

1-1 By: Fraser S.B. No. 14
1-2 (In the Senate - Filed March 13, 2009; March 18, 2009, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 April 21, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 2; April 21, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 14 By: Fraser

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the operation of the Texas Windstorm Insurance
1-11 Association and the Texas FAIR Plan Association; making an
1-12 appropriation.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 2210.001, Insurance Code, is amended to
1-15 read as follows:

1-16 Sec. 2210.001. PURPOSE. The primary purpose of the Texas
1-17 Windstorm Insurance Association is the provision of an [An]
1-18 adequate market for windstorm and[7] hail[7, and fire] insurance in
1-19 the seacoast territory of this state. The legislature finds that
1-20 the provision of adequate windstorm and hail insurance is necessary
1-21 to the economic welfare of this state, and without that insurance,
1-22 the orderly growth and development of this state would be severely
1-23 impeded. This chapter provides a method by which adequate
1-24 windstorm and[7] hail[7, and fire] insurance may be obtained in
1-25 certain designated portions of the seacoast territory of this
1-26 state. The association is intended to serve as a residual insurer
1-27 of last resort for windstorm and hail insurance in the seacoast
1-28 territory. The association shall:

1-29 (1) function in such a manner as to not be a direct
1-30 competitor in the private market; and

1-31 (2) provide windstorm and hail insurance coverage to
1-32 those who are unable to obtain that coverage in the private market.

1-33 SECTION 2. Section 2210.002, Insurance Code, is amended to
1-34 read as follows:

1-35 Sec. 2210.002. SHORT TITLE; SUNSET PROVISION. (a) This
1-36 chapter may be cited as the Texas Windstorm Insurance Association
1-37 Act.

1-38 (b) The association is subject to review under Chapter 325,
1-39 Government Code (Texas Sunset Act), but is not abolished under that
1-40 chapter. The association shall be reviewed during the period in
1-41 which state agencies abolished in 2015 are reviewed. The
1-42 association shall pay the costs incurred by the Sunset Advisory
1-43 Commission in performing the review of the association under this
1-44 subsection. The Sunset Advisory Commission shall determine the
1-45 costs of the review performed under this subsection, and the
1-46 association shall pay the amount of those costs promptly on receipt
1-47 of a statement from the Sunset Advisory Commission regarding those
1-48 costs. This subsection expires September 1, 2015.

1-49 SECTION 3. Subchapter A, Chapter 2210, Insurance Code, is
1-50 amended by adding Section 2210.0025 to read as follows:

1-51 Sec. 2210.0025. BIENNIAL REPORT TO LEGISLATURE. On or
1-52 before December 31 of each even-numbered year, the board of
1-53 directors shall submit to the commissioner, the appropriate
1-54 committees of each house of the legislature, and the Sunset
1-55 Advisory Commission a written report relating to the operations of
1-56 the association during the preceding biennium. The report must
1-57 include:

1-58 (1) any proposed changes in the laws relating to
1-59 regulation of the association and a statement of the reasons for the
1-60 changes; and

1-61 (2) any information regarding association operations
1-62 or procedures that is requested by the department to be addressed in
1-63 the report.

2-1 SECTION 4. Section 2210.003, Insurance Code, is amended by
2-2 adding Subdivision (3-a) and amending Subdivision (6) to read as
2-3 follows:

2-4 (3-a) "Catastrophe reserve trust fund" means the trust
2-5 fund established under Subchapter J.

2-6 (6) "Insurance" means Texas [~~fire and explosion~~
2-7 ~~insurance and Texas~~] windstorm and hail insurance.

2-8 SECTION 5. Subsection (a), Section 2210.004, Insurance
2-9 Code, is amended to read as follows:

2-10 (a) Except as provided by Subsection (h), for purposes of
2-11 this chapter and subject to this section, "insurable property"
2-12 means immovable property at a fixed location in a catastrophe area
2-13 or corporeal movable property located in that immovable property,
2-14 as designated in the plan of operation, that is determined by the
2-15 association according to the criteria specified in the plan of
2-16 operation to be in an insurable condition against windstorm and
2-17 hail [~~or fire and explosion, as appropriate~~], as determined by
2-18 normal underwriting standards. The term includes property
2-19 described by Section 2210.209.

2-20 SECTION 6. Section 2210.005, Insurance Code, is amended to
2-21 read as follows:

2-22 Sec. 2210.005. DESIGNATION AS CATASTROPHE AREA [~~OR~~
2-23 ~~INADEQUATE FIRE INSURANCE AREA~~]; REVOCATION OF DESIGNATION.

2-24 (a) After at least 10 days' notice and a hearing, the commissioner
2-25 may designate an area of the seacoast territory of this state as a
2-26 catastrophe area if the commissioner determines, unless such a
2-27 determination results in an adverse impact to the exposure of the
2-28 association, that windstorm and hail insurance is not reasonably
2-29 available to a substantial number of the owners of insurable
2-30 property located in that territory because the territory is subject
2-31 to unusually frequent and severe damage resulting from windstorms
2-32 or hailstorms.

2-33 (b) [~~After at least 10 days' notice and a hearing, the~~
2-34 ~~commissioner may designate an area of this state as an inadequate~~
2-35 ~~fire insurance area if the commissioner determines that fire and~~
2-36 ~~explosion insurance is not reasonably available to a substantial~~
2-37 ~~number of owners of insurable property located in that area.~~

2-38 [~~(c)~~] The commissioner shall revoke a designation made
2-39 under Subsection (a) [~~or (b)~~] if the commissioner determines, after
2-40 at least 10 days' notice and a hearing, that the applicable
2-41 insurance coverage is no longer reasonably unavailable to a
2-42 substantial number of owners of insurable property within the
2-43 designated territory.

2-44 (c) [~~(d)~~] If the association determines that windstorm and
2-45 hail insurance [~~or fire and explosion insurance~~] is no longer
2-46 reasonably unavailable to a substantial number of owners of
2-47 insurable property in a territory designated as a catastrophe area
2-48 [~~or inadequate fire insurance area, as applicable~~], the association
2-49 may request in writing that the commissioner revoke the
2-50 designation. After at least 10 days' notice and a hearing, but not
2-51 later than the 30th day after the date of the hearing, the
2-52 commissioner shall:

- 2-53 (1) approve the request and revoke the designation; or
- 2-54 (2) reject the request.

2-55 SECTION 7. Section 2210.008, Insurance Code, is amended to
2-56 read as follows:

2-57 Sec. 2210.008. DEPARTMENT ORDERS; GENERAL RULEMAKING
2-58 AUTHORITY. (a) The [~~After notice and hearing as provided by~~
2-59 ~~Subsection (b), the~~] commissioner may issue any orders that the
2-60 commissioner considers necessary to implement this chapter[~~7~~
2-61 ~~including orders regarding maximum rates, competitive rates, and~~
2-62 ~~policy forms~~].

2-63 (b) The commissioner may adopt rules in the manner
2-64 prescribed by Subchapter A, Chapter 36, as reasonable and necessary
2-65 to implement this chapter. [~~Before the commissioner adopts an~~
2-66 ~~order, the department shall post notice of the hearing on the order~~
2-67 ~~at the secretary of state's office in Austin and shall hold a~~
2-68 ~~hearing to consider the proposed order. Any person may appear at~~
2-69 ~~the hearing and testify for or against the adoption of the order.]~~

3-1 SECTION 8. Subchapter A, Chapter 2210, Insurance Code, is
 3-2 amended by adding Section 2210.009 to read as follows:

3-3 Sec. 2210.009. LIST OF PRIVATE INSURERS; INCENTIVE PLAN.

3-4 (a) The department shall maintain a list of all insurers that
 3-5 engage in the business of property and casualty insurance in the
 3-6 voluntary market in the seacoast territory.

3-7 (b) The department shall develop incentive programs in the
 3-8 manner described by Section 2210.053(b) to encourage authorized
 3-9 insurers to write insurance on a voluntary basis and to minimize the
 3-10 use of the association as a means to obtain insurance.

3-11 SECTION 9. Section 2210.052, Insurance Code, is amended by
 3-12 amending Subsections (a) and (d) and adding Subsection (e) to read
 3-13 as follows:

3-14 (a) Each member of the association shall participate in
 3-15 insured losses and operating expenses of the association, in excess
 3-16 of premium and other revenue [the writings, expenses, profits, and
 3-17 losses] of the association, in the proportion that the net direct
 3-18 premiums of that member during the preceding calendar year bears to
 3-19 the aggregate net direct premiums by all members of the
 3-20 association, as determined using the information provided under
 3-21 Subsection (b).

3-22 (d) Notwithstanding Subsection (a), a member, in accordance
 3-23 with the plan of operation, is entitled to receive credit for
 3-24 similar insurance voluntarily written in areas [an area] designated
 3-25 by the commissioner. The member's participation in the insured
 3-26 losses and operating expenses of the association in excess of
 3-27 premium and other revenue [writings] of the association shall be
 3-28 reduced in accordance with the plan of operation.

3-29 (e) Notwithstanding Subsections (a)-(d), an insurer that
 3-30 becomes a member of the association and that has not previously been
 3-31 a member of the association is not subject to participation in any
 3-32 insured losses and operating expenses of the association in excess
 3-33 of premium and other revenue of the association until the second
 3-34 anniversary of the date on which the insurer first becomes a member
 3-35 of the association.

3-36 SECTION 10. Subsection (b), Section 2210.056, Insurance
 3-37 Code, is amended to read as follows:

3-38 (b) The association's assets may not be used for or diverted
 3-39 to any purpose other than to:

3-40 (1) satisfy, in whole or in part, the liability of the
 3-41 association on claims made on policies written by the association;

3-42 (2) make investments authorized under applicable law;

3-43 (3) pay reasonable and necessary administrative
 3-44 expenses incurred in connection with the operation of the
 3-45 association and the processing of claims against the association;
 3-46 [or]

3-47 (4) satisfy, in whole or in part, the obligations of
 3-48 the association incurred in connection with Subchapters B-1, J, and
 3-49 M, including reinsurance, public securities, and financial
 3-50 instruments; or

3-51 (5) make remittance under the laws of this state to be
 3-52 used by this state to:

3-53 (A) pay claims made on policies written by the
 3-54 association;

3-55 (B) purchase reinsurance covering losses under
 3-56 those policies; or

3-57 (C) prepare for or mitigate the effects of
 3-58 catastrophic natural events.

3-59 SECTION 11. Subsection (c), Section 2210.060, Insurance
 3-60 Code, is amended to read as follows:

3-61 (c) Subsection (a) does not authorize the association to
 3-62 indemnify a member of the association for participating in the
 3-63 assessments made by [writings, expenses, profits, and losses of]
 3-64 the association in the manner provided by this chapter.

3-65 SECTION 12. Chapter 2210, Insurance Code, is amended by
 3-66 adding Subchapter B-1 to read as follows:

3-67 SUBCHAPTER B-1. PAYMENT OF LOSSES

3-68 Sec. 2210.071. RESERVES SOLVENCY ASSESSMENT; PREMIUM
 3-69 SURCHARGES. (a) To ensure available reserves and the capacity to

4-1 pay excess losses, the association shall assess the members of the
 4-2 association \$250 million once in 2009, and \$250 million once in
 4-3 2010, with the proportion of the assessment allocable to each
 4-4 insurer determined in the manner used to determine each member's
 4-5 participation in the association under Section 2210.052. Not later
 4-6 than the 30th day before the date on which the assessment is due,
 4-7 the association shall notify each member of the association of the
 4-8 amount of the member's assessment under this subsection. The
 4-9 members shall remit their assessments to the association not later
 4-10 than the 30th day after the date of the notification from the
 4-11 association. The association shall deposit the remitted
 4-12 assessments into the catastrophe reserve trust fund not later than
 4-13 the 10th day after the expiration of the 30-day period for the
 4-14 members to remit the assessments to the association. A member of
 4-15 the association may not recoup an assessment paid under this
 4-16 section through a premium surcharge.

4-17 (b) In addition to the assessment under Subsection (a), the
 4-18 association, each member of the association, and each insurer that
 4-19 engages in the business of property and casualty insurance in this
 4-20 state, including the Texas FAIR Plan Association, shall collect a
 4-21 premium surcharge on each policy issued or renewed on or after the
 4-22 effective date of S.B. No. 14, Acts of the 81st Legislature, Regular
 4-23 Session, 2009, and for the 12-month period following the effective
 4-24 date of that Act, as provided by this section from their
 4-25 policyholders who reside or have operations in, or whose insured
 4-26 property is located in, a catastrophe area.

4-27 (c) The association shall collect from its policyholders
 4-28 the nonrefundable premium surcharge in an amount equal to 20
 4-29 percent of the policy premium for each policy issued by the
 4-30 association. Each insurer and the Texas FAIR Plan Association
 4-31 shall collect from each of their affected policyholders the
 4-32 nonrefundable premium surcharge in an amount equal to three percent
 4-33 of the policy premium for each property and casualty insurance
 4-34 policy described by Subsection (b) and issued by the insurer or the
 4-35 Texas FAIR Plan Association.

4-36 (d) Each insurer and the Texas FAIR Plan Association shall
 4-37 remit the premium surcharge collected under this section to the
 4-38 association not later than the 20th day after the last day of each
 4-39 calendar quarter. The association shall deposit the remitted
 4-40 premium surcharges in the catastrophe reserve trust fund not later
 4-41 than the 30th day after the last day of each calendar quarter.

4-42 (e) A premium surcharge under this section shall apply to
 4-43 all policies that provide coverage on any premises, locations,
 4-44 operations, or property located in the area described by Subsection
 4-45 (b) for all property and casualty lines of insurance, other than
 4-46 federal flood insurance, workers' compensation insurance, accident
 4-47 and health insurance, and medical malpractice insurance.

4-48 (f) A premium surcharge under this section is a separate
 4-49 nonrefundable charge in addition to the premiums collected and is
 4-50 not subject to premium tax or commissions. Failure by a
 4-51 policyholder to pay the surcharge constitutes failure to pay
 4-52 premium for purposes of policy cancellation.

4-53 Sec. 2210.072. PAYMENT OF EXCESS LOSSES; AUTHORIZATION TO
 4-54 REINSURE OR BORROW. (a) If an occurrence or series of occurrences
 4-55 in a catastrophe area results in insured losses and operating
 4-56 expenses of the association in excess of premium and other revenue
 4-57 of the association, the excess losses and operating expenses shall
 4-58 be paid as provided by this subchapter.

4-59 (b) The association shall pay losses in excess of premium
 4-60 and other revenue of the association from available reserves of the
 4-61 association and available amounts in the catastrophe reserve trust
 4-62 fund.

4-63 (c) The association may borrow from, or enter into other
 4-64 financing arrangements with, any market sources at prevailing
 4-65 interest rates as authorized by this subchapter and as necessary to
 4-66 pay insured losses.

4-67 (d) The association may pay losses in excess of premium and
 4-68 other revenue of the association with:

4-69 (1) reinsurance proceeds, as provided by this

5-1 subchapter, from reinsurance purchased by the association as
 5-2 authorized under Section 2210.453;

5-3 (2) the proceeds of Class 1 or Class 2 public
 5-4 securities authorized under Section 2210.074, 2210.075, 2210.077,
 5-5 or 2210.078; and

5-6 (3) proceeds from financial instruments, including
 5-7 loans or other financing arrangements described by Subsection (c),
 5-8 as authorized under this subchapter.

5-9 (e) With respect to assessments to members of the
 5-10 association, the proportion of the losses allocable to each insurer
 5-11 under this subchapter shall be determined in the manner used to
 5-12 determine each insurer's participation in the association for the
 5-13 year under Section 2210.052.

5-14 Sec. 2210.073. PAYMENT FROM TRUST FUND; ASSESSMENT;
 5-15 REINSURANCE. (a) For each occurrence, losses shall be paid from
 5-16 the catastrophe reserve trust fund and any available reinsurance.

5-17 (b) For each occurrence, if the association's losses and
 5-18 operating expenses result in withdrawals from the catastrophe
 5-19 reserve trust fund, the amounts withdrawn shall be replenished to
 5-20 an amount equal to the lesser of the balance of the trust fund
 5-21 immediately before the withdrawals, reduced by any anticipated
 5-22 payments from prior occurrences, or \$250 million. Not later than
 5-23 the 30th day after an occurrence, the board of directors shall
 5-24 determine if it is necessary to withdraw funds from the catastrophe
 5-25 reserve trust fund and shall assess the members of the association
 5-26 as necessary to replenish the trust fund as required under this
 5-27 subsection. The proportion of the assessment allocable to each
 5-28 insurer shall be determined in the manner used to determine each
 5-29 member's participation in the association under Section 2210.052.

5-30 (c) Assessments against members of the association under
 5-31 this section may not exceed \$250 million during a calendar year.

5-32 (d) The amount of an assessment under this section must be:

5-33 (1) provided to each member of the association not
 5-34 later than the fifth day after the date the assessment is determined
 5-35 by the board of directors under Subsection (b); and

5-36 (2) paid by each member not later than the 30th day
 5-37 after the date on which the insurer receives notice of the amount of
 5-38 its assessment.

5-39 (e) A member may not recoup an assessment paid under this
 5-40 section through a premium surcharge.

5-41 (f) The association may purchase reinsurance in addition to
 5-42 using some or all of the trust fund if, after a cost-benefit
 5-43 analysis or other appropriate examination, the board of directors
 5-44 determines that the use of reinsurance is a fiscally appropriate
 5-45 alternative to other sources of funding or is economically
 5-46 beneficial to this state. If the association purchases reinsurance
 5-47 under this section, the cost of the reinsurance shall be paid from
 5-48 premium paid by policyholders, other revenue of the association,
 5-49 and the catastrophe reserve trust fund.

5-50 Sec. 2210.074. PAYMENT FROM CLASS 1 PUBLIC SECURITIES;
 5-51 REINSURANCE; FINANCIAL INSTRUMENTS. (a) Losses not paid under
 5-52 Section 2210.073 shall be paid as provided by this section.

5-53 (b) The losses may be paid with:

5-54 (1) proceeds from Class 1 public securities authorized
 5-55 to be issued in accordance with Subchapter M before the date of any
 5-56 occurrence that results in insured losses under Subsection (a);

5-57 (2) available reinsurance described by Subsection
 5-58 (f);

5-59 (3) proceeds from financial instruments described by
 5-60 Subsection (e); or

5-61 (4) a combination of reinsurance, public securities,
 5-62 and financial instruments described by Subdivisions (1)-(3).

5-63 (c) Public securities described by Subsection (b)(1) may be
 5-64 issued if the board of directors determines, before the date of any
 5-65 occurrence, that the amount available from premium and other
 5-66 revenue, in combination with the amounts available from the
 5-67 catastrophe reserve trust fund, any reinsurance, and any financial
 5-68 instruments may be insufficient to pay insured losses. The public
 5-69 securities shall be issued as necessary in a principal amount not to

6-1 exceed \$750 million per occurrence.

6-2 (d) Any public securities proceeds received under this
6-3 section:

6-4 (1) must be used before the proceeds of any public
6-5 securities that the association authorizes to be issued under
6-6 Section 2210.075 on or after any catastrophic event; and

6-7 (2) may not be used to fund losses of any catastrophic
6-8 event occurring before the date on which public securities
6-9 described by this section are authorized to be issued.

6-10 (e) Under the authority of Section 2210.072(c), the
6-11 association may borrow from, or enter into other financing
6-12 arrangements with, any market source, under which the market source
6-13 makes interest-bearing loans to the association to enable the
6-14 association to pay losses under this section in lieu of, or in
6-15 addition to, the issuance of public securities.

6-16 (f) The association may purchase reinsurance in lieu of, or
6-17 in addition to, using Class 1 public securities or proceeds of
6-18 financial instruments authorized under this section if, after a
6-19 cost-benefit analysis or other appropriate examination, the board
6-20 of directors determines that the use of reinsurance is a fiscally
6-21 appropriate alternative to other sources of funding or is
6-22 economically beneficial to this state. If the association
6-23 purchases reinsurance under this section, the cost of the
6-24 reinsurance shall be paid from premium paid by policyholders of the
6-25 association, other revenue of the association, and the catastrophe
6-26 reserve trust fund.

6-27 (g) If the losses are paid with public securities or
6-28 proceeds from financial instruments described by this section, the
6-29 public securities or proceeds from financial instruments shall be
6-30 repaid by premium surcharges in the manner prescribed by Section
6-31 2210.612.

6-32 Sec. 2210.075. PAYMENT FROM CLASS 2 PUBLIC SECURITIES;
6-33 REINSURANCE; FINANCIAL INSTRUMENTS. (a) Losses not paid under
6-34 Sections 2210.073 and 2210.074 shall be paid as provided by this
6-35 section.

6-36 (b) The losses may be paid from:

6-37 (1) proceeds from Class 2 public securities authorized
6-38 to be issued in accordance with Subchapter M on or after the date of
6-39 any occurrence that results in insured losses under Subsection (a);

6-40 (2) available reinsurance described by Subsection
6-41 (e);

6-42 (3) proceeds from financial instruments described by
6-43 Subsection (d); or

6-44 (4) a combination of the reinsurance, public
6-45 securities, and financial instruments described by Subdivisions
6-46 (1)-(3).

6-47 (c) Public securities described by Subsection (b)(1) may be
6-48 issued as necessary in a principal amount not to exceed \$1 billion
6-49 per occurrence.

6-50 (d) Under the authority of Section 2210.072(c), the
6-51 association may borrow from, or enter into other financial
6-52 arrangements with, any market source, under which the market source
6-53 makes interest-bearing loans to the association to enable the
6-54 association to pay losses under this section without the issuance
6-55 of public securities.

6-56 (e) The association may purchase reinsurance in lieu of, or
6-57 in addition to, using Class 2 public securities or proceeds of
6-58 financial instruments authorized under this section if, after a
6-59 cost-benefit analysis or other appropriate examination, the board
6-60 of directors determines that the use of reinsurance is a fiscally
6-61 appropriate alternative to other sources of funding or is
6-62 economically beneficial to this state. If the association
6-63 purchases reinsurance under this section, the cost of the
6-64 reinsurance shall be paid from premium paid by the policyholders of
6-65 the association, other revenue of the association, and the
6-66 catastrophe reserve trust fund.

6-67 (f) If the losses are paid with public securities or
6-68 proceeds from financial instruments described by this section, the
6-69 public securities or proceeds from financial instruments shall be

7-1 repaid by premium surcharges in the manner prescribed by Section
7-2 2210.613.

7-3 Sec. 2210.076. PAYMENT FROM ASSOCIATION ASSESSMENT.

7-4 (a) Losses not paid under Sections 2210.073-2210.075 shall be paid
7-5 as provided by this section.

7-6 (b) The association shall assess the members of the
7-7 association \$300 million per occurrence for the payment of losses
7-8 described by this section. The association shall notify each
7-9 member of the association of the amount of the member's assessment
7-10 under this subsection. The proportion of the losses allocable to
7-11 each insurer under this section shall be determined in the manner
7-12 used to determine each insurer's participation in the association
7-13 for the year under Section 2210.052.

7-14 (c) The association may not assess members of the
7-15 association under this section more than twice in any calendar
7-16 year.

7-17 (d) A member of the association may recoup an assessment
7-18 paid under this section through a premium surcharge collected for
7-19 one year on each policy of property or casualty insurance written by
7-20 the member. A premium surcharge under this section shall apply to
7-21 all policies that provide coverage on any premises, locations,
7-22 operations, or property located in this state for all property and
7-23 casualty lines of insurance, other than federal flood insurance,
7-24 workers' compensation insurance, accident and health insurance,
7-25 and medical malpractice insurance.

7-26 (e) A premium surcharge under this section is a separate
7-27 nonrefundable charge in addition to the premiums collected and is
7-28 not subject to premium tax or commissions. Failure to pay the
7-29 premium surcharge by a policyholder constitutes failure to pay
7-30 premium for purposes of policy cancellation.

7-31 Sec. 2210.077. PAYMENT FROM CLASS 2 PUBLIC SECURITIES;
7-32 REINSURANCE; FINANCIAL INSTRUMENTS. (a) Losses not paid under
7-33 Sections 2210.073-2210.076 shall be paid as provided by this
7-34 section.

7-35 (b) The losses may be paid from:

7-36 (1) proceeds from Class 2 public securities authorized
7-37 to be issued in accordance with Subchapter M on or after the date of
7-38 any occurrence that results in insured losses under Subsection (a);

7-39 (2) available reinsurance described by Subsection
7-40 (e);

7-41 (3) proceeds from financial instruments described by
7-42 Subsection (d); or

7-43 (4) a combination of the reinsurance, public
7-44 securities, and financial instruments described by Subdivisions
7-45 (1)-(3).

7-46 (c) Public securities described by Subsection (b)(1) may be
7-47 issued as necessary in a principal amount not to exceed \$500 million
7-48 per occurrence.

7-49 (d) Under the authority of Section 2210.072(c), the
7-50 association may borrow from, or enter into other financing
7-51 agreements with, any market source, under which the market source
7-52 makes interest-bearing loans to the association to enable the
7-53 association to pay losses under this section in lieu of, or in
7-54 addition to, the issuance of public securities.

7-55 (e) The association may purchase reinsurance in lieu of, or
7-56 in addition to, using Class 2 public securities or proceeds from
7-57 financial instruments authorized under this section if, after a
7-58 cost-benefit analysis or other appropriate examination, the board
7-59 of directors determines that the use of reinsurance is a fiscally
7-60 appropriate alternative to other sources of funding or is
7-61 economically beneficial to this state. If the association
7-62 purchases reinsurance under this section, the cost of the
7-63 reinsurance shall be paid from premium paid by the policyholders of
7-64 the association, other revenue of the association, and the
7-65 catastrophe reserve trust fund.

7-66 (f) If the losses are paid with public securities or
7-67 proceeds from financial instruments described by this section, the
7-68 public securities or proceeds from financial instruments shall be
7-69 repaid by premium surcharges in the manner prescribed by Section

8-1 2210.613.

8-2 Sec. 2210.078. PAYMENT FROM CLASS 2 PUBLIC SECURITIES;
 8-3 REINSURANCE. (a) Losses not paid under Sections
 8-4 2210.073-2210.077 shall be paid as provided by this section.

8-5 (b) The losses may be paid from:

8-6 (1) proceeds from Class 2 public securities authorized
 8-7 to be issued in accordance with Subchapter M on or after the date of
 8-8 any occurrence that results in insured losses under Subsection (a);

8-9 (2) available reinsurance described by Subsection
 8-10 (d); or

8-11 (3) a combination of the reinsurance and public
 8-12 securities described by Subdivisions (1) and (2).

8-13 (c) Public securities described by Subsection (b)(1) may be
 8-14 issued as necessary in a principal amount not to exceed \$2.8 billion
 8-15 per occurrence.

8-16 (d) The association may purchase reinsurance in lieu of, or
 8-17 in addition to, using Class 2 public securities authorized under
 8-18 this section if, after a cost-benefit analysis or other appropriate
 8-19 examination, the board of directors determines that the use of
 8-20 reinsurance is a fiscally appropriate alternative to other sources
 8-21 of funding or is economically beneficial to this state. If the
 8-22 association purchases reinsurance under this section, the cost of
 8-23 the reinsurance shall be paid from premium paid by the
 8-24 policyholders of the association, other revenue of the association,
 8-25 and the catastrophe reserve trust fund.

8-26 (e) If the losses are paid with public securities described
 8-27 by this section, the public securities shall be repaid by premium
 8-28 surcharges in the manner prescribed by Section 2210.613.

8-29 Sec. 2210.079. PAYMENT FROM ADDITIONAL ASSOCIATION
 8-30 ASSESSMENTS. (a) Losses not paid under Sections
 8-31 2210.073-2210.078 and any available reinsurance shall be paid as
 8-32 provided by this section.

8-33 (b) The board of directors shall assess the members of the
 8-34 association for the payment of losses described by this section.
 8-35 The association shall notify each member of the association of the
 8-36 amount of the member's assessments under this subsection, with the
 8-37 proportion of the assessment allocable to each insurer determined
 8-38 in the manner used to determine each member's participation in the
 8-39 association under Section 2210.052.

8-40 (c) A member of the association may not recoup an assessment
 8-41 paid under this section through a premium surcharge.

8-42 (d) A member of the association may credit an amount paid in
 8-43 accordance with this section in a calendar year against the
 8-44 insurer's premium tax under Chapter 221. The tax credit authorized
 8-45 under this subsection shall be allowed at a rate not to exceed 20
 8-46 percent per year for five or more successive years beginning the
 8-47 calendar year that the assessments under this section are
 8-48 paid. The balance of payments made by the insurer and not claimed
 8-49 as a premium tax credit may be reflected in the books and records of
 8-50 the insurer as an admitted asset of the insurer for all purposes,
 8-51 including exhibition in an annual statement under Section 862.001.

8-52 Sec. 2210.080. NOTIFICATION REGARDING TAX
 8-53 CREDITS. (a) The association shall immediately notify the
 8-54 department if an occurrence or series of occurrences in a
 8-55 catastrophe area results in insured losses that result in a tax
 8-56 credit under Section 2210.079(d) in a calendar year.

8-57 (b) On receipt of notice under Subsection (a), the
 8-58 department shall immediately notify the governor and the
 8-59 appropriate committees of each house of the legislature of the
 8-60 amount of insured losses eligible for tax credits under Section
 8-61 2210.079(d).

8-62 SECTION 13. The heading to Subchapter C, Chapter 2210,
 8-63 Insurance Code, is amended to read as follows:

8-64 SUBCHAPTER C. ASSOCIATION BOARD OF DIRECTORS; GENERAL
 8-65 POWERS AND DUTIES OF BOARD OF DIRECTORS

8-66 SECTION 14. Section 2210.102, Insurance Code, is amended to
 8-67 read as follows:

8-68 Sec. 2210.102. COMPOSITION. (a) The board of directors is
 8-69 composed of [~~the following~~] nine members appointed by the

9-1 commissioner in accordance with this section.

9-2 (b) Four members must be [+

9-3 ~~[(1) five]~~ representatives of different insurers who

9-4 are members of the association.

9-5 (c) Three members must be [~~—~~, elected by the members as

9-6 ~~provided by the plan of operation,~~

9-7 ~~[(2) two]~~ public representatives, at least one of whom

9-8 ~~[who are nominated by the office of public insurance counsel and~~

9-9 ~~who], as of the date of the appointment, does not [+~~

9-10 ~~[(A)] reside in or own property in a first tier~~

9-11 ~~coastal county.~~

9-12 (d) Two members must be [~~a catastrophe area, and~~

9-13 ~~[(B) are policyholders of the association, and~~

9-14 ~~[(3) two] property and casualty agents who are~~

9-15 ~~licensed under this code and are not captive agents. One of the~~

9-16 ~~agents, but not more than one, as of the date of the appointment,~~

9-17 ~~must maintain the agent's principal office in a first tier coastal~~

9-18 ~~county.~~

9-19 (e) All members must [~~—~~, each of whom must:

9-20 ~~[(A)] have demonstrated experience in insurance,~~

9-21 ~~general business, or actuarial principles sufficient to make the~~

9-22 ~~success of the association probable [+~~

9-23 ~~[(B) maintain the agent's principal office, as of~~

9-24 ~~the date of the appointment, in a catastrophe area, and~~

9-25 ~~[(C) hold a license under Chapter 4051 as a~~

9-26 ~~general property and casualty agent or a personal lines property~~

9-27 ~~and casualty agent].~~

9-28 (f) The commissioner shall appoint one person to serve as a

9-29 ~~nonvoting member of the board to advise the board regarding issues~~

9-30 ~~relating to the inspection process. The commissioner may give~~

9-31 ~~preference in an appointment under this subsection to a person who~~

9-32 ~~is a qualified inspector under Section 2210.254. The nonvoting~~

9-33 ~~member appointed under this section must:~~

9-34 ~~(1) be an engineer licensed by, and in good standing~~

9-35 ~~with, the Texas Board of Professional Engineers;~~

9-36 ~~(2) reside in a first tier coastal county; and~~

9-37 ~~(3) be knowledgeable of, and have professional~~

9-38 ~~expertise in, wind-related design and construction practices in~~

9-39 ~~coastal areas that are subject to high winds and hurricanes.~~

9-40 (g) [~~(b)~~] The persons appointed under Subsection (c)

9-41 ~~[Subsections (a)(2) and (3)] must be from different counties.~~

9-42 SECTION 15. Section 2210.103, Insurance Code, is amended by

9-43 adding Subsection (c) to read as follows:

9-44 (c) A member of the board of directors may be removed by the

9-45 ~~commissioner without cause. The commissioner shall appoint a~~

9-46 ~~replacement in the manner provided by Section 2210.102 for a member~~

9-47 ~~who leaves or is removed from the board of directors.~~

9-48 SECTION 16. Section 2210.104, Insurance Code, is amended to

9-49 read as follows:

9-50 Sec. 2210.104. OFFICERS. The board of directors shall

9-51 ~~elect from the board's membership an executive committee consisting~~

9-52 ~~of a presiding officer, assistant presiding officer, and~~

9-53 ~~secretary-treasurer. [At least one of the officers must be a member~~

9-54 ~~appointed under Section 2210.102(a)(2) or (3).]~~

9-55 SECTION 17. Subchapter C, Chapter 2210, Insurance Code, is

9-56 amended by adding Section 2210.1051 to read as follows:

9-57 Sec. 2210.1051. MEETINGS OF BOARD OF DIRECTORS.

9-58 (a) Notwithstanding Chapter 551, Government Code, or any other

9-59 ~~law, members of the board of directors may meet by telephone~~

9-60 ~~conference call, videoconference, or other similar~~

9-61 ~~telecommunication method. The board may use telephone conference~~

9-62 ~~call, videoconference, or other similar telecommunication method~~

9-63 ~~for purposes of establishing a quorum or voting or for any other~~

9-64 ~~meeting purpose in accordance with this subsection and Subsection~~

9-65 ~~(b). This subsection applies without regard to the subject matter~~

9-66 ~~discussed or considered by the members of the board at the meeting.~~

9-67 (b) A meeting held by telephone conference call,

9-68 ~~videoconference, or other similar telecommunication method:~~

9-69 (1) is subject to the notice requirements applicable

10-1 to other meetings of the board of directors;
 10-2 (2) may not be held unless notice of the meeting
 10-3 specifies the location of the meeting;
 10-4 (3) must be audible to the public at the location
 10-5 specified in the notice under Subdivision (2); and
 10-6 (4) must provide two-way audio communication between
 10-7 all members of the board attending the meeting during the entire
 10-8 meeting, and if the two-way audio communication link with members
 10-9 attending the meeting is disrupted so that a quorum of the board is
 10-10 no longer participating in the meeting, the meeting may not
 10-11 continue until the two-way audio communication link is
 10-12 reestablished.

10-13 SECTION 18. Subchapter C, Chapter 2210, Insurance Code, is
 10-14 amended by adding Section 2210.107 to read as follows:

10-15 Sec. 2210.107. PRIMARY BOARD OBJECTIVES. The primary
 10-16 objectives of the board of directors are to ensure that the
 10-17 association:

10-18 (1) operates in accordance with this chapter and
 10-19 commissioner rules;

10-20 (2) complies with sound insurance principles; and

10-21 (3) meets all standards imposed under this chapter.

10-22 SECTION 19. Section 2210.151, Insurance Code, is amended to
 10-23 read as follows:

10-24 Sec. 2210.151. ADOPTION OF PLAN OF OPERATION. With the
 10-25 advice of the board of directors, the commissioner by rule shall
 10-26 adopt the plan of operation to provide[+]

10-27 ~~[(1)] Texas windstorm and hail insurance in a~~
 10-28 ~~catastrophe area[+and~~

10-29 ~~[(2)] Texas fire and explosion insurance in an~~
 10-30 ~~inadequate fire insurance area].~~

10-31 SECTION 20. Subsection (a), Section 2210.152, Insurance
 10-32 Code, is amended to read as follows:

10-33 (a) The plan of operation must:

10-34 (1) provide for the efficient, economical, fair, and
 10-35 nondiscriminatory administration of the association; and

10-36 (2) include:

10-37 (A) a plan for the equitable assessment of the
 10-38 members of the association to defray losses and expenses;

10-39 (B) underwriting standards;

10-40 (C) procedures for accepting and ceding
 10-41 reinsurance;

10-42 (D) procedures for obtaining and repaying
 10-43 amounts pursuant to financial instruments authorized under
 10-44 Subchapter B-1;

10-45 (E) procedures for determining the amount of
 10-46 insurance to be provided to specific risks;

10-47 (F) ~~[(F)]~~ time limits and procedures for
 10-48 processing applications for insurance; and

10-49 (G) ~~[(F)]~~ other provisions as considered
 10-50 necessary by the department to implement the purposes of this
 10-51 chapter.

10-52 SECTION 21. Section 2210.202, Insurance Code, is amended to
 10-53 read as follows:

10-54 Sec. 2210.202. APPLICATION FOR COVERAGE. (a) A person who
 10-55 has an insurable interest in insurable property may apply to the
 10-56 association for insurance coverage provided under the plan of
 10-57 operation and an inspection of the property, subject to any rules[
 10-58 ~~including any inspection fee,~~] established by the board of
 10-59 directors and approved by the commissioner. The association shall
 10-60 make insurance available to each applicant in the catastrophe area
 10-61 whose property is insurable property but who, after diligent
 10-62 efforts, is unable to obtain property insurance through the
 10-63 voluntary market, as evidenced by two declinations from insurers
 10-64 authorized to engage in the business of, and writing, property
 10-65 insurance providing windstorm and hail coverage in the first tier
 10-66 coastal counties. For purposes of this section, "declination" has
 10-67 the meaning assigned by the plan of operation and shall include a
 10-68 refusal to offer coverage for the perils of windstorm and hail and
 10-69 the inability to obtain substantially equivalent insurance

11-1 coverage for the perils of windstorm and hail. Notwithstanding
 11-2 Section 2210.203(c), evidence of two declinations is also required
 11-3 with an application for renewal of an association policy.

11-4 (b) A ~~[general]~~ property and casualty agent ~~[or a personal~~
 11-5 ~~lines property and casualty agent]~~ must submit an application for
 11-6 the insurance coverage on behalf of the applicant on forms
 11-7 prescribed by the association. The application must contain a
 11-8 statement as to whether the applicant has submitted or will submit
 11-9 the premium in full from personal funds or, if not, to whom a
 11-10 balance is or will be due. Each application for initial or renewal
 11-11 coverage must also contain a statement that the agent possesses
 11-12 proof of the declinations described by Subsection (a) and proof of
 11-13 flood insurance coverage or unavailability of that coverage as
 11-14 described by Section 2210.203(a-1).

11-15 SECTION 22. Section 2210.203, Insurance Code, is amended by
 11-16 adding Subsection (a-1) to read as follows:

11-17 (a-1) Notwithstanding Subsection (a), if all or any part of
 11-18 the property for which an application for new or renewal insurance
 11-19 coverage is made is located in Zone V or another similar zone with
 11-20 an additional hazard associated with storm waves, as defined by the
 11-21 National Flood Insurance Program, and if flood insurance under that
 11-22 federal program is available, the association may not issue a new or
 11-23 renewal insurance policy unless evidence that the property is
 11-24 covered by a flood insurance policy is submitted to the
 11-25 association.

11-26 SECTION 23. Subchapter E, Chapter 2210, Insurance Code, is
 11-27 amended by adding Section 2210.2031 to read as follows:

11-28 Sec. 2210.2031. PREMIUM SURCHARGES IMPOSED ON INITIAL AND
 11-29 RENEWAL COVERAGES FOR CERTAIN RESIDENCES. (a) Notwithstanding
 11-30 any other provision of this chapter, for all applicable policies
 11-31 issued or renewed beginning on the effective date of S.B. No. 14,
 11-32 Acts of the 81st Legislature, Regular Session, 2009, and until the
 11-33 second anniversary of that effective date, a nonrefundable
 11-34 surcharge of:

11-35 (1) 20 percent is imposed on the premium for an initial
 11-36 policy of windstorm and hail insurance obtained from the
 11-37 association for coverage for:

11-38 (A) each residence for which an application for
 11-39 insurance coverage is submitted to the association on or after the
 11-40 effective date of S.B. No. 14, Acts of the 81st Legislature, Regular
 11-41 Session, 2009, but that is not occupied as the policyholder's
 11-42 primary residence by the policyholder; and

11-43 (B) the corporeal movable property located in the
 11-44 residence; and

11-45 (2) 20 percent is imposed on the premium for renewal
 11-46 coverage from the association for:

11-47 (A) each residence that is insured by the
 11-48 association as of the effective date of S.B. No. 14, Acts of the
 11-49 81st Legislature, Regular Session, 2009, but that is not occupied
 11-50 as the policyholder's primary residence by the policyholder; and

11-51 (B) the corporeal movable property located in the
 11-52 residence.

11-53 (b) A premium surcharge under this section is a separate
 11-54 nonrefundable charge in addition to the premiums collected and is
 11-55 not subject to premium tax or commissions. Failure to pay the
 11-56 premium surcharge by a policyholder or applicant for insurance
 11-57 constitutes failure to pay premium for purposes of policy
 11-58 cancellation. The premium surcharge under this section is due on
 11-59 the issuance or renewal of the policy.

11-60 (c) The association shall deposit the remitted premium
 11-61 surcharges in the catastrophe reserve trust fund not later than the
 11-62 30th day after the last day of each calendar quarter.

11-63 SECTION 24. Section 2210.204, Insurance Code, is amended by
 11-64 amending Subsection (d) and adding Subsection (e) to read as
 11-65 follows:

11-66 (d) If an insured requests cancellation of the insurance
 11-67 coverage, the association shall refund the unearned premium, less
 11-68 any minimum retained premium set forth in the plan of operation,
 11-69 payable to the insured and the holder of an unpaid balance. The

12-1 property and casualty agent who submitted the application shall
 12-2 refund the agent's commission on any unearned premium in the same
 12-3 manner.

12-4 (e) For cancellation of insurance coverage under this
 12-5 section, the minimum retained premium in the plan of operation must
 12-6 be for a period of not less than 180 days, except for events
 12-7 specified in the plan of operation that reflect a significant
 12-8 change in the exposure or the policyholder concerning the insured
 12-9 property, including:

12-10 (1) the purchase of similar coverage in the voluntary
 12-11 market;

12-12 (2) sale of the property to an unrelated party;

12-13 (3) death of the policyholder; or

12-14 (4) total loss of the property.

12-15 SECTION 25. Subchapter E, Chapter 2210, Insurance Code, is
 12-16 amended by adding Section 2210.2041 to read as follows:

12-17 Sec. 2210.2041. NONREFUNDABLE SURCHARGE. A nonrefundable
 12-18 surcharge established under this chapter is not refundable under
 12-19 this code for any reason or purpose.

12-20 SECTION 26. Section 2210.251, Insurance Code, is amended to
 12-21 read as follows:

12-22 Sec. 2210.251. INSPECTION REQUIREMENTS. (a) Except as
 12-23 provided by this section, to be considered insurable property
 12-24 eligible for windstorm and hail insurance coverage from the
 12-25 association, a structure that is constructed, altered, remodeled,
 12-26 enlarged, or repaired or to which additions are made on or after
 12-27 January 1, 1988, must be inspected [~~or approved~~] by the association
 12-28 [~~department~~] for compliance with the plan of operation.

12-29 (b) After January 1, 2004, for geographic areas specified by
 12-30 the commissioner, the commissioner by rule shall adopt the 2003
 12-31 International Residential Code for one- and two-family dwellings
 12-32 published by the International Code Council. For those geographic
 12-33 areas, the commissioner by rule may adopt a subsequent edition of
 12-34 that code and may adopt any supplements published by the
 12-35 International Code Council and amendments to that code.

12-36 (c) After January 1, 2004, a person must submit a notice of a
 12-37 windstorm inspection to the association [~~unit responsible for~~
 12-38 ~~certification of windstorm inspections at the department~~] before
 12-39 beginning to construct, alter, remodel, enlarge, or repair a
 12-40 structure.

12-41 (d) A structure constructed, altered, remodeled, enlarged,
 12-42 or repaired or to which additions were made before January 1, 1988,
 12-43 that is located in an area that was governed at the time of the
 12-44 construction, alteration, remodeling, enlargement, repair, or
 12-45 addition by a building code recognized by the association is
 12-46 insurable property eligible for windstorm and hail insurance
 12-47 coverage from the association without compliance with the
 12-48 inspection [~~or approval~~] requirements of this section or the plan
 12-49 of operation.

12-50 (e) A structure constructed, altered, remodeled, enlarged,
 12-51 or repaired or to which additions were made before January 1, 1988,
 12-52 that is located in an area not governed by a building code
 12-53 recognized by the association is insurable property eligible for
 12-54 windstorm and hail insurance coverage from the association without
 12-55 compliance with the inspection [~~or approval~~] requirements of this
 12-56 section or the plan of operation if the structure was previously
 12-57 insured by an insurer authorized to engage in the business of
 12-58 insurance in this state and the structure is in essentially the same
 12-59 condition as when previously insured, except for normal wear and
 12-60 tear, and is without any structural change other than a change made
 12-61 according to code. For purposes of this subsection, evidence of
 12-62 previous insurance coverage must reflect coverage for the perils of
 12-63 windstorm and hail for the property within the 12-month period
 12-64 immediately preceding the date of the application for coverage
 12-65 through the association and includes:

12-66 (1) a copy of a previous insurance policy;

12-67 (2) copies of canceled checks or agent's records that
 12-68 show payments for previous policies; and

12-69 (3) a copy of the title to the structure or mortgage

13-1 company records that show previous policies.

13-2 (f) Notwithstanding any other provision of this section, a
 13-3 residential structure insured by the association as of June 1,
 13-4 2009, may continue coverage through the association subject to the
 13-5 inspection requirements imposed under Section 2210.258.

13-6 (g) The association [department] shall issue a certificate
 13-7 of compliance for each structure that qualifies for coverage. The
 13-8 certificate is evidence of insurability of the structure by the
 13-9 association.

13-10 [~~(g) The department may enter into agreements and contracts~~
 13-11 ~~as necessary to implement this section.~~]

13-12 (h) The association [department] may charge a reasonable
 13-13 fee to cover the cost of making building requirements and
 13-14 inspection standards available to the public.

13-15 (i) The association shall charge a reasonable fee for each
 13-16 inspection of each structure in an amount set by the board of
 13-17 directors. The association may use fees collected under this
 13-18 section for operating expenses or for the purchase of reinsurance.

13-19 (j) Without limitation of the department's authority to
 13-20 otherwise enforce this chapter, the department shall monitor the
 13-21 association's compliance with this subchapter.

13-22 (k) Except as otherwise provided by this subchapter, the
 13-23 association may not consider any request that a structure be
 13-24 certified as insurable property if, within six months after the
 13-25 final inspection of a structure, the association has not received:

13-26 (1) fully completed documentation verifying that the
 13-27 structure has been constructed, altered, remodeled, enlarged, or
 13-28 repaired, or any addition to the structure has been made, in
 13-29 compliance with the plan of operation; and

13-30 (2) full payment of all inspection fees owed to the
 13-31 association, including any fees related to prior association
 13-32 inspections.

13-33 (l) If a structure is rejected for coverage under Subsection
 13-34 (k), a person may make a new request for certification and the
 13-35 structure may be reinspected for compliance with the plan of
 13-36 operation. A request for certification brought under this
 13-37 subsection must meet the requirements of Subsection (k).

13-38 SECTION 27. Subsections (a), (c), and (d), Section
 13-39 2210.254, Insurance Code, are amended to read as follows:

13-40 (a) For purposes of this chapter, a "qualified inspector"
 13-41 includes:

13-42 (1) a person determined by the association
 13-43 [department] to be qualified because of training or experience to
 13-44 perform building inspections;

13-45 (2) a licensed professional engineer who meets the
 13-46 requirements specified by the association [commissioner rule] for
 13-47 appointment to conduct windstorm inspections; and

13-48 (3) an inspector who:
 13-49 (A) is certified by the International Code
 13-50 Council, the Building Officials and Code Administrators
 13-51 International, Inc., the International Conference of Building
 13-52 Officials, or the Southern Building Code Congress International,
 13-53 Inc.;

13-54 (B) has certifications as a buildings inspector
 13-55 and coastal construction inspector; and

13-56 (C) complies with other requirements specified
 13-57 by the association [commissioner rule].

13-58 (c) Before performing building inspections, a qualified
 13-59 inspector must be approved and appointed or employed by the
 13-60 association [department].

13-61 (d) The association [department] may charge a reasonable
 13-62 fee for the filing of applications by and determining the
 13-63 qualifications of persons for appointment as qualified inspectors.

13-64 SECTION 28. Section 2210.255, Insurance Code, is amended to
 13-65 read as follows:

13-66 Sec. 2210.255. APPOINTMENT OF LICENSED ENGINEER AS
 13-67 INSPECTOR. (a) On request of an engineer licensed by the Texas
 13-68 Board of Professional Engineers, the association may [commissioner
 13-69 shall] appoint the engineer as an inspector under this subchapter

14-1 on receipt of information satisfactory to the association ~~[not~~
 14-2 ~~later than the 10th day after the date the engineer delivers to the~~
 14-3 ~~commissioner information demonstrating]~~ that the engineer is
 14-4 qualified to perform windstorm inspections under this subchapter.

14-5 (b) The association shall consult with the commissioner
 14-6 regarding ~~[shall adopt rules establishing]~~ the information to be
 14-7 considered in appointing engineers under this section.

14-8 SECTION 29. Subchapter F, Chapter 2210, Insurance Code, is
 14-9 amended by adding Section 2210.2565 to read as follows:

14-10 Sec. 2210.2565. PROCEDURES REGARDING APPOINTMENT OF
 14-11 INSPECTORS. The association shall develop procedures for the
 14-12 appointment and oversight of qualified inspectors appointed under
 14-13 Sections 2210.254 and 2210.255, including procedures relating to
 14-14 the suspension or revocation of an appointment made by the
 14-15 association.

14-16 SECTION 30. Subchapter F, Chapter 2210, Insurance Code, is
 14-17 amended by adding Sections 2210.258 and 2210.259 to read as
 14-18 follows:

14-19 Sec. 2210.258. MANDATORY COMPLIANCE WITH BUILDING CODES;
 14-20 ELIGIBILITY. (a) Notwithstanding any other provision of this
 14-21 chapter, to be eligible for insurance through the association, all
 14-22 construction, alteration, remodeling, enlargement, and repair of,
 14-23 or addition to, any structure located in the catastrophe area that
 14-24 is begun on or after the effective date of S.B. No. 14, Acts of the
 14-25 81st Legislature, Regular Session, 2009, must be performed in
 14-26 compliance with the applicable building code standards, as set
 14-27 forth in the plan of operation.

14-28 (b) The association may not insure a structure described by
 14-29 Subsection (a) until:

14-30 (1) the structure has been inspected for compliance
 14-31 with the plan of operation in accordance with Section 2210.251(a);
 14-32 and

14-33 (2) a certificate of compliance has been issued for
 14-34 the structure in accordance with Section 2210.251(g).

14-35 Sec. 2210.259. SURCHARGE FOR CERTAIN NONCOMPLIANT
 14-36 STRUCTURES. (a) A structure eligible for coverage through the
 14-37 association under Section 2210.251(d), (e), or (f) is subject to an
 14-38 annual premium surcharge equal to 30 percent of the premium for
 14-39 insurance coverage obtained through the association. The surcharge
 14-40 under this subsection applies to each policy issued or renewed by
 14-41 the association on or after the effective date of S.B. No. 14, Acts
 14-42 of the 81st Legislature, Regular Session, 2009, and is due on the
 14-43 issuance or renewal of the policy.

14-44 (b) A premium surcharge collected under this section shall
 14-45 be deposited in the catastrophe reserve trust fund. A premium
 14-46 surcharge under this section is a separate nonrefundable charge in
 14-47 addition to the premiums collected and is not subject to premium tax
 14-48 or commissions. Failure to pay the surcharge by a policyholder
 14-49 constitutes failure to pay premium for purposes of policy
 14-50 cancellation.

14-51 SECTION 31. Subsections (c) and (d), Section 2210.351
 14-52 Insurance Code, are amended to read as follows:

14-53 (c) Except as provided by Subsection (d), as ~~As~~ soon as
 14-54 reasonably possible after the filing has been made, the
 14-55 commissioner in writing shall approve~~, modify,~~ or disapprove the
 14-56 filing. A filing is considered approved unless ~~modified or~~
 14-57 disapproved on or before the 30th day after the date of the filing.
 14-58 If the commissioner disapproves a filing, the commissioner shall
 14-59 state in writing the reasons for the disapproval and the criteria
 14-60 the association is required to meet to obtain approval.

14-61 (d) The association may use a rate filed by the association
 14-62 without prior commissioner approval if:

14-63 (1) the filing is made not later than the 30th day
 14-64 before the date of any use or delivery for use of the rate;

14-65 (2) the filed rate does not exceed 105 percent of the
 14-66 rate in effect on the date on which the filing is made;

14-67 (3) the filed rate does not reflect a rate change for
 14-68 an individual rating class that is 10 percent higher than the rate
 14-69 in effect for that rating class on the date on which the filing is

15-1 made; and

15-2 (4) the commissioner has not disapproved the filing in
 15-3 writing, advising of the reasons for the disapproval and the
 15-4 criteria the association is required to meet to obtain approval.
 15-5 [If at any time the commissioner determines that a filing approved
 15-6 under Subsection (c) no longer meets the requirements of this
 15-7 chapter, the commissioner may, after a hearing held on at least 20
 15-8 days' notice to the association that specifies the matters to be
 15-9 considered at the hearing, issue an order withdrawing approval of
 15-10 the filing. The order must specify in what respects the
 15-11 commissioner determines that the filing no longer meets the
 15-12 requirements of this chapter. An order issued under this
 15-13 subsection may not take effect before the 30th day after the date of
 15-14 issuance of the order.]

15-15 SECTION 32. Section 2210.352, Insurance Code, is amended to
 15-16 read as follows:

15-17 Sec. 2210.352. MANUAL RATE FILINGS: ANNUAL FILING.
 15-18 (a) Not later than August 15 of each year, the association shall
 15-19 file with the department [~~for approval by the commissioner~~] a
 15-20 proposed manual rate for all types and classes of risks written by
 15-21 the association[~~. Chapter 40 does not apply to:~~

15-22 [~~(1) a filing made under this subsection; or~~
 15-23 [~~(2) a department action with respect to the filing~~].

15-24 (a-1) The association may use a rate filed by the
 15-25 association under this section without prior commissioner approval
 15-26 if:

15-27 (1) the filing is made not later than the 30th day
 15-28 before the date of any use or delivery for use of the rate;

15-29 (2) the filed rate does not exceed 105 percent of the
 15-30 rate used by the association in effect on the date on which the
 15-31 filing is made; and

15-32 (3) the filed rate does not reflect a rate change for
 15-33 an individual rating class that is 10 percent higher than the rate
 15-34 in effect for that rating class on the date on which the filing is
 15-35 made.

15-36 (b) Except as provided by Subsection (a-1), before [Before]
 15-37 approving or [7] disapproving [7, or modifying] a filing under this
 15-38 section, the commissioner shall provide all interested persons a
 15-39 reasonable opportunity to:

15-40 (1) review the filing;

15-41 (2) obtain copies of the filing on payment of any
 15-42 legally required copying cost; and

15-43 (3) submit to the commissioner written comments or
 15-44 information related to the filing.

15-45 (c) Except as provided by Subsection (a-1), [The
 15-46 commissioner shall schedule an open meeting not later than the 45th
 15-47 day after the date the department receives a filing at which
 15-48 interested persons may present written or oral comments relating to
 15-49 the filing.

15-50 [d] An open meeting under Subsection (c) is subject to
 15-51 Chapter 551, Government Code, but is not a contested case hearing
 15-52 under Chapter 2001, Government Code.

15-53 [e] The department shall file with the secretary of state
 15-54 for publication in the Texas Register notice that a filing has been
 15-55 made under Subsection (a) not later than the seventh day after the
 15-56 date the department receives the filing. The notice must include
 15-57 information relating to:

15-58 [1] the availability of the filing for public
 15-59 inspection at the department during regular business hours and the
 15-60 procedures for obtaining copies of the filing;

15-61 [2] procedures for making written comments related to
 15-62 the filing; and

15-63 [3] the time, place, and date of the open meeting
 15-64 scheduled under Subsection (c) at which interested persons may
 15-65 present written or oral comments relating to the filing.

15-66 [f] After the conclusion of the open meeting, the
 15-67 commissioner shall approve or [7] disapprove [7, or modify] the filing
 15-68 in writing not later than October [November] 15 of the year in which
 15-69 the filing was made. If the filing is not approved or [7]

16-1 disapproved~~[, or modified]~~ on or before that date, the filing is
 16-2 considered approved.

16-3 (d) Except as provided by Subsection (a-1), if ~~[(g) If]~~ the
 16-4 commissioner disapproves a filing, the commissioner shall state in
 16-5 writing the reasons for the disapproval and the criteria the
 16-6 association is required to meet to obtain approval.

16-7 SECTION 33. Section 2210.353, Insurance Code, is amended to
 16-8 read as follows:

16-9 Sec. 2210.353. MANUAL RATE FILINGS: AMENDED ANNUAL
 16-10 FILING. (a) Not later than the 30th day after the date the
 16-11 association receives the commissioner's written disapproval under
 16-12 Section 2210.352(c) ~~[2210.352(f)]~~, the association may file with
 16-13 the commissioner an amended annual filing that conforms to all
 16-14 criteria stated in that written disapproval.

16-15 (b) Not later than the 30th day after the date an amended
 16-16 filing made under Subsection (a) is received, the commissioner
 16-17 shall approve ~~[the amended filing with or without modifications]~~ or
 16-18 disapprove the amended filing. If the filing is not ~~[modified or]~~
 16-19 disapproved on or before the 30th day after the date of receipt, the
 16-20 filing is considered approved ~~[without modification]~~. If the
 16-21 commissioner disapproves a filing, the commissioner shall state in
 16-22 writing the reasons for the disapproval and the criteria the
 16-23 association is required to meet to obtain approval.

16-24 (c) Before approving or disapproving an amended annual
 16-25 filing under this section, the commissioner shall, in the manner
 16-26 provided by Section 2210.352(b), provide all interested persons a
 16-27 reasonable opportunity to:

- 16-28 (1) review the amended annual filing;
 16-29 (2) obtain copies of the amended annual filing on
 16-30 payment of any legally required copying cost; and
 16-31 (3) submit to the commissioner written comments or
 16-32 information related to the amended annual filing.

16-33 ~~[(d) The commissioner may, in the manner provided by~~
 16-34 ~~Sections 2210.352(c) and (d), hold a hearing regarding an amended~~
 16-35 ~~filing not later than the 20th day after the date the department~~
 16-36 ~~receives the amended filing.~~

16-37 ~~[(e) Not later than the 10th day after the date the hearing~~
 16-38 ~~is concluded, the commissioner shall approve or disapprove the~~
 16-39 ~~amended filing.~~

16-40 ~~[(f) The requirements imposed under Subsection (a) and~~
 16-41 ~~under Sections 2210.352(e), (f), and (g) apply to a hearing~~
 16-42 ~~conducted under this section and the commissioner's decision~~
 16-43 ~~resulting from that hearing.]~~

16-44 SECTION 34. Subsections (a), (c), and (d), Section
 16-45 2210.354, Insurance Code, are amended to read as follows:

16-46 (a) In conjunction with the review of a filing under Section
 16-47 2210.352, other than a filing made under Subsection (a-1) of that
 16-48 section, ~~[or 2210.353.~~

16-49 ~~[(1)]~~ the commissioner may request the association to
 16-50 provide additional supporting information relating to the filing~~+~~
 16-51 ~~and~~

16-52 ~~[(2) any interested person may file a written request~~
 16-53 ~~with the commissioner for additional supporting information~~
 16-54 ~~relating to the filing].~~

16-55 (c) The commissioner shall submit to the association all
 16-56 requests for additional supporting information made under this
 16-57 section for the commissioner's use not later than the 21st day after
 16-58 the date of receipt of the filing ~~[and the use of any interested~~
 16-59 ~~person].~~

16-60 (d) Unless a different period is requested by the
 16-61 association and approved by the commissioner, the association shall
 16-62 provide the information to the commissioner not later than the
 16-63 fifth day after the date the written request for additional
 16-64 supporting information is delivered to the association. ~~[The~~
 16-65 ~~department shall notify an interested person who has requested~~
 16-66 ~~additional information of the availability of the information not~~
 16-67 ~~later than one business day after the date the commissioner~~
 16-68 ~~receives the information from the association.]~~

16-69 SECTION 35. Section 2210.355, Insurance Code, is amended by

17-1 amending Subsection (b) and adding Subsection (h) to read as
17-2 follows:

17-3 (b) In adopting rates under this chapter, the following must
17-4 be considered:

17-5 (1) the past and prospective loss experience within
17-6 and outside this state of hazards for which insurance is made
17-7 available through the plan of operation, if any;

17-8 (2) recognized catastrophe models;

17-9 (3) expenses of operation, including acquisition
17-10 costs;

17-11 (4) ~~[(3)]~~ a reasonable margin for profit and
17-12 contingencies; and

17-13 (5) ~~[(4)]~~ all other relevant factors, within and
17-14 outside this state.

17-15 (h) The association may establish rating territories and
17-16 may vary rates among the territories.

17-17 SECTION 36. Subsection (b), Section 2210.361, Insurance
17-18 Code, is amended to read as follows:

17-19 (b) After notice and hearing, the commissioner may accept~~[,]~~
17-20 ~~modify,~~ or reject a recommendation made by the association under
17-21 this section. ~~[Chapter 40 does not apply to an action taken under~~
17-22 ~~this section.]~~

17-23 SECTION 37. Subchapter H, Chapter 2210, Insurance Code, is
17-24 amended by adding Section 2210.364 to read as follows:

17-25 Sec. 2210.364. AUTOMATIC RATE INCREASES. (a) In addition
17-26 to any increases made under a rate filing made under this
17-27 subchapter, each rate used by the association for an initial policy
17-28 or renewal of a policy issued by the association automatically
17-29 increases 10 percent on each of the following dates:

17-30 (1) January 1, 2010;

17-31 (2) January 1, 2011; and

17-32 (3) January 1, 2012.

17-33 (b) A rate increase under Subsection (a) takes effect for
17-34 all purposes on the date on which the rate is increased under
17-35 Subsection (a).

17-36 (c) A rate increase under this section is presumed to be
17-37 justified.

17-38 SECTION 38. Subsections (a), (c), and (d), Section
17-39 2210.452, Insurance Code, are amended to read as follows:

17-40 (a) The commissioner shall adopt rules under which the
17-41 association makes ~~[members relinquish their net equity on an annual~~
17-42 ~~basis as provided by those rules by making]~~ payments to the
17-43 catastrophe reserve trust fund. The trust fund may be used only to
17-44 fund~~+~~

17-45 ~~[(1)]~~ the obligations of the trust fund under
17-46 ~~Subchapter B-1 [Section 2210.058(a); and~~

17-47 ~~[(2)] the mitigation and preparedness plan established~~
17-48 ~~under Section 2210.454 to reduce the potential for payments by~~
17-49 ~~association members that give rise to tax credits in the event of~~
17-50 ~~loss].~~

17-51 (c) At the end of each calendar year or policy year, the
17-52 association shall use [pay] the net gain from operations [equity]
17-53 of the association [a member], including all premium and other
17-54 revenue of the association in excess of incurred losses and
17-55 operating expenses, to make payments to the trust fund, to procure
17-56 [or a] reinsurance, or to make payments to the trust fund and to
17-57 procure reinsurance [program approved by the commissioner].

17-58 (d) The commissioner by rule shall establish the procedure
17-59 relating to the disbursement of money from the trust fund to
17-60 policyholders in the event of an occurrence or series of
17-61 occurrences within a catastrophe area that results in a
17-62 disbursement under Subchapter B-1 [Section 2210.058(a)].

17-63 SECTION 39. Section 2210.453, Insurance Code, is amended to
17-64 read as follows:

17-65 Sec. 2210.453. REINSURANCE [PROGRAM]. (a) The
17-66 association may [shall]:

17-67 (1) make payments into the trust fund; and [or]

17-68 (2) purchase [establish a] reinsurance [program
17-69 approved by the department].

18-1 (b) The [With the approval of the department, the]
 18-2 association may purchase [establish a] reinsurance [program] that
 18-3 operates in addition to or in concert with the trust fund, public
 18-4 securities, financial instruments, and assessments authorized by
 18-5 this chapter.

18-6 SECTION 40. Subsection (b), Section 2210.454, Insurance
 18-7 Code, is amended to read as follows:

18-8 (b) Each state fiscal year, the department may fund the
 18-9 mitigation and preparedness plan using available funds [the
 18-10 investment income of the trust fund in an amount not less than \$1
 18-11 million and not more than 10 percent of the investment income of the
 18-12 prior fiscal year. From that amount and as part of that plan, the
 18-13 department may use in each fiscal year \$1 million for the windstorm
 18-14 inspection program established under Section 2210.251].

18-15 SECTION 41. Section 2210.552, Insurance Code, is amended to
 18-16 read as follows:

18-17 Sec. 2210.552. CLAIM DISPUTES; VENUE. (a) Except as
 18-18 provided by Sections 2210.007 and 2210.106, a person insured under
 18-19 this chapter who is aggrieved by an act, ruling, or decision of the
 18-20 association relating to the payment of, the amount of, or the denial
 18-21 of a claim may:

18-22 (1) bring an action for policy benefits against the
 18-23 association[, including an action under Chapter 541]; or

18-24 (2) appeal [the act, ruling, or decision] under
 18-25 Section 2210.551.

18-26 (b) The remedies provided by Subsection (a) and Section
 18-27 2210.551 are exclusive. A person may not proceed under both
 18-28 Section 2210.551 and this section for the same act, ruling, or
 18-29 decision.

18-30 (c) Venue [Except as provided by Subsection (d), venue] in
 18-31 an action brought under this section[, including an action under
 18-32 Chapter 541,] against the association is in the county in which the
 18-33 insured property is located or in a district court in Travis County.

18-34 [(d) Venue in an action, including an action under Chapter
 18-35 541, brought under this section in which the claimant joins the
 18-36 department as a party to the action is only in a district court in
 18-37 Travis County.]

18-38 SECTION 42. Chapter 2210, Insurance Code, is amended by
 18-39 adding Subchapter M to read as follows:

18-40 SUBCHAPTER M. PUBLIC SECURITIES PROGRAM

18-41 Sec. 2210.601. PURPOSE. The legislature finds that
 18-42 authorizing the issuance of public securities to provide a method
 18-43 to raise funds to provide windstorm and hail insurance through the
 18-44 association in certain designated portions of the state is for the
 18-45 benefit of the public and in furtherance of a public purpose.

18-46 Sec. 2210.602. DEFINITIONS. In this subchapter:

18-47 (1) "Board" means the board of directors of the Texas
 18-48 Public Finance Authority.

18-49 (2) "Class 1 public securities" means public
 18-50 securities authorized to be issued before the occurrence of a
 18-51 catastrophic event by Section 2210.074.

18-52 (3) "Class 2 public securities" means public
 18-53 securities authorized to be issued on or after the occurrence of a
 18-54 catastrophic event by Section 2210.075, 2210.077, or 2210.078.

18-55 (4) "Credit agreement" has the meaning assigned by
 18-56 Chapter 1371, Government Code.

18-57 (5) "Insurer" means each property and casualty insurer
 18-58 authorized to engage in the business of property and casualty
 18-59 insurance in this state and an affiliate of such an insurer, as
 18-60 described by Section 823.003, including an affiliate that is not
 18-61 authorized to engage in the business of property and casualty
 18-62 insurance in this state. The term specifically includes a county
 18-63 mutual insurance company, a Lloyd's plan, and a reciprocal or
 18-64 interinsurance exchange.

18-65 (6) "Public security" means a debt instrument or other
 18-66 public security issued by the Texas Public Finance Authority.

18-67 (7) "Public security administrative expenses" means
 18-68 expenses incurred to administer public securities issued under this
 18-69 subchapter, including fees for paying agents, trustees, and

19-1 attorneys, and for other professional services necessary to ensure
 19-2 compliance with applicable state or federal law.

19-3 (8) "Public security obligations" means the principal
 19-4 of a public security and any premium and interest on a public
 19-5 security issued under this subchapter, together with any amount
 19-6 owed under a related credit agreement.

19-7 (9) "Public security obligation revenue fund" means
 19-8 the dedicated trust fund established by the association outside the
 19-9 state treasury under this subchapter.

19-10 (10) "Public security resolution" means the
 19-11 resolution or order authorizing public securities to be issued
 19-12 under this subchapter.

19-13 Sec. 2210.603. APPLICABILITY OF OTHER LAWS. The board
 19-14 shall issue the public securities as described by Section 2210.604
 19-15 in accordance with and subject to the requirements of Chapter 1232,
 19-16 Government Code, and other provisions of Title 9, Government Code,
 19-17 that apply to issuance of a public security by a state agency. In
 19-18 the event of a conflict, this subchapter controls.

19-19 Sec. 2210.604. ISSUANCE OF PUBLIC SECURITIES AUTHORIZED.
 19-20 (a) At the request of the association and with the approval of the
 19-21 commissioner, the Texas Public Finance Authority shall issue Class
 19-22 1 or Class 2 public securities.

19-23 (b) The association shall specify in the association's
 19-24 request to the board the maximum principal amount of the public
 19-25 securities and the maximum term of the public securities.

19-26 (c) The principal amount determined by the association
 19-27 under Subsection (b) may be increased to include an amount
 19-28 sufficient to:

19-29 (1) pay the costs related to issuance of the public
 19-30 securities;

19-31 (2) provide a public security reserve fund; and

19-32 (3) capitalize interest for the period determined
 19-33 necessary by the association, not to exceed two years.

19-34 Sec. 2210.605. TERMS OF ISSUANCE. (a) The board shall
 19-35 determine the method of sale, type and form of public security,
 19-36 maximum interest rates, and other terms of the public securities
 19-37 that, in the board's judgment, best achieve the goals of the
 19-38 association and effect the borrowing at the lowest practicable
 19-39 cost. The board may enter into a credit agreement in connection
 19-40 with the public securities.

19-41 (b) Public securities must be issued in the name of the
 19-42 association.

19-43 Sec. 2210.606. ADDITIONAL COVENANTS. The board may make
 19-44 additional covenants with respect to the public securities and the
 19-45 designated income and receipts of the association pledged to their
 19-46 payment, and provide for the flow of funds and the establishment,
 19-47 maintenance, and investment of funds and accounts with respect to
 19-48 the public securities, and the administration of those funds and
 19-49 accounts, as provided in the proceedings authorizing the public
 19-50 securities.

19-51 Sec. 2210.607. PUBLIC SECURITY PROCEEDS. The proceeds of
 19-52 public securities issued by the board under this subchapter may be
 19-53 deposited with a trustee selected by the association in
 19-54 consultation with the commissioner or held by the comptroller in a
 19-55 dedicated trust fund outside the state treasury in the custody of
 19-56 the comptroller.

19-57 Sec. 2210.608. USE OF PUBLIC SECURITY PROCEEDS.
 19-58 (a) Public security proceeds, including investment income, shall
 19-59 be held in trust for the exclusive use and benefit of the
 19-60 association. The association may use the proceeds to:

19-61 (1) pay incurred claims and operating expenses of the
 19-62 association;

19-63 (2) purchase reinsurance for the association;

19-64 (3) pay the costs of issuing the public securities,
 19-65 and public security administrative expenses, if any;

19-66 (4) provide a public security reserve; and

19-67 (5) pay capitalized interest and principal on the
 19-68 public securities for the period determined necessary by the
 19-69 association.

20-1 (b) Any excess public security proceeds remaining after the
 20-2 purposes for which the public securities were issued are satisfied
 20-3 may be used to purchase or redeem outstanding public securities. If
 20-4 there are no outstanding public security obligations or public
 20-5 security administrative expenses, the excess proceeds shall be
 20-6 transferred to the catastrophe reserve trust fund.

20-7 Sec. 2210.609. REPAYMENT OF ASSOCIATION'S PUBLIC SECURITY
 20-8 OBLIGATIONS. (a) The association shall pay all public security
 20-9 obligations from available funds collected by the association and
 20-10 deposited into the public security obligation revenue fund. If the
 20-11 association determines that it is unable to pay the public security
 20-12 obligations and public security administrative expenses, if any,
 20-13 with available funds, the association shall pay those obligations
 20-14 and expenses in accordance with Sections 2210.612 and 2210.613, as
 20-15 applicable.

20-16 (b) The board shall notify the association of the amount of
 20-17 the public security obligations and the estimated amount of public
 20-18 security administrative expenses, if any, each year in a period
 20-19 sufficient, as determined by the association, to permit the
 20-20 association to determine the availability of funds and assess a
 20-21 premium surcharge if necessary.

20-22 (c) The association shall deposit all revenue collected
 20-23 under Sections 2210.612 and 2210.613 in the public security
 20-24 obligation revenue fund. Money deposited in the fund may be
 20-25 invested as permitted by general law. Money in the fund required to
 20-26 be used to pay public security obligations and public security
 20-27 administrative expenses, if any, shall be transferred to the
 20-28 appropriate funds in the manner and at the time specified in the
 20-29 proceedings authorizing the public securities to ensure timely
 20-30 payment of obligations and expenses.

20-31 (d) The association shall provide for the payment of the
 20-32 public security obligations and the public security administrative
 20-33 expenses by irrevocably pledging revenues received from premiums,
 20-34 premium surcharges, and amounts on deposit in the public security
 20-35 obligation revenue fund, together with any public security reserve
 20-36 fund, as provided in the proceedings authorizing the public
 20-37 securities and related credit agreements.

20-38 (e) An amount owed by the board under a credit agreement
 20-39 shall be payable from and secured by a pledge of revenues received
 20-40 by the association or amounts from the obligation trust fund to the
 20-41 extent provided in the proceedings authorizing the credit
 20-42 agreement.

20-43 Sec. 2210.610. PUBLIC SECURITY PAYMENTS. (a) Revenues
 20-44 received from the premium surcharges under Section 2210.612 or
 20-45 2210.613 may be applied only as provided by this subchapter.

20-46 (b) The association may pay public security obligations
 20-47 with other legally available funds.

20-48 (c) Public security obligations are payable only from
 20-49 sources provided for payment in this subchapter.

20-50 Sec. 2210.611. EXCESS REVENUE COLLECTIONS AND INVESTMENT
 20-51 EARNINGS. Revenue collected in any year from a premium surcharge
 20-52 under Section 2210.612 or 2210.613 that exceeds the amount of the
 20-53 public security obligations and public security administrative
 20-54 expenses payable in that year and interest earned on the public
 20-55 security obligation fund may, in the discretion of the association,
 20-56 be:

20-57 (1) used to pay public security obligations payable in
 20-58 the subsequent year, offsetting the amount of the premium surcharge
 20-59 that would otherwise be required to be levied for the year under
 20-60 this subchapter;

20-61 (2) used to redeem or purchase outstanding public
 20-62 securities; or

20-63 (3) deposited in the catastrophe reserve trust fund.

20-64 Sec. 2210.612. CLASS 1 PREMIUM SURCHARGE; REPAYMENT OF
 20-65 AMOUNTS OWED UNDER FINANCIAL INSTRUMENTS. (a) Each insurer, the
 20-66 association, and the Texas FAIR Plan Association shall collect from
 20-67 their policyholders a surcharge in addition to any premiums to pay:

20-68 (1) public security obligations and public security
 20-69 administrative expenses, if any, on Class 1 public securities; and

21-1 (2) principal and interest on any financial
 21-2 instruments entered into by the association under Section 2210.074.

21-3 (b) The association shall determine the premium surcharge
 21-4 at least annually.

21-5 (c) On approval by the commissioner, each insurer, the
 21-6 association, and the Texas FAIR Plan Association shall assess a
 21-7 premium surcharge to its policyholders as provided by this section.
 21-8 The premium surcharge must be set in an amount sufficient to pay all
 21-9 debt service not already covered by available funds and all related
 21-10 expenses on the public securities or financial instruments, as
 21-11 applicable. The premium surcharge shall be assessed on all
 21-12 policyholders who reside or have operations in, or whose insured
 21-13 property is located in a catastrophe area.

21-14 (d) The percent of premium assessed as surcharges to all
 21-15 policies issued or renewed by the association must be at least twice
 21-16 the percent of premium assessed as surcharges to all other
 21-17 policies.

21-18 (e) The association shall collect the premium surcharge
 21-19 from its policyholders. Each insurer and the Texas FAIR Plan
 21-20 Association shall collect the premium surcharge from their affected
 21-21 policyholders and shall remit the premium surcharge to the
 21-22 association as required by commissioner rule.

21-23 (f) A premium surcharge under this section shall apply to
 21-24 all policies that provide coverage on any premises, locations,
 21-25 operations, or property located in the area described by Subsection
 21-26 (c) for all property and casualty lines of insurance, other than
 21-27 federal flood insurance, workers' compensation insurance, accident
 21-28 and health insurance, and medical malpractice insurance.

21-29 (g) A premium surcharge under this section is a separate
 21-30 nonrefundable charge in addition to the premiums collected and is
 21-31 not subject to premium tax or commissions. Failure to pay the
 21-32 surcharge by a policyholder constitutes failure to pay premium for
 21-33 purposes of policy cancellation.

21-34 Sec. 2210.613. CLASS 2 PREMIUM SURCHARGE; REPAYMENT OF
 21-35 AMOUNTS OWED UNDER FINANCIAL INSTRUMENTS. (a) Each insurer, the
 21-36 association, and the Texas FAIR Plan Association shall collect from
 21-37 their policyholders a premium surcharge to pay:

21-38 (1) public security obligations and public security
 21-39 administrative expenses, if any, on Class 2 public securities
 21-40 issued under Section 2210.075;

21-41 (2) public security obligations and public security
 21-42 administrative expenses, if any, on Class 2 public securities
 21-43 issued under Section 2210.077;

21-44 (3) public security obligations and public security
 21-45 administrative expenses, if any, on Class 2 public securities
 21-46 issued under Section 2210.078;

21-47 (4) principal and interest on financial instruments
 21-48 entered into by the association under Section 2210.075; or

21-49 (5) principal and interest on financial instruments
 21-50 entered into by the association under Section 2210.077.

21-51 (b) The association shall determine the premium surcharge
 21-52 at least annually.

21-53 (c) On approval by the commissioner, each insurer, the
 21-54 association, and the Texas FAIR Plan Association shall assess a
 21-55 premium surcharge to its policyholders as provided by this section.
 21-56 The premium surcharge must be set in an amount sufficient to pay all
 21-57 debt service and all related expenses on the public securities or
 21-58 financial instruments, as applicable.

21-59 (d) Each insurer, the association, and the Texas FAIR Plan
 21-60 Association shall collect the premium surcharge under this section
 21-61 from their policyholders who have a property or casualty policy
 21-62 that provides coverage for premises, locations, operations, or
 21-63 property located in this state, and shall remit the premium
 21-64 surcharge to the association as required by commissioner rule.

21-65 (e) A premium surcharge under this section shall apply to
 21-66 all policies that provide coverage on any premises, locations,
 21-67 operations, or property located in this state for all property and
 21-68 casualty lines of insurance, other than federal flood insurance,
 21-69 workers' compensation insurance, accident and health insurance,

22-1 and medical malpractice insurance. The premium surcharge does not
 22-2 apply to premiums charged for any premises, locations, operations,
 22-3 or property located outside this state.

22-4 (f) Seventy percent of a premium surcharge assessed under
 22-5 Subsection (a)(1), (2), (4), or (5) must be assessed on
 22-6 policyholders who have a property or casualty policy that provides
 22-7 coverage for premises, locations, operations, or property located
 22-8 in a catastrophe area.

22-9 (g) With respect to the premium surcharge assessed under
 22-10 Subsection (a)(1), (2), (4), or (5) in accordance with Subsection
 22-11 (f), the percent of premium assessed as surcharges to all policies
 22-12 issued or renewed by the association must be at least twice the
 22-13 percent of premium assessed as surcharges to all other new or
 22-14 renewal policies.

22-15 (h) A premium surcharge under this section is a separate
 22-16 nonrefundable charge in addition to the premiums collected and is
 22-17 not subject to premium tax or commissions. Failure to pay the
 22-18 surcharge by a policyholder constitutes failure to pay premium for
 22-19 purposes of policy cancellation.

22-20 Sec. 2210.614. REFINANCING PUBLIC SECURITIES. The
 22-21 association may request the board to refinance any public
 22-22 securities issued in accordance with Subchapter B-1, whether Class
 22-23 1 or Class 2 public securities, with the refinanced public
 22-24 securities payable from the same sources as the original public
 22-25 securities.

22-26 Sec. 2210.615. SOURCE OF PAYMENT; STATE DEBT NOT CREATED.
 22-27 (a) A public security or credit agreement is payable solely from
 22-28 revenue as provided by this subchapter.

22-29 (b) A public security issued under this subchapter, and any
 22-30 related credit agreement, is not a debt of this state or any state
 22-31 agency or political subdivision of this state, and does not
 22-32 constitute a pledge of the faith and credit of this state or any
 22-33 state agency or political subdivision of this state.

22-34 (c) Each public security, and any related credit agreement,
 22-35 issued under this subchapter must state on the security's face
 22-36 that:

22-37 (1) neither the state nor a state agency, political
 22-38 corporation, or political subdivision of the state is obligated to
 22-39 pay the principal of or interest on the public security except as
 22-40 provided by this subchapter; and

22-41 (2) neither the faith and credit nor the taxing power
 22-42 of the state or any state agency, political corporation, or
 22-43 political subdivision of the state is pledged to the payment of the
 22-44 principal of or interest on the public security.

22-45 Sec. 2210.616. STATE NOT TO IMPAIR PUBLIC SECURITY
 22-46 OBLIGATIONS. If public securities under this subchapter are
 22-47 outstanding, the state may not:

22-48 (1) take action to limit or restrict the rights of the
 22-49 association to fulfill its responsibility to pay public security
 22-50 obligations; or

22-51 (2) in any way impair the rights and remedies of the
 22-52 public security owners until the public securities are fully
 22-53 discharged.

22-54 Sec. 2210.617. ENFORCEMENT BY MANDAMUS. A writ of mandamus
 22-55 and any other legal and equitable remedies are available to a party
 22-56 at interest to require the association or another party to fulfill
 22-57 an agreement and to perform functions and duties under:

22-58 (1) this subchapter;

22-59 (2) the Texas Constitution; or

22-60 (3) a relevant public security resolution.

22-61 Sec. 2210.618. EXEMPTION FROM TAXATION. A public security
 22-62 issued under this subchapter, any transaction relating to the
 22-63 public security, and profits made from the sale of the public
 22-64 security are exempt from taxation by this state or by a municipality
 22-65 or other political subdivision of this state.

22-66 Sec. 2210.619. NO PERSONAL LIABILITY. The members of the
 22-67 association, members of the association board of directors,
 22-68 association employees, the board, the employees of the Texas Public
 22-69 Finance Authority, the commissioner, and department employees are

23-1 not personally liable as a result of exercising the rights and
23-2 responsibilities granted under this subchapter.

23-3 Sec. 2210.620. AUTHORIZED INVESTMENTS. Public securities
23-4 issued under this subchapter are authorized investments under:

- 23-5 (1) Subchapter B, Chapter 424;
- 23-6 (2) Subchapter C, Chapter 425; and
- 23-7 (3) Sections 425.203-425.213.

23-8 SECTION 43. Section 941.003, Insurance Code, is amended by
23-9 adding Subsection (e) to read as follows:

23-10 (e) A Lloyd's plan is subject to Chapter 2210, as provided
23-11 by that chapter.

23-12 SECTION 44. Section 942.003, Insurance Code, is amended by
23-13 adding Subsection (f) to read as follows:

23-14 (f) An exchange is subject to Chapter 2210, as provided by
23-15 that chapter.

23-16 SECTION 45. The following laws are repealed:

- 23-17 (1) Subdivisions (5) and (12), Section 2210.003,
23-18 Insurance Code;
- 23-19 (2) Sections 2210.058 and 2210.059, Insurance Code;
- 23-20 (3) Sections 2210.205 and 2210.206, Insurance Code;
- 23-21 (4) Sections 2210.256 and 2210.257, Insurance Code;
- 23-22 (5) Sections 2210.356, 2210.359, 2210.360, and
23-23 2210.363, Insurance Code; and
- 23-24 (6) Subchapter G, Chapter 2210, Insurance Code.

23-25 SECTION 46. (a) The board of directors of the Texas
23-26 Windstorm Insurance Association established under Section
23-27 2210.102, Insurance Code, as that section existed before amendment
23-28 by this Act, is abolished effective December 31, 2009.

23-29 (b) The commissioner of insurance shall appoint the members
23-30 of the board of directors of the Texas Windstorm Insurance
23-31 Association under Section 2210.102, Insurance Code, as amended by
23-32 this Act, not later than December 31, 2009.

23-33 (c) The term of a person who is serving as a member of the
23-34 board of directors of the Texas Windstorm Insurance Association
23-35 immediately before the abolition of that board under Subsection (a)
23-36 of this section expires on December 31, 2009. Such a person is
23-37 eligible for appointment by the commissioner of insurance to the
23-38 new board of directors of the Texas Windstorm Insurance Association
23-39 under Section 2210.102, Insurance Code, as amended by this Act.

23-40 SECTION 47. (a) The commissioner of insurance shall adopt
23-41 rules as required by Chapter 2210, Insurance Code, as amended by
23-42 this Act, as soon as possible after the effective date of this Act,
23-43 but not later than the 30th day after the effective date of this
23-44 Act.

23-45 (b) The Texas Windstorm Insurance Association, through the
23-46 board of directors of that association, shall propose to the
23-47 commissioner of insurance amendments to the association's plan of
23-48 operation as required by Chapter 2210, Insurance Code, as amended
23-49 by this Act, not later than March 1, 2010.

23-50 SECTION 48. Sections 2210.202 and 2210.203, Insurance Code,
23-51 as amended by this Act, apply to an application for insurance
23-52 coverage submitted to the Texas Windstorm Insurance Association on
23-53 or after the effective date of this Act.

23-54 SECTION 49. Section 2210.251, Insurance Code, as amended by
23-55 this Act, applies to an inspection conducted by the Texas Windstorm
23-56 Insurance Association on or after September 1, 2009. Except as
23-57 otherwise specifically provided by that section, a structure that
23-58 has been inspected and is the subject of a certificate of compliance
23-59 issued by the Texas Department of Insurance under Subsection (g),
23-60 Section 2210.251, Insurance Code, as that section existed
23-61 immediately before September 1, 2009, is not required to obtain an
23-62 inspection certificate from the Texas Windstorm Insurance
23-63 Association to remain eligible for insurance coverage through that
23-64 association unless the structure is altered, remodeled, enlarged,
23-65 or repaired on or after September 1, 2009.

23-66 SECTION 50. The changes in law made by this Act in amending
23-67 Sections 2210.251, 2210.254, and 2210.255, Insurance Code, adding
23-68 Section 2210.2565, Insurance Code, and repealing Section 2210.256,
23-69 Insurance Code, take effect September 1, 2009.

24-1 SECTION 51. (a) The Texas Windstorm Insurance Association
24-2 shall assess its members for the 2009 reserves solvency assessment
24-3 under Section 2210.071, Insurance Code, as added by this Act, not
24-4 later than the 30th day after the effective date of this Act.

24-5 (b) The Texas Windstorm Insurance Association shall assess
24-6 its members for the 2010 reserves solvency assessment under Section
24-7 2210.071, Insurance Code, as added by this Act, not later than
24-8 January 1, 2010.

24-9 (c) The initial premium surcharge assessed under Section
24-10 2210.071, Insurance Code, as added by this Act, must be remitted to
24-11 the Texas Windstorm Insurance Association not later than the 60th
24-12 day after the effective date of this Act.

24-13 SECTION 52. Section 2210.552, Insurance Code, as amended by
24-14 this Act, applies to a cause of action that accrues on or after the
24-15 effective date of this Act. A cause of action that accrues before
24-16 the effective date of this Act is governed by the law as it exists
24-17 immediately before that date, and that law is continued in effect
24-18 for that purpose.

24-19 SECTION 53. The amount of \$500 million is appropriated for
24-20 use during fiscal year 2009 from the general revenue fund to the
24-21 comptroller of public accounts to be used, subject to the prior
24-22 written approval of the governor and the Legislative Budget Board,
24-23 to provide emergency financing to the commissioner of insurance for
24-24 the support of the financial integrity of the Texas Windstorm
24-25 Insurance Association consistent with rules adopted by the
24-26 commissioner of insurance as provided under this Act and consistent
24-27 with the law of this state.

24-28 SECTION 54. Except as otherwise provided by this Act, this
24-29 Act takes effect immediately if it receives a vote of two-thirds of
24-30 all the members elected to each house, as provided by Section 39,
24-31 Article III, Texas Constitution. If this Act does not receive the
24-32 vote necessary for immediate effect, this Act takes effect
24-33 September 1, 2009.

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