to the amended annual filing.

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

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

26 [~~(f) The requirements imposed under Subsection (a) and~~
27 ~~under Sections 2210.352(e), (f), and (g) apply to a hearing~~

1 ~~conducted under this section and the commissioner's decision~~
2 ~~resulting from that hearing.]~~

3 SECTION 31. Section 2210.354(a), Insurance Code, is amended
4 to read as follows:

5 (a) In conjunction with the review of a filing under Section
6 2210.352 or 2210.353:

7 (1) the commissioner may request the association to
8 provide additional supporting information relating to the filing;
9 and

10 (2) in the case of a filing in which the filed rate
11 exceeds 105 percent of the rate used by the association during the
12 preceding 12-month period, any interested person may file a written
13 request with the commissioner for additional supporting
14 information relating to the filing.

15 SECTION 32. Section 2210.355, Insurance Code, is amended by
16 amending Subsection (b) and adding Subsection (h) to read as
17 follows:

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

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

23 (2) recognized catastrophe models;

24 (3) expenses of operation, including acquisition
25 costs;

26 (4) [~~(3)~~] a reasonable margin for profit and
27 contingencies; and

1 (5) [~~(4)~~] all other relevant factors, within and
2 outside this state.

3 (h) The association may establish rating territories and
4 may vary rates among the territories.

5 SECTION 33. Sections 2210.452(a), (c), and (d), Insurance
6 Code, are amended to read as follows:

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

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

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

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

25 (d) The commissioner by rule shall establish the procedure
26 relating to the disbursement of money from the trust fund to
27 policyholders in the event of an occurrence or series of

1 occurrences within a catastrophe area that results in a
2 disbursement under Subchapter B-1 [~~Section 2210.058(a)~~].

3 SECTION 34. Section 2210.453, Insurance Code, is amended to
4 read as follows:

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

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

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

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

15 SECTION 35. Section 2210.454(b), Insurance Code, is amended
16 to read as follows:

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

24 SECTION 36. Chapter 2210, Insurance Code, is amended by
25 adding Subchapter M to read as follows:

26 SUBCHAPTER M. PUBLIC SECURITIES PROGRAM

27 Sec. 2210.601. PURPOSE. The legislature finds that

1 authorizing the issuance of public securities to provide a method
2 to raise funds to provide windstorm and hail insurance through the
3 association in certain designated portions of the state is for the
4 benefit of the public and in furtherance of a public purpose.

5 Sec. 2210.602. DEFINITIONS. In this subchapter:

6 (1) "Board" means the board of directors of the Texas
7 Public Finance Authority.

8 (2) "Class 1 public securities" means public
9 securities authorized to be issued before the occurrence of a
10 catastrophic event by Section 2210.074.

11 (3) "Class 2 public securities" means public
12 securities authorized to be issued on or after the occurrence of a
13 catastrophic event by Section 2210.075, 2210.077, or 2210.078.

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

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

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

26 (7) "Public security administrative expenses" means
27 expenses incurred to administer public securities issued under this

1 subchapter, including fees for paying agents, trustees, and
2 attorneys, and for other professional services necessary to ensure
3 compliance with applicable state or federal law.

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

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

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

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

20 Sec. 2210.604. ISSUANCE OF PUBLIC SECURITIES AUTHORIZED.

21 (a) At the request of the association and with the approval of the
22 commissioner, the Texas Public Finance Authority shall issue Class
23 1 or Class 2 public securities.

24 (b) The association shall specify in the association's
25 request to the board the maximum principal amount of the public
26 securities and the maximum term of the public securities.

27 (c) The principal amount determined by the association

1 under Subsection (b) may be increased to include an amount
2 sufficient to:

3 (1) pay the costs related to issuance of the public
4 securities;

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

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

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

15 (b) Public securities must be issued in the name of the
16 association.

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

25 Sec. 2210.607. PUBLIC SECURITY PROCEEDS. The proceeds of
26 public securities issued by the board under this subchapter may be
27 deposited with a trustee selected by the association in

1 consultation with the commissioner or held by the comptroller in a
2 dedicated trust fund outside the state treasury in the custody of
3 the comptroller.

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

8 (1) pay incurred claims and operating expenses of the
9 association;

10 (2) purchase reinsurance for the association;

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

13 (4) provide a public security reserve; and

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

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

23 Sec. 2210.609. REPAYMENT OF ASSOCIATION'S PUBLIC SECURITY
24 OBLIGATIONS. (a) The association shall pay all public security
25 obligations from available funds collected by the association and
26 deposited into the public security obligation revenue fund. If the
27 association determines that it is unable to pay the public security

1 obligations and public security administrative expenses, if any,
2 with available funds, the association shall pay those obligations
3 and expenses in accordance with Sections 2210.612 and 2210.613, as
4 applicable.

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

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

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

27 (e) An amount owed by the board under a credit agreement

1 shall be payable from and secured by a pledge of revenues received
2 by the association or amounts from the obligation trust fund to the
3 extent provided in the proceedings authorizing the credit
4 agreement.

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

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

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

12 Sec. 2210.611. EXCESS REVENUE COLLECTIONS AND INVESTMENT
13 EARNINGS. Revenue collected in any year from a premium surcharge
14 under Section 2210.612 or 2210.613 that exceeds the amount of the
15 public security obligations and public security administrative
16 expenses 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 that would otherwise be required to be levied for the year under
22 this subchapter;

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

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

26 Sec. 2210.612. CLASS 1 PREMIUM SURCHARGE; REPAYMENT OF
27 AMOUNTS OWED UNDER FINANCIAL INSTRUMENTS. (a) Each insurer, the

1 association, and the Texas FAIR Plan Association shall collect from
2 their policyholders a surcharge in addition to any premiums to pay:

3 (1) public security obligations and public security
4 administrative expenses, if any, on Class 1 public securities; and

5 (2) principal and interest on any financial
6 instruments entered into by the association under Section 2210.074.

7 (b) The association shall determine the premium surcharge
8 at least annually.

9 (c) On approval by the commissioner, each insurer, the
10 association, and the Texas FAIR Plan Association shall assess a
11 premium surcharge to its policyholders as provided by this section.
12 The premium surcharge must be set in an amount sufficient to pay all
13 debt service not already covered by available funds and all related
14 expenses on the public securities or financial instruments, as
15 applicable. The premium surcharge shall be assessed on all
16 policyholders who reside or have operations in, or whose insured
17 property is located in a catastrophe area.

18 (d) The percent of premium assessed as surcharges to all
19 policies issued or renewed by the association must be at least twice
20 the percent of premium assessed as surcharges to all other
21 policies.

22 (e) The association shall collect the premium surcharge
23 from its policyholders. Each insurer and the Texas FAIR Plan
24 Association shall collect the premium surcharge from their affected
25 policyholders and shall remit the premium surcharge to the
26 association as required by commissioner rule.

27 (f) A premium surcharge under this section shall apply to

1 all policies that provide coverage on any premises, locations,
2 operations, or property located in the area described by Subsection
3 (c) for all property and casualty lines of insurance, other than
4 federal flood insurance, workers' compensation insurance, accident
5 and health insurance, and medical malpractice insurance.

6 (g) 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. 2210.613. CLASS 2 PREMIUM SURCHARGE; REPAYMENT OF
12 AMOUNTS OWED UNDER FINANCIAL INSTRUMENTS. (a) Each insurer, the
13 association, and the Texas FAIR Plan Association shall collect from
14 their policyholders a premium surcharge to pay:

15 (1) public security obligations and public security
16 administrative expenses, if any, on Class 2 public securities
17 issued under Section 2210.075;

18 (2) public security obligations and public security
19 administrative expenses, if any, on Class 2 public securities
20 issued under Section 2210.077;

21 (3) public security obligations and public security
22 administrative expenses, if any, on Class 2 public securities
23 issued under Section 2210.078;

24 (4) principal and interest on financial instruments
25 entered into by the association under Section 2210.075; or

26 (5) principal and interest on financial instruments
27 entered into by the association under Section 2210.077.

1 (b) The association shall determine the premium surcharge
2 at least annually.

3 (c) On approval by the commissioner, each insurer, the
4 association, and the Texas FAIR Plan Association shall assess a
5 premium surcharge to its policyholders as provided by this section.
6 The premium surcharge must be set in an amount sufficient to pay all
7 debt service and all related expenses on the public securities or
8 financial instruments, as applicable.

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

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

23 (f) Seventy percent of a premium surcharge assessed under
24 Subsection (a)(1), (2), (4), or (5) must be assessed on
25 policyholders who have a property or casualty policy that provides
26 coverage for premises, locations, operations, or property located
27 in a catastrophe area.

1 (g) With respect to the premium surcharge assessed under
2 Subsection (a)(1), (2), (4), or (5) in accordance with Subsection
3 (f), the percent of premium assessed as surcharges to all policies
4 issued or renewed by the association must be at least twice the
5 percent of premium assessed as surcharges to all other new or
6 renewal policies.

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

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

18 Sec. 2210.615. SOURCE OF PAYMENT; STATE DEBT NOT CREATED.
19 (a) A public security or credit agreement is payable solely from
20 revenue as provided by this subchapter.

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

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

1 that:

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

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

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

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

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

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

23 (1) this subchapter;

24 (2) the Texas Constitution; or

25 (3) a relevant public security resolution.

26 Sec. 2210.618. EXEMPTION FROM TAXATION. A public security
27 issued under this subchapter, any transaction relating to the

1 public security, and profits made from the sale of the public
2 security are exempt from taxation by this state or by a municipality
3 or other political subdivision of this state.

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

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

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

15 SECTION 37. Section 2211.104, Insurance Code, is amended by
16 amending Subsections (a), (b), and (c) and adding Subsection (f) to
17 read as follows:

18 (a) Except as provided by Subsection (f), if [~~If~~] the
19 association incurs a deficit, the association, at the
20 commissioner's direction, shall:

21 (1) request the issuance of public securities as
22 authorized by Subchapter E; or

23 (2) assess participating insurers in accordance with
24 this section.

25 (b) Except as provided by Subsection (f), as [~~As~~]
26 reimbursement for assessments paid under this section or service
27 fees paid under Section 2211.209, each insurer may charge a premium

1 surcharge on every property insurance policy insuring property in
2 this state that the insurer issues, the effective date of which is
3 within the three-year period beginning on the 90th day after the
4 date of the assessment or the 90th day after the date the service
5 fee under Section 2211.209 is paid, as applicable.

6 (c) Except as provided by Subsection (f), insurers [~~The~~
7 ~~insurer~~] shall compute the amount of the surcharge under Subsection
8 (b) as a uniform percentage of the premium on each policy described
9 by Subsection (b). The percentage must be equal to one-third of
10 the ratio of the amount of the participating insurer's assessment
11 or service fee payment to the amount of the insurer's direct earned
12 premiums, as reported to the department in the insurer's financial
13 statement for the calendar year preceding the year in which the
14 assessment or service fee payment is made so that, over the
15 three-year period, the aggregate of all surcharges by the insurer
16 under this section is at least equal to the amount of the assessment
17 or service fee payment.

18 (f) In the event of an occurrence or series of occurrences
19 resulting in deficits for the association and the Texas Windstorm
20 Insurance Association, the commissioner may adopt rules in the
21 manner provided by Subchapter A, Chapter 36, to provide for the
22 coordinated recoupment of those deficits. The rules may not
23 provide for a recoupment of assessments through premium tax
24 credits.

25 SECTION 38. Section 941.003, Insurance Code, is amended by
26 adding Subsection (e) to read as follows:

27 (e) A Lloyd's plan is subject to Chapter 2210, as provided

1 by that chapter.

2 SECTION 39. Section 942.003, Insurance Code, is amended by
3 adding Subsection (f) to read as follows:

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

6 SECTION 40. The following laws are repealed:

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

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

9 (3) Sections 2210.256 and 2210.257, Insurance Code;

10 (4) Sections 2210.356 and 2210.359, Insurance Code;

11 and

12 (5) Subchapter G, Chapter 2210, Insurance Code.

13 SECTION 41. (a) The board of directors of the Texas
14 Windstorm Insurance Association established under Section
15 2210.102, Insurance Code, as that section existed before amendment
16 by this Act, is abolished effective December 31, 2009.

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

21 (c) The term of a person who is serving as a member of the
22 board of directors of the Texas Windstorm Insurance Association
23 immediately before the abolition of that board under Subsection (a)
24 of this section expires on December 31, 2009. Such a person is
25 eligible for appointment by the commissioner of insurance to the
26 new board of directors of the Texas Windstorm Insurance Association
27 under Section 2210.102, Insurance Code, as amended by this Act.

1 SECTION 42. (a) The commissioner of insurance shall adopt
2 rules as required by Chapter 2210, Insurance Code, as amended by
3 this Act, not later than the 180th day after the effective date of
4 this Act.

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

10 SECTION 43. Section 2210.202, Insurance Code, as amended by
11 this Act, applies to an application for insurance coverage
12 submitted to the Texas Windstorm Insurance Association on or after
13 the effective date of this Act.

14 SECTION 44. Section 2210.251, Insurance Code, as amended by
15 this Act, applies to an inspection conducted by the Texas Windstorm
16 Insurance Association on or after September 1, 2009. Except as
17 otherwise specifically provided by that section, a structure that
18 has been inspected and is the subject of a certificate of compliance
19 issued by the Texas Department of Insurance under Section
20 2210.251(f), Insurance Code, as that section existed immediately
21 before September 1, 2009, is not required to obtain an inspection
22 certificate from the Texas Windstorm Insurance Association to
23 remain eligible for insurance coverage through that association
24 unless the structure is altered, remodeled, enlarged, or repaired
25 on or after September 1, 2009.

26 SECTION 45. The changes in law made by this Act in amending
27 Sections 2210.251, 2210.254, and 2210.255, Insurance Code, adding

1 Section 2210.2565, Insurance Code, and repealing Section 2210.256,
2 Insurance Code, take effect September 1, 2009.

3 SECTION 46. Notwithstanding Section 2210.071, Insurance
4 Code, as added by this Act, the Texas Windstorm Insurance
5 Association shall assess its members for the initial annual
6 reserves solvency assessment under that section not later than the
7 30th day after the effective date of this Act.

8 SECTION 47. Except as otherwise provided by this Act, this
9 Act takes effect immediately if it receives a vote of two-thirds of
10 all the members elected to each house, as provided by Section 39,
11 Article III, Texas Constitution. If this Act does not receive the
12 vote necessary for immediate effect, this Act takes effect
13 September 1, 2009.