

SENATE AMENDMENTS

2nd Printing

By: Taylor, Eiland

H.B. No. 4409

A BILL TO BE ENTITLED

AN ACT

relating to emergency preparation and management.

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

SECTION 1. Subchapter A, Chapter 418, Government Code, is amended by adding Section 418.006 to read as follows:

Sec. 418.006. CIVIL LIABILITY. An officer or employee of a state or local agency, or a volunteer acting at the direction of an officer or employee of a state or local agency, is considered for purposes of Section 431.085 to be a member of the state military forces ordered into active service of the state by proper authority and is considered to be discharging a duty in that capacity if the person is performing an activity related to sheltering or housing individuals in connection with the evacuation of an area stricken or threatened by disaster.

SECTION 2. Section 418.043, Government Code, is amended to read as follows:

Sec. 418.043. OTHER POWERS AND DUTIES. The division shall:

(1) determine requirements of the state and its political subdivisions for food, clothing, and other necessities in event of a disaster;

(2) procure and position supplies, medicines, materials, and equipment;

(3) adopt standards and requirements for local and interjurisdictional emergency management plans;

1 (4) periodically review local and interjurisdictional
2 emergency management plans;

3 (5) coordinate deployment of mobile support units;

4 (6) establish and operate training programs and
5 programs of public information or assist political subdivisions and
6 emergency management agencies to establish and operate the
7 programs;

8 (7) make surveys of public and private industries,
9 resources, and facilities in the state that are necessary to carry
10 out the purposes of this chapter;

11 (8) plan and make arrangements for the availability
12 and use of any private facilities, services, and property and
13 provide for payment for use under terms and conditions agreed on if
14 the facilities are used and payment is necessary;

15 (9) establish a register of persons with types of
16 training and skills important in disaster mitigation,
17 preparedness, response, and recovery;

18 (10) establish a register of mobile and construction
19 equipment and temporary housing available for use in a disaster;

20 (11) assist political subdivisions in developing
21 plans for the humane evacuation, transport, and temporary
22 sheltering of service animals and household pets in a disaster;

23 (12) prepare, for issuance by the governor, executive
24 orders and regulations necessary or appropriate in coping with
25 disasters;

26 (13) cooperate with the federal government and any
27 public or private agency or entity in achieving any purpose of this

1 chapter and in implementing programs for disaster mitigation,
2 preparation, response, and recovery; ~~and~~

3 (14) define "individuals with special needs" in the
4 context of a disaster;

5 (15) do other things necessary, incidental, or
6 appropriate for the implementation of this chapter; and

7 (16) in coordination with the Texas Commission on
8 Environmental Quality, adopt rules to require a retail public
9 utility that serves customers in a county any territory of which is
10 located not more than 100 miles from the Gulf of Mexico to adopt and
11 submit to the commission for its approval an emergency preparedness
12 plan that ensures that, in the event of a local power outage during
13 the next year, the retail public utility maintains the ability to
14 provide water to the local distribution system with at least the
15 minimum water pressure required under commission rules and sewer
16 services to all existing customers.

17 (A) An emergency preparedness plan must provide
18 for:

19 (i) the maintenance of automatically
20 starting auxiliary generators for that purpose. If a retail public
21 utility's emergency preparedness plan provides for the maintenance
22 of automatically starting auxiliary generators, the retail public
23 utility must include with the plan a proposed schedule for the
24 regular servicing, testing, and operation of the generators that
25 complies with commission rules. A retail public utility that
26 maintains auxiliary generators shall maintain a log of the regular
27 servicing, testing, and operation of the generators and shall

1 submit a copy of the log to the commission with its yearly emergency
2 preparedness plan. The commission may inspect the log at any time
3 before the retail public utility submits the log to the commission;
4 or

5 (ii) the retail public utility's
6 participation in a recognized statewide mutual aid program, if the
7 commission finds that the utility's participation in the program
8 will provide the utility with access to auxiliary generators and
9 other necessary aid or equipment sufficient for the utility to
10 restore service not later than the 36th hour after the hour the
11 local power outage begins.

12 (B) The commission may impose an administrative
13 penalty on a person licensed under this chapter who violates this
14 section or a rule or order adopted under this section. The
15 commission by rule shall prescribe standards relating to the
16 servicing, testing, and operation of auxiliary power generators
17 used in the implementation of an emergency preparedness plan.

18 SECTION 3. Subchapter F, Chapter 418, Government Code, is
19 amended by adding Section 418.126 to read as follows:

20 Sec. 418.126. PRE-EVENT DISASTER RESPONSE CONTRACTS. (a)
21 The General Land Office shall solicit proposals for and enter into
22 one or more pre-event contracts that may be activated by the office
23 in the event of a weather-related disaster declaration to obtain
24 services for debris removal from beaches as needed following the
25 disaster.

26 (b) The Texas Department of Transportation shall solicit
27 proposals for and enter into one or more pre-event contracts that

1 may be activated by the department in the event of a weather-related
2 disaster declaration to obtain services for debris removal from the
3 state highway system as needed following the disaster.

4 (c) The Texas Department of Housing and Community Affairs
5 shall solicit proposals for and enter into one or more pre-event
6 contracts that may be activated by the department in the event of a
7 weather-related disaster declaration to obtain temporary or
8 emergency housing as needed following the disaster.

9 (d) Services obtained under a pre-event contract under this
10 section shall be paid for with money from the disaster contingency
11 fund under Section 418.073.

12 SECTION 4. Not later than January 1, 2010, the relevant
13 state agencies shall adopt the contracts required by Section
14 418.126, Government Code, as added by this Act.

15 SECTION 5. This Act takes effect September 1, 2009.

ADOPTED

MAY 27 2009

Letty Spaul
Secretary of the Senate

By: Jackson / Taylor

H.B. No. 4409

Substitute the following for H.B. No. 4409:

By: Wentworth

C.S. H.B. No. 4409

A BILL TO BE ENTITLED

AN ACT

1
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3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. Subchapter A, Chapter 418, Government Code, is
5 amended by adding Section 418.006 to read as follows:

6 Sec. 418.006. CIVIL LIABILITY. An officer or employee of a
7 state or local agency, or a volunteer acting at the direction of an
8 officer or employee of a state or local agency, is considered for
9 purposes of Section 431.085 to be a member of the state military
10 forces ordered into active service of the state by proper authority
11 and is considered to be discharging a duty in that capacity if the
12 person is performing an activity related to sheltering or housing
13 individuals in connection with the evacuation of an area stricken
14 or threatened by disaster.

15 SECTION 2. Section 418.043, Government Code, is amended to
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22 materials, and equipment;

23 (3) adopt standards and requirements for local and
24 interjurisdictional emergency management plans;

- 1 (4) periodically review local and interjurisdictional
2 emergency management plans;
- 3 (5) coordinate deployment of mobile support units;
- 4 (6) establish and operate training programs and
5 programs of public information or assist political subdivisions and
6 emergency management agencies to establish and operate the
7 programs;
- 8 (7) make surveys of public and private industries,
9 resources, and facilities in the state that are necessary to carry
10 out the purposes of this chapter;
- 11 (8) plan and make arrangements for the availability
12 and use of any private facilities, services, and property and
13 provide for payment for use under terms and conditions agreed on if
14 the facilities are used and payment is necessary;
- 15 (9) establish a register of persons with types of
16 training and skills important in disaster mitigation,
17 preparedness, response, and recovery;
- 18 (10) establish a register of mobile and construction
19 equipment and temporary housing available for use in a disaster;
- 20 (11) assist political subdivisions in developing
21 plans for the humane evacuation, transport, and temporary
22 sheltering of service animals and household pets in a disaster;
- 23 (12) prepare, for issuance by the governor, executive
24 orders and regulations necessary or appropriate in coping with
25 disasters;
- 26 (13) cooperate with the federal government and any
27 public or private agency or entity in achieving any purpose of this

1 chapter and in implementing programs for disaster mitigation,
2 preparation, response, and recovery; [~~and~~]

3 (14) define "individuals with special needs" in the
4 context of a disaster; and

5 (15) do other things necessary, incidental, or
6 appropriate for the implementation of this chapter.

7 SECTION 3. Subchapter F, Chapter 418, Government Code, is
8 amended by adding Section 418.126 to read as follows:

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13 services for debris removal from beaches as needed following the
14 disaster.

15 (b) The Texas Department of Transportation shall solicit
16 proposals for and enter into one or more pre-event contracts that
17 may be activated by the department in the event of a weather-related
18 disaster declaration to obtain services for debris removal from the
19 state highway system as needed following the disaster.

20 (c) The Texas Department of Housing and Community Affairs
21 shall solicit proposals for and enter into one or more pre-event
22 contracts that may be activated by the department in the event of a
23 weather-related disaster declaration to obtain temporary or
24 emergency housing as needed following the disaster.

25 (d) Services obtained under a pre-event contract under this
26 section may be paid for with money from the disaster contingency
27 fund under Section 418.073.

1 SECTION 4. Subtitle G, Title 10, Government Code, is
2 amended by adding Chapter 2311 to read as follows:

3 CHAPTER 2311. ENERGY SECURITY TECHNOLOGIES FOR CRITICAL
4 GOVERNMENTAL FACILITIES

5 Sec. 2311.001. DEFINITIONS. In this chapter:

6 (1) "Combined heating and power system" means a system
7 that:

8 (A) is located on the site of a facility;

9 (B) is the primary source of both electricity and
10 thermal energy for the facility;

11 (C) can provide all of the electricity needed to
12 power the facility's critical emergency operations for at least 14
13 days; and

14 (D) has an overall efficiency of energy use that
15 exceeds 60 percent.

16 (2) "Critical governmental facility" means a building
17 owned by the state or a political subdivision of the state that is
18 expected to:

19 (A) be continuously occupied;

20 (B) maintain operations for at least 6,000 hours
21 each year;

22 (C) have a peak electricity demand exceeding 500
23 kilowatts; and

24 (D) serve a critical public health or public
25 safety function during a natural disaster or other emergency
26 situation that may result in a widespread power outage, including
27 a:

- 1 (i) command and control center;
2 (ii) shelter;
3 (iii) prison or jail;
4 (iv) police or fire station;
5 (v) communications or data center;
6 (vi) water or wastewater facility;
7 (vii) hazardous waste storage facility;
8 (viii) biological research facility;
9 (ix) hospital; or
10 (x) food preparation or food storage
11 facility.

12 Sec. 2311.002. COMBINED HEATING AND POWER SYSTEMS. When
13 constructing or extensively renovating a critical governmental
14 facility or replacing major heating, ventilation, and
15 air-conditioning equipment for a critical governmental facility,
16 the entity with charge and control of the facility shall evaluate
17 whether equipping the facility with a combined heating and power
18 system would result in expected energy savings that would exceed
19 the expected costs of purchasing, operating, and maintaining the
20 system over a 20-year period. The entity may equip the facility
21 with a combined heating and power system if the expected energy
22 savings exceed the expected costs.

23 SECTION 5. Not later than January 1, 2010, the relevant
24 state agencies shall adopt the contracts required by Section
25 418.126, Government Code, as added by this Act.

26 SECTION 6. This Act takes effect September 1, 2009.

ADOPTED

MAY 27 2009

FLOOR AMENDMENT NO. 1

Atay Spaul
Secretary of the Senate

BY: *Jackson*

1 Amend H.B. No. 4409 by adding the following SECTIONS to
2 the bill, appropriately numbered, and renumbering the SECTIONS
3 of the bill accordingly:

4 SECTION ____ . Section 2210.001, Insurance Code, is amended
5 to read as follows:

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

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

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

24 SECTION ____ . Section 2210.002, Insurance Code, is amended
25 to read as follows:

26 Sec. 2210.002. SHORT TITLE; SUNSET PROVISION. (a) This
27 chapter may be cited as the Texas Windstorm Insurance
28 Association Act.

29 (b) The association is subject to review under Chapter

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

12 SECTION __. Subchapter A, Chapter 2210, Insurance Code, is
13 amended by adding Section 2210.0025 to read as follows:

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

21 (1) any proposed changes in the laws relating to
22 regulation of the association and a statement of the reasons for
23 the changes; and

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

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

30 (3-a) "Catastrophe reserve trust fund" means the
31 trust fund established under Subchapter J.

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

3 SECTION __. Subsection (a), Section 2210.004, Insurance
4 Code, is amended to read as follows:

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

15 SECTION __. Section 2210.005, Insurance Code, is amended
16 to read as follows:

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

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

28 (b) [~~After at least 10 days' notice and a hearing, the~~
29 ~~commissioner may designate an area of this state as an~~
30 ~~inadequate fire insurance area if the commissioner determines~~
31 ~~that fire and explosion insurance is not reasonably available to~~

1 ~~a substantial number of owners of insurable property located in~~
2 ~~that area.~~

3 [~~e~~] The commissioner shall revoke a designation made
4 under Subsection (a) [~~or (b)~~] if the commissioner determines,
5 after at least 10 days' notice and a hearing, that the
6 applicable insurance coverage is no longer reasonably
7 unavailable to a substantial number of owners of insurable
8 property within the designated territory.

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

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

20 (2) reject the request.

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

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

29 (b) The commissioner may adopt rules in the manner
30 prescribed by Subchapter A, Chapter 36, as reasonable and
31 necessary to implement this chapter [~~Before the commissioner~~

1 ~~adopts an order, the department shall post notice of the hearing~~
2 ~~on the order at the secretary of state's office in Austin and~~
3 ~~shall hold a hearing to consider the proposed order. Any person~~
4 ~~may appear at the hearing and testify for or against the~~
5 ~~adoption of the order].~~

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

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

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

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

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

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

27 (d) Notwithstanding Subsection (a), a member, in
28 accordance with the plan of operation, is entitled to receive
29 credit for similar insurance voluntarily written in areas [~~an~~
30 ~~area~~] designated by the commissioner. The member's
31 participation in the insured losses and operating expenses of

1 the association in excess of premium and other revenue
2 [writings] of the association shall be reduced in accordance
3 with the plan of operation.

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

11 SECTION __. Subsection (b), Section 2210.056, Insurance
12 Code, is amended to read as follows:

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

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

18 (2) make investments authorized under applicable law;

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

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

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

29 (A) pay claims made on policies written by the
30 association;

31 (B) purchase reinsurance covering losses under

516

1 those policies; or

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

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

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

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

12 SUBCHAPTER B-1. PAYMENT OF LOSSES

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

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

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

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

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

1 (2) the proceeds of Class 1 or Class 2 public
2 securities authorized under Section 2210.073, 2210.074,
3 2210.076, or 2210.077; and

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

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

12 Sec. 2210.072. PAYMENT FROM TRUST FUND; ASSESSMENT;
13 REINSURANCE. (a) For each occurrence, losses shall be paid
14 from the catastrophe reserve trust fund and any available
15 reinsurance. Losses in excess of the catastrophe reserve trust
16 fund and any available reinsurance shall be paid as provided by
17 this section.

18 (b) For each occurrence, the association shall assess the
19 members of the association an amount not greater than \$400
20 million. The proportion of the assessment allocable to each
21 insurer shall be determined in the manner used to determine each
22 member's participation in the association under Section
23 2210.052.

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

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

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

31 (2) paid by each member not later than the 30th day

1 after the date on which the insurer receives notice of the
2 amount of its assessment.

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

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

15 Sec. 2210.073. PAYMENT FROM CLASS 1 PUBLIC SECURITIES;
16 REINSURANCE; FINANCIAL INSTRUMENTS. (a) Losses not paid under
17 Section 2210.072 shall be paid as provided by this section.

18 (b) The losses may be paid with:

19 (1) proceeds from Class 1 public securities
20 authorized to be issued in accordance with Subchapter M before
21 or on or after the date of any occurrence that results in
22 insured losses under Subsection (a);

23 (2) available reinsurance described by Subsection
24 (f);

25 (3) proceeds from financial instruments described by
26 Subsection (e); or

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

29 (c) Public securities described by Subsection (b)(1) may
30 be issued if the board of directors determines, before the date
31 of any occurrence, that the amount available from premium and

1 other revenue, in combination with the amounts available from
2 the catastrophe reserve trust fund, any reinsurance, and any
3 financial instruments may be insufficient to pay insured losses.
4 The public securities shall be issued as necessary in a
5 principal amount not to exceed \$600 million per occurrence.

6 (d) Any public securities proceeds received under this
7 section from Class 1 public securities authorized in accordance
8 with Subchapter M before the date of any occurrence that results
9 in insured losses under Subsection (a):

10 (1) must be used before the proceeds of any public
11 securities that the association authorizes to be issued under
12 Section 2210.074 on or after any catastrophic event; and

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

17 (e) Under the authority of Section 2210.071(c), the
18 association may borrow from, or enter into other financing
19 arrangements with, any market source, under which the market
20 source makes interest-bearing loans to the association to enable
21 the association to pay losses under this section in lieu of, or
22 in addition to, the issuance of public securities.

23 (f) The association may purchase reinsurance in lieu of,
24 or in addition to, using Class 1 public securities or proceeds
25 of financial instruments authorized under this section if, after
26 a cost-benefit analysis or other appropriate examination, the
27 board of directors determines that the use of reinsurance is a
28 fiscally appropriate alternative to other sources of funding or
29 is economically beneficial to this state. If the association
30 purchases reinsurance under this section, the cost of the
31 reinsurance shall be paid from premium paid by policyholders of

1020

1 the association, other revenue of the association, and the
2 catastrophe reserve trust fund.

3 (g) If the losses are paid with public securities or
4 proceeds from financial instruments described by this section,
5 the public securities or proceeds from financial instruments
6 shall be repaid by premium surcharges in the manner prescribed
7 by Section 2210.612.

8 Sec. 2210.074. PAYMENT FROM CLASS 2 PUBLIC SECURITIES;
9 REINSURANCE; FINANCIAL INSTRUMENTS. (a) Losses not paid under
10 Sections 2210.072 and 2210.073 shall be paid as provided by this
11 section.

12 (b) The losses may be paid from:

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

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

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

21 (4) a combination of the reinsurance, public
22 securities, and financial instruments described by Subdivisions
23 (1)-(3).

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

27 (d) Under the authority of Section 2210.071(c), the
28 association may borrow from, or enter into other financial
29 arrangements with, any market source, under which the market
30 source makes interest-bearing loans to the association to enable
31 the association to pay losses under this section without the

1 issuance of public securities.

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

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

18 Sec. 2210.075. PAYMENT FROM ASSOCIATION ASSESSMENT.

19 (a) Losses not paid under Sections 2210.072-2210.074 shall be
20 paid as provided by this section.

21 (b) The association shall assess the members of the
22 association \$300 million per occurrence for the payment of
23 losses described by this section. The association shall notify
24 each member of the association of the amount of the member's
25 assessment under this subsection. The proportion of the losses
26 allocable to each insurer under this section shall be determined
27 in the manner used to determine each insurer's participation in
28 the association for the year under Section 2210.052.

29 (c) The association may not assess members of the
30 association under this section more than twice in any calendar
31 year.

1 (d) A member of the association may recoup an assessment
2 paid under this section through a premium surcharge collected
3 for one year on each policy of property or casualty insurance
4 written by the member. A premium surcharge under this section
5 shall apply to all policies that provide coverage on any
6 premises, locations, operations, or property located in this
7 state for all property and casualty lines of insurance, other
8 than federal flood insurance, workers' compensation insurance,
9 accident and health insurance, and medical malpractice
10 insurance.

11 (e) A premium surcharge under this section is a separate
12 nonrefundable charge in addition to the premiums collected and
13 is not subject to premium tax or commissions. Failure to pay
14 the premium surcharge by a policyholder constitutes failure to
15 pay premium for purposes of policy cancellation.

16 Sec. 2210.076. PAYMENT FROM CLASS 2 PUBLIC SECURITIES;
17 REINSURANCE; FINANCIAL INSTRUMENTS. (a) Losses not paid under
18 Sections 2210.072-2210.075 shall be paid as provided by this
19 section.

20 (b) The losses may be paid from:

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

25 (2) available reinsurance described by Subsection
26 (e);

27 (3) proceeds from financial instruments described by
28 Subsection (d); or

29 (4) a combination of the reinsurance, public
30 securities, and financial instruments described by Subdivisions
31 (1)-(3).

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

4 (d) Under the authority of Section 2210.071(c), the
5 association may borrow from, or enter into other financing
6 agreements with, any market source, under which the market
7 source makes interest-bearing loans to the association to enable
8 the association to pay losses under this section in lieu of, or
9 in addition to, the issuance of public securities.

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

21 (f) If the losses are paid with public securities or
22 proceeds from financial instruments described by this section,
23 the public securities or proceeds from financial instruments
24 shall be repaid by premium surcharges in the manner prescribed
25 by Section 2210.613.

26 Sec. 2210.077. PAYMENT FROM CLASS 2 PUBLIC SECURITIES;
27 REINSURANCE. (a) Losses not paid under Sections 2210.072-
28 2210.076 shall be paid as provided by this section.

29 (b) The losses may be paid from:

30 (1) proceeds from Class 2 public securities
31 authorized to be issued in accordance with Subchapter M on or

1 after the date of any occurrence that results in insured losses
2 under Subsection (a);

3 (2) available reinsurance described by Subsection
4 (d); or

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

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

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

20 (e) If the losses are paid with public securities
21 described by this section, the public securities shall be repaid
22 by premium surcharges in the manner prescribed by Section
23 2210.613.

24 Sec. 2210.078. PAYMENT FROM ADDITIONAL ASSOCIATION
25 ASSESSMENTS. (a) Losses not paid under Sections 2210.072-
26 2210.077 and any available reinsurance shall be paid as provided
27 by this section.

28 (b) The board of directors shall assess the members of the
29 association for the payment of losses described by this section.
30 The association shall notify each member of the association of
31 the amount of the member's assessments under this subsection,

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

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

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

17 Sec. 2210.079. NOTIFICATION REGARDING TAX CREDITS.

18 (a) The association shall immediately notify the department if
19 an occurrence or series of occurrences in a catastrophe area
20 results in insured losses that result in a tax credit under
21 Section 2210.078(d) in a calendar year.

22 (b) On receipt of notice under Subsection (a), the
23 department shall immediately notify the governor and the
24 appropriate committees of each house of the legislature of the
25 amount of insured losses eligible for tax credits under Section
26 2210.078(d).

27 SECTION __. The heading to Subchapter C, Chapter 2210,
28 Insurance Code, is amended to read as follows:

29 SUBCHAPTER C. ASSOCIATION BOARD OF DIRECTORS; GENERAL

30 POWERS AND DUTIES OF BOARD OF DIRECTORS

31 SECTION __. Section 2210.102, Insurance Code, is amended

1 to read as follows:

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

5 (b) Four members must be [+

6 [~~(1) five~~] representatives of different insurers who
7 are members of the association.

8 (c) Three members must be [~~electe~~d by the members as
9 ~~provided by the plan of operation;~~

10 [~~(2) two~~] public representatives:

11 (1) at least one of whom [~~who are nominated by the~~
12 ~~office of public insurance counsel and who~~], as of the date of
13 the appointment, does not [+

14 [~~(A)~~] reside in or own property in a first tier
15 coastal county; and

16 (2) at least one of whom, as of the date of the
17 appointment, resides in or owns property in a first tier coastal
18 county and is a policyholder of the association.

19 (d) Two members must be [~~a catastrophe area; and~~

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

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

26 (e) All members must [~~each of whom must:~~

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

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

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

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

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

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

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

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

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

27 SECTION __. Section 2210.103, Insurance Code, is amended
28 by adding Subsection (c) to read as follows:

29 (c) A member of the board of directors may be removed by
30 the commissioner with cause stated in writing and posted on the
31 association's website. The commissioner shall appoint a

1 replacement in the manner provided by Section 2210.102 for a
2 member who leaves or is removed from the board of directors.

3 SECTION __. Section 2210.104, Insurance Code, is amended
4 to read as follows:

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

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

12 (d) Except for an emergency meeting, a meeting of the
13 board of directors shall be held at a location as determined by
14 the board of directors.

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

17 Sec. 2210.1051. MEETINGS OF BOARD OF DIRECTORS.

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

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

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

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

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

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

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

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

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

21 (2) complies with sound insurance principles; and

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

23 SECTION ____ . Section 2210.151, Insurance Code, is amended
24 to read as follows:

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

28 ~~[-1-]~~ Texas windstorm and hail insurance in a
29 catastrophe area[+and

30 ~~[-2-] Texas fire and explosion insurance in an~~
31 ~~inadequate fire insurance area].~~

1 SECTION ____ . Subsection (a), Section 2210.152, Insurance
2 Code, is amended to read as follows:

3 (a) The plan of operation must:

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

6 (2) include:

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

9 (B) underwriting standards;

10 (C) procedures for accepting and ceding
11 reinsurance;

12 (D) procedures for obtaining and repaying
13 amounts pursuant to financial instruments authorized under
14 Subchapter B-1;

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

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

19 (G) [~~F~~] other provisions as considered
20 necessary by the department to implement the purposes of this
21 chapter.

22 SECTION ____ . Section 2210.202, Insurance Code, is amended
23 to read as follows:

24 Sec. 2210.202. APPLICATION FOR COVERAGE. (a) A person
25 who has an insurable interest in insurable property may apply to
26 the association for insurance coverage provided under the plan
27 of operation and an inspection of the property, subject to any
28 rules [~~, including any inspection fee,~~] established by the board
29 of directors and approved by the commissioner. The association
30 shall make insurance available to each applicant in the
31 catastrophe area whose property is insurable property but who,

1 after diligent efforts, is unable to obtain property insurance
2 through the voluntary market, as evidenced by one declination
3 from an insurer authorized to engage in the business of, and
4 writing, property insurance providing windstorm and hail
5 coverage in the first tier coastal counties. For purposes of
6 this section, "declination" has the meaning assigned by the plan
7 of operation and shall include a refusal to offer coverage for
8 the perils of windstorm and hail and the inability to obtain
9 substantially equivalent insurance coverage for the perils of
10 windstorm and hail. Notwithstanding Section 2210.203(c),
11 evidence of one declination is also required with an application
12 for renewal of an association policy.

13 (b) A [~~general~~] property and casualty agent [~~or a personal~~
14 ~~lines property and casualty agent~~] must submit an application
15 for the insurance coverage on behalf of the applicant on forms
16 prescribed by the association. The application must contain a
17 statement as to whether the applicant has submitted or will
18 submit the premium in full from personal funds or, if not, to
19 whom a balance is or will be due. Each application for initial
20 or renewal coverage must also contain a statement that the agent
21 possesses proof of the declination described by Subsection (a)
22 and proof of flood insurance coverage or unavailability of that
23 coverage as described by Section 2210.203(a-1).

24 SECTION ____ . Section 2210.203, Insurance Code, is amended
25 by adding Subsection (a-1) to read as follows:

26 (a-1) Notwithstanding Subsection (a), if all or any part
27 of the property for which an application for new or renewal
28 insurance coverage is made is located in Zone V or another
29 similar zone with an additional hazard associated with storm
30 waves, as defined by the National Flood Insurance Program, and
31 if flood insurance under that federal program is available, the

1 association may not issue a new or renewal insurance policy
2 unless evidence that the property is covered by a flood
3 insurance policy is submitted to the association.

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

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

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

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

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

23 (3) death of the policyholder; or

24 (4) total loss of the property.

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

27 Sec. 2210.2041. NONREFUNDABLE SURCHARGE. A nonrefundable
28 surcharge established under this chapter is not refundable under
29 this code for any reason or purpose.

30 SECTION ____ . Section 2210.251, Insurance Code, is amended
31 to read as follows:

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

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

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

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

31 (e) A structure constructed, altered, remodeled, enlarged,

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

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

22 (f) Notwithstanding any other provision of this section, a
23 residential structure insured by the association as of June 1,
24 2009, may continue coverage through the association subject to
25 the inspection requirements imposed under Section 2210.258.

26 (g) The association [~~department~~] shall issue a certificate
27 of compliance for each structure that qualifies for coverage.
28 The certificate is evidence of insurability of the structure by
29 the association.

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

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

4 (i) The association shall charge a reasonable fee for each
5 inspection of each structure in an amount set by the board of
6 directors. The association may use fees collected under
7 this section for operating expenses or for the purchase of
8 reinsurance.

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

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

17 (1) fully completed documentation verifying that the
18 structure has been constructed, altered, remodeled, enlarged, or
19 repaired, or any addition to the structure has been made, in
20 compliance with the plan of operation; and

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

24 (l) If a structure is rejected for coverage under
25 Subsection (k), a person may make a new request for
26 certification and the structure may be reinspected for
27 compliance with the plan of operation. A request for
28 certification brought under this subsection must meet the
29 requirements of Subsection (k).

30 SECTION ____ . Subsections (a), (c), and (d), Section
31 2210.254, Insurance Code, are amended to read as follows:

1 (a) For purposes of this chapter, a "qualified inspector"
2 includes:

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

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

9 (3) an inspector who:

10 (A) is certified by the International Code
11 Council, the Building Officials and Code Administrators
12 International, Inc., the International Conference of Building
13 Officials, or the Southern Building Code Congress International,
14 Inc.;

15 (B) has certifications as a buildings inspector
16 and coastal construction inspector; and

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

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

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

26 SECTION ____ . Section 2210.255, Insurance Code, is amended
27 to read as follows:

28 Sec. 2210.255. APPOINTMENT OF LICENSED ENGINEER AS
29 INSPECTOR. (a) On request of an engineer licensed by the Texas
30 Board of Professional Engineers, the association may
31 [~~commissioner shall~~] appoint the engineer as an inspector under

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

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

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

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

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

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

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

31 (1) the structure has been inspected for compliance

1 with the plan of operation in accordance with Section
2 2210.251(a); and

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

5 Sec. 2210.259. SURCHARGE FOR CERTAIN NONCOMPLIANT
6 STRUCTURES. (a) A noncompliant residential structure insured
7 by the association as of June 1, 2009, under Section 2210.251(f)
8 that had been approved for insurability under the approval
9 process regulations in effect on June 1, 2009, is subject to an
10 annual premium surcharge in an amount not less than 15 percent
11 of the premium for insurance coverage obtained through the
12 association. The surcharge under this subsection applies to
13 each policy issued or renewed by the association on or after the
14 effective date of S.B. No. 14, Acts of the 81st Legislature,
15 Regular Session, 2009, and is due on the issuance or renewal of
16 the policy.

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

24 SECTION ____ . Subsections (c) and (d), Section 2210.351,
25 Insurance Code, are amended to read as follows:

26 (c) Except as provided by Subsection (d), as [Ae] soon as
27 reasonably possible after the filing has been made, the
28 commissioner in writing shall approve[~~r~~ modify] or disapprove
29 the filing. A filing is considered approved unless [modified
30 ex] disapproved on or before the 30th day after the date of the
31 filing. If the commissioner disapproves a filing, the

1 commissioner shall state in writing the reasons for the
2 disapproval and the criteria the association is required to meet
3 to obtain approval.

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

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

8 (2) the filed rate does not exceed 105 percent of the
9 rate in effect on the date on which the filing is made;

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

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

17 ~~[If at any time the commissioner determines that a filing~~
18 ~~approved under Subsection (c) no longer meets the requirements~~
19 ~~of this chapter, the commissioner may, after a hearing held on~~
20 ~~at least 20 days' notice to the association that specifies the~~
21 ~~matters to be considered at the hearing, issue an order~~
22 ~~withdrawing approval of the filing. The order must specify in~~
23 ~~what respects the commissioner determines that the filing no~~
24 ~~longer meets the requirements of this chapter. An order issued~~
25 ~~under this subsection may not take effect before the 30th day~~
26 ~~after the date of issuance of the order].~~

27 SECTION ____ . Section 2210.352, Insurance Code, is amended
28 to read as follows:

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

30 (a) Not later than August 15 of each year, the association
31 shall file with the department ~~[for approval by the~~

1 ~~commissioner]~~ a proposed manual rate for all types and classes
2 of risks written by the association [~~Chapter 40 does not apply~~
3 ~~to:~~

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

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

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

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

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

18 (b) Except as provided by Subsection (a-1), before
19 ~~[Before]~~ approving or~~[r]~~ disapproving~~[, or modifying]~~ a filing
20 under this section, the commissioner shall provide all
21 interested persons a reasonable opportunity to:

22 (1) review the filing;

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

25 (3) submit to the commissioner written comments or
26 information related to the filing.

27 (c) Except as provided by Subsection (a-1), ~~[The~~
28 ~~commissioner shall schedule an open meeting not later than the~~
29 ~~45th day after the date the department receives a filing at~~
30 ~~which interested persons may present written or oral comments~~
31 ~~relating to the filing.~~

1 ~~[(d) An open meeting under Subsection (e) is subject to~~
2 ~~Chapter 551, Government Code, but is not a contested case~~
3 ~~hearing under Chapter 2001, Government Code.~~

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

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

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

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

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

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

27 SECTION ____ . Section 2210.353, Insurance Code, is amended
28 to read as follows:

29 Sec. 2210.353. MANUAL RATE FILINGS: AMENDED ANNUAL
30 FILING. (a) Not later than the 30th day after the date the
31 association receives the commissioner's written disapproval

2242

1 under Section 2210.352(c) [~~2210.352(f)~~], the association may
2 file with the commissioner an amended annual filing that
3 conforms to all criteria stated in that written disapproval.

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

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

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

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

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

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

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

3 SECTION ___. Subsections (a), (c), and (d), Section
4 2210.354, Insurance Code, are amended to read as follows:

5 (a) In conjunction with the review of a filing under
6 Section 2210.352, other than a filing made under Subsection (a-
7 1) of that section, ~~[or 2210.353:~~

8 ~~[(1)]~~ the commissioner may request the association to
9 provide additional supporting information relating to the
10 filing ~~and~~

11 ~~[(2) any interested person may file a written request~~
12 ~~with the commissioner for additional supporting information~~
13 ~~relating to the filing].~~

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

19 (d) Unless a different period is requested by the
20 association and approved by the commissioner, the association
21 shall provide the information to the commissioner not later than
22 the fifth day after the date the written request for additional
23 supporting information is delivered to the association. ~~[The~~
24 ~~department shall notify an interested person who has requested~~
25 ~~additional information of the availability of the information~~
26 ~~not later than one business day after the date the commissioner~~
27 ~~receives the information from the association.]~~

28 SECTION ___. Section 2210.355, Insurance Code, is amended
29 by amending Subsection (b) and adding Subsection (h) to read as
30 follows:

31 (b) In adopting rates under this chapter, the following

1 must be considered:

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

5 (2) recognized catastrophe models;

6 (3) expenses of operation, including acquisition
7 costs;

8 (4) ~~[-3]~~ a reasonable margin for profit and
9 contingencies; and

10 (5) ~~[-4]~~ all other relevant factors, within and
11 outside this state.

12 (h) The association may establish rating territories and
13 may vary rates among the territories.

14 SECTION ___. Subsection (b), Section 2210.361, Insurance
15 Code, is amended to read as follows:

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

20 SECTION ___. Subchapter H, Chapter 2210, Insurance Code,
21 is amended by adding Section 2210.364 to read as follows:

22 Sec. 2210.364. MIGRATION TO ACTUARIALLY SOUND RATES. Not
23 later than September 1, 2009, the association shall begin
24 implementing rates that are actuarially sound as determined by
25 the association. Not later than August 31, 2012, all rates used
26 by the association for an initial policy or renewal policy
27 issued by the association shall be actuarially sound as
28 determined by the association.

29 SECTION ___. Subsections (a), (c), and (d), Section
30 2210.452, Insurance Code, are amended to read as follows:

31 (a) The commissioner shall adopt rules under which the

1 association makes [~~members relinquish their net equity on an~~
2 ~~annual basis as provided by these rules by making~~] payments to
3 the catastrophe reserve trust fund. The trust fund may be used
4 only to fund[+

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

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

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

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

24 SECTION ____ . Section 2210.453, Insurance Code, is amended
25 to read as follows:

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

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

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

31 (b) The [~~With the approval of the department, the~~]

1 association may purchase [~~establish a~~] reinsurance [~~program~~]
2 that operates in addition to or in concert with the trust fund,
3 public securities, financial instruments, and assessments
4 authorized by this chapter.

5 SECTION _____. Subsection (b), Section 2210.454, Insurance
6 Code, is amended to read as follows:

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

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

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

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

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

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

30 (c) Venue [~~Except as provided by Subsection (d), venue~~] in
31 an action brought under this section[~~, including an action under~~

1 ~~Chapter 541,~~] against the association is in the county in which
2 the insured property is located or in a district court in Travis
3 County.

4 ~~[(d) Venue in an action, including an action under Chapter~~
5 ~~541, brought under this section in which the claimant joins the~~
6 ~~department as a party to the action is only in a district court~~
7 ~~in Travis County.]~~

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

10 SUBCHAPTER M. PUBLIC SECURITIES PROGRAM

11 Sec. 2210.601. PURPOSE. The legislature finds that
12 authorizing the issuance of public securities to provide a
13 method to raise funds to provide windstorm and hail insurance
14 through the association in certain designated portions of the
15 state is for the benefit of the public and in furtherance of a
16 public purpose.

17 Sec. 2210.602. DEFINITIONS. In this subchapter:

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

20 (2) "Class 1 public securities" means public
21 securities authorized to be issued before or on or after the
22 occurrence of a catastrophic event by Section 2210.073.

23 (3) "Class 2 public securities" means public
24 securities authorized to be issued on or after the occurrence of
25 a catastrophic event by Section 2210.074, 2210.076, or 2210.077.

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

28 (5) "Insurer" means each property and casualty
29 insurer authorized to engage in the business of property and
30 casualty insurance in this state and an affiliate of such an
31 insurer, as described by Section 823.003, including an affiliate

1 that is not authorized to engage in the business of property and
2 casualty insurance in this state. The term specifically
3 includes a county mutual insurance company, a Lloyd's plan, and
4 a reciprocal or interinsurance exchange.

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

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

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

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

20 (10) "Public security resolution" means the
21 resolution or order authorizing public securities to be issued
22 under this subchapter.

23 Sec. 2210.603. APPLICABILITY OF OTHER LAWS. The board
24 shall issue the public securities as described by Section
25 2210.604 in accordance with and subject to the requirements of
26 Chapter 1232, Government Code, and other provisions of Title 9,
27 Government Code, that apply to issuance of a public security by
28 a state agency. In the event of a conflict, this subchapter
29 controls.

30 Sec. 2210.604. ISSUANCE OF PUBLIC SECURITIES AUTHORIZED.

31 (a) At the request of the association and with the approval of

1 the commissioner, the Texas Public Finance Authority shall issue
2 Class 1 or Class 2 public securities.

3 (b) The association shall specify in the association's
4 request to the board the maximum principal amount of the public
5 securities and the maximum term of the public securities.

6 (c) The principal amount determined by the association
7 under Subsection (b) may be increased to include an amount
8 sufficient to:

9 (1) pay the costs related to issuance of the public
10 securities;

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

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

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

21 (b) Public securities must be issued in the name of the
22 association.

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

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

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

6 Sec. 2210.608. USE OF PUBLIC SECURITY PROCEEDS.

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

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

12 (2) purchase reinsurance for the association;

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

15 (4) provide a public security reserve; and

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

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

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

27 OBLIGATIONS. (a) The association shall pay all public security
28 obligations from available funds collected by the association
29 and deposited into the public security obligation revenue fund.

30 If the association determines that it is unable to pay the
31 public security obligations and public security administrative

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

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

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

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

27 (e) An amount owed by the board under a credit agreement
28 shall be payable from and secured by a pledge of revenues
29 received by the association or amounts from the obligation trust
30 fund to the extent provided in the proceedings authorizing the
31 credit agreement.

1 Sec. 2210.610. PUBLIC SECURITY PAYMENTS. (a) Revenues
2 received from the premium surcharges under Section 2210.612 or
3 2210.613 may be applied only as provided by this subchapter.

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

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

8 Sec. 2210.611. EXCESS REVENUE COLLECTIONS AND INVESTMENT
9 EARNINGS. Revenue collected in any year from a premium
10 surcharge under Section 2210.612 or 2210.613 that exceeds the
11 amount of the public security obligations and public security
12 administrative expenses payable in that year and interest earned
13 on the public security obligation fund may, in the discretion of
14 the association, be:

15 (1) used to pay public security obligations payable
16 in the subsequent year, offsetting the amount of the premium
17 surcharge that would otherwise be required to be levied for the
18 year under this subchapter;

19 (2) used to redeem or purchase outstanding public
20 securities; or

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

22 Sec. 2210.612. CLASS 1 PREMIUM SURCHARGE; REPAYMENT OF
23 AMOUNTS OWED UNDER FINANCIAL INSTRUMENTS. (a) Each insurer,
24 the association, and the Texas FAIR Plan Association shall
25 collect from their policyholders a surcharge in addition to any
26 premiums to pay:

27 (1) public security obligations and public security
28 administrative expenses, if any, on Class 1 public securities;
29 and

30 (2) principal and interest on any financial
31 instruments entered into by the association under Section

1 2210.073.

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

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

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

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

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

30 (g) A premium surcharge under this section is a separate
31 nonrefundable charge in addition to the premiums collected and

1 is not subject to premium tax or commissions. Failure to pay
2 the surcharge by a policyholder constitutes failure to pay
3 premium for purposes of policy cancellation.

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

8 (1) public security obligations and public security
9 administrative expenses, if any, on Class 2 public securities
10 issued under Section 2210.074;

11 (2) public security obligations and public security
12 administrative expenses, if any, on Class 2 public securities
13 issued under Section 2210.076;

14 (3) public security obligations and public security
15 administrative expenses, if any, on Class 2 public securities
16 issued under Section 2210.077;

17 (4) principal and interest on financial instruments
18 entered into by the association under Section 2210.074; or

19 (5) principal and interest on financial instruments
20 entered into by the association under Section 2210.076.

21 (b) The association shall determine the premium surcharge
22 at least annually.

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

29 (d) Each insurer, the association, and the Texas FAIR Plan
30 Association shall collect the premium surcharge under this
31 section from their policyholders who have a property or casualty

1 policy that provides coverage for premises, locations,
2 operations, or property located in this state, and shall remit
3 the premium surcharge to the association as required by
4 commissioner rule.

5 (e) A premium surcharge under this section shall apply to
6 all policies that provide coverage on any premises, locations,
7 operations, or property located in this state for all property
8 and casualty lines of insurance, other than federal flood
9 insurance, workers' compensation insurance, accident and health
10 insurance, and medical malpractice insurance. The premium
11 surcharge does not apply to premiums charged for any premises,
12 locations, operations, or property located outside this state.

13 (f) Seventy percent of a premium surcharge assessed under
14 Subsection (a)(1), (2), (4), or (5) must be assessed on
15 policyholders who have a property or casualty policy that
16 provides coverage for premises, locations, operations, or
17 property located in a catastrophe area.

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

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

29 Sec. 2210.614. REFINANCING PUBLIC SECURITIES. The
30 association may request the board to refinance any public
31 securities issued in accordance with Subchapter B-1, whether

1 Class 1 or Class 2 public securities, with the refinanced public
2 securities payable from the same sources as the original public
3 securities.

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

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

7 (b) A public security issued under this subchapter, and
8 any related credit agreement, is not a debt of this state or any
9 state agency or political subdivision of this state, and does
10 not constitute a pledge of the faith and credit of this state or
11 any state agency or political subdivision of this state.

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

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

19 (2) neither the faith and credit nor the taxing power
20 of the state or any state agency, political corporation, or
21 political subdivision of the state is pledged to the payment of
22 the principal of or interest on the public security.

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

26 (1) take action to limit or restrict the rights of
27 the association to fulfill its responsibility to pay public
28 security obligations; or

29 (2) in any way impair the rights and remedies of the
30 public security owners until the public securities are fully
31 discharged.

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

- 6 (1) this subchapter;
7 (2) the Texas Constitution; or
8 (3) a relevant public security resolution.

9 Sec. 2210.618. EXEMPTION FROM TAXATION. A public security
10 issued under this subchapter, any transaction relating to the
11 public security, and profits made from the sale of the public
12 security are exempt from taxation by this state or by a
13 municipality or other political subdivision of this state.

14 Sec. 2210.619. NO PERSONAL LIABILITY. The members of the
15 association, members of the association board of directors,
16 association employees, the board, the employees of the Texas
17 Public Finance Authority, the commissioner, and department
18 employees are not personally liable as a result of exercising
19 the rights and responsibilities granted under this subchapter.

20 Sec. 2210.620. AUTHORIZED INVESTMENTS. Public securities
21 issued under this subchapter are authorized investments under:

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

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

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

29 SECTION ____ . Section 942.003, Insurance Code, is amended
30 by adding Subsection (f) to read as follows:

31 (f) An exchange is subject to Chapter 2210, as provided by

1 that chapter.

2 SECTION _____. The following laws are repealed:

3 (1) Subdivisions (5) and (12), Section 2210.003,
4 Insurance Code;

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

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

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

8 (5) Sections 2210.356, 2210.359, 2210.360, and
9 2210.363, Insurance Code; and

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

11 SECTION _____. (a) The board of directors of the Texas
12 Windstorm Insurance Association established under Section
13 2210.102, Insurance Code, as that section existed before
14 amendment by this Act of Chapter 2210, Insurance Code, is
15 abolished effective December 31, 2009.

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

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

28 SECTION _____. (a) The commissioner of insurance shall
29 adopt rules as required by Chapter 2210, Insurance Code, as
30 amended by this Act, as soon as possible after the effective
31 date of this Act, but not later than the 30th day after the

1 effective date of this Act.

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

7 SECTION _____. Sections 2210.202 and 2210.203, Insurance
8 Code, as amended by this Act, apply to an application for
9 insurance coverage submitted to the Texas Windstorm Insurance
10 Association on or after the effective date of this Act.

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

24 SECTION _____. The changes in law made by this Act in
25 amending Sections 2210.251, 2210.254, and 2210.255, Insurance
26 Code, adding Section 2210.2565, Insurance Code, and repealing
27 Section 2210.256, Insurance Code, take effect September 1, 2009.

28 SECTION _____. Section 2210.552, Insurance Code, as amended
29 by this Act, applies to a cause of action that accrues on or
30 after the effective date of this Act. A cause of action that
31 accrues before the effective date of this Act is governed by the

1 law as it exists immediately before that date, and that law is
2 continued in effect for that purpose.

3

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5

FLOOR AMENDMENT NO.

2

BY:

Watson

Amend C.S.H.B. No. 4409 (Senate Committee Report) in SECTION 4 of the bill in amended Section 418.043(14), Government Code (page 3, line 1), between "20-year period" and the period, by inserting "on a discounted net present value basis".

ADOPTED

MAY 27 2009


Secretary of the Senate

FLOOR AMENDMENT NO. 3

ADOPTED

MAY 27 2009

BY: *Maui Hallgren*

Amend H.B. 4409 (Senate *Letty Spaul* Committee Report) by adding
Secretary of the Senate

the following appropriately numbered section to the bill and renumbering subsequent sections of the bill as appropriate:

SECTION ____ . Section 418.018, Government Code, is amended by adding Subsections (d), (e), and (f) to read as follows:

(d) The division, in cooperation with the Department of Public Safety, shall create a task force to study and develop uniform reentry procedures for essential personnel entering a disaster area or a stricken or threatened area that has been evacuated. The task force shall submit a written report on the procedures developed by the task force to the governor. The procedures must:

(1) authorize the orderly reentry of essential personnel according to the critical functions provided by the personnel in restoring normal operations to the area following an evacuation;

(2) prioritize the order of reentry for the essential personnel, including emergency responders, search and rescue personnel, infrastructure and utility repair personnel, official damage assessment personnel, health care providers, and businesses essential to the return of residents; and

(3) establish methods to authenticate the identity of the personnel authorized to reenter the area.

(e) The task force created under Subsection (d) must include representatives of:

(1) the office of the governor;

(2) the Department of Public Safety;

(3) emergency responders;
(4) search and rescue personnel;
(5) infrastructure and utility repair personnel;
(6) official damage assessment personnel;
(7) health care providers;
(8) the Texas Oil and Gas Association;
(9) county judges and mayors; and
(10) businesses essential to the return of
residents.

(f) Based on the report and procedures developed by
the task force created under Subsection (d) and in
cooperation with the Department of Public Safety, the
division shall establish uniform reentry procedures for
essential personnel entering a disaster area or a stricken
or threatened area that has been evacuated. The procedures
adopted under this section may not diminish the authority
of local emergency management officials to adopt
appropriate reentry provisions in a local plan or to make
decisions on the timing and implementation of reentry
activities.

SECTION 2. The division of emergency management in the office of the governor, in cooperation with the Department of Public Safety of the State of Texas, shall:

(1) appoint members to the task force created under Subsection (d), Section 418.018, Government Code, as added by this Act; and

(2) based on the report and procedures developed by the task force, adopt uniform reentry procedures for essential personnel as required by Subsection (f), Section 418.018, Government Code, as added by this Act.

ADOPTED

MAY 27 2009

FLOOR AMENDMENT NO. 4

Atty Gen BY: *Robney Ellis*
Secretary of the Senate

Amend C.S.H.B. No. 4409 (senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS accordingly:

SECTION __. Section 2306.0521, Government Code, is amended by adding Subsection (c) to read as follows:

(c) Notwithstanding Subsection (a), the department shall establish and maintain an emergency housing and disaster recovery division. The division shall:

(1) develop a program to provide for the rapid deployment of temporary housing for homeowners affected by natural disasters;

(2) develop a program to quickly restore or replace permanent housing for homeowners affected by natural disasters;

(3) develop a program to quickly provide additional rental housing to areas affected by natural disasters;

(4) provide funding to nonprofit agencies that provide to homeowners affected by natural disasters counseling on refinancing options and financial assistance available through state and federal programs; and

(5) collaborate with the division of emergency management established under Chapter 418 and the Federal Emergency Management Agency to secure reimbursement for housing needs in areas affected by natural disasters.

SECTION __. Section 2306.056, Government Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) If federal or state money, other than money appropriated to the department under a current services budget for the state

fiscal biennium prepared for the state budgetary process is allocated to the department to address the results of a natural disaster, the board may appoint a committee composed of residents of the affected area. The committee shall serve until 90 percent of the money allocated to the department to address the results of the natural disaster has been spent. The committee may give input to the department and the emergency housing and disaster recovery division with regards to resource allocation.

(d) The department shall develop and implement policies that provide the public with a reasonable opportunity to appear periodically before a committee created under Subsection (c) and to speak on any issue under the jurisdiction of the emergency housing and disaster recovery division.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 28, 2009

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB4409 by Taylor (Relating to emergency preparation and management.), **As Passed 2nd House**

The fiscal implications of the bill cannot be determined at this time

Local Government Impact

The fiscal implications of the bill cannot be determined at this time

Source Agencies:

LBB Staff: JOB, SD

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

Revision 1

May 22, 2009

TO: Honorable John Carona, Chair, Senate Committee on Transportation & Homeland Security

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB4409 by Taylor (Relating to emergency preparation and management.), **Committee Report 2nd House, Substituted**

Due to the unknown nature of any future disaster, the bill could have an indeterminate fiscal impact to the state.

The bill would not make an appropriation, but would establish the basis for an appropriation.

The negative fiscal impact to the General Revenue Fund would depend on the timing, magnitude, location, and number of natural disasters that might occur, which cannot be determined. For the purpose of this analysis, Hurricane Ike, the state's most recent weather-related disaster, was used as a source of comparison.

The bill would amend Chapter 418 of the Government Code by adding section 418.126, which directs the General Land Office (GLO), the Texas Department of Transportation (TxDOT), and the Texas Department of Housing and Community Affairs (TDHCA) to solicit and enter into pre-event contracts for weather-related disaster response activities after a disaster. GLO shall solicit and contract for debris removal from beaches, TxDOT shall solicit and contract for debris removal from the state highway system, and TDHCA shall solicit and contract to provide temporary or emergency shelter or housing. The bill further directs that funds from the Disaster Contingency Fund (0453) may be used to pay for these contract services. The Department of Emergency Management reports that the bill would expand the scope of activities that can be paid for with the Disaster Contingency Fund and therefore could potentially increase the number of requests for funding from the fund. Currently, the Comptroller reports that the Disaster Contingency Fund has no available balance and no existing funding mechanism that would appropriate funds to the account in the future.

The fiscal impact of Hurricane Ike to state agencies is an estimated \$2.0 billion. Of that amount, GLO and TxDOT report that debris removal costs for their agencies totaled an estimated \$39.0 and \$18.4 million respectively. Some of these costs could potentially be offset by federal assistance from the Federal Emergency Management Agency (FEMA). While debris removal for Hurricane Ike is currently being reimbursed at 100 percent, the federal Stafford Act sets federal assistance for this type of work at 75 percent for a presidentially-declared disaster. Similar assistance would not be available for a state disaster that is not presidentially-declared or for costs associated with debris removal from private property.

According to the analysis provided by TDHCA, the agency estimates that following Hurricane Ike, approximately 35,000 individuals sought emergency shelter solutions. TDHCA estimates that in the event of a similar disaster, the agency's costs to provide temporary shelter and housing to an estimated 5,000 households could be as much as \$441 million for fiscal years 2010-2014. The majority of those costs, an estimated \$315 million, would be one-time expenditures in the first year associated with purchasing and furnishing 5,000 manufactured homes. The remaining costs would be for delivery and set up, utilities, removal costs, and associated FTE costs. If all or part of the housing solutions were contracted out, TDHCA's costs could be significantly lower due to not having to purchase temporary housing units.

Additionally, the bill would amend the Government Code to require state and local governmental entities, when constructing or renovating a critical governmental facility (CGF) or replacing major heating, ventilation, and air-conditioning equipment for a CGF, to evaluate whether equipping the CGF with a combined heating and power system would result in expected energy savings that would exceed the expected costs of purchasing, operating, and maintaining the system over a 20-year period. The entity may equip the facility with a combined heating and power system if the expected energy savings would exceed the expected costs. It is assumed the requirements of the bill would have a minimal cost to perform the evaluation, and that this cost would be absorbed by the agency as part of the cost of a planned CGF construction or renovation project. If it is determined that it would be cost effective to utilize a combined heating and power system, then there would be initial costs that would be offset by future savings.

Local Government Impact

The costs to local governmental entities to obtain an evaluation of a CGF's system could be significant depending on the number of critical governmental facilities that require an evaluation. One local entity reported the cost for a consultant to perform the evaluation of a system is an estimated \$10,000 per facility.

Source Agencies: 301 Office of the Governor, 303 Facilities Commission, 305 General Land Office and Veterans' Land Board, 332 Department of Housing and Community Affairs, 401 Adjutant General's Department, 405 Department of Public Safety, 529 Health and Human Services Commission, 601 Department of Transportation, 694 Youth Commission, 696 Department of Criminal Justice, 771 School for the Blind and Visually Impaired, 772 School for the Deaf

LBB Staff: JOB, KJG, KK, MH, ER, BTA, TP, SD, PJK

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 19, 2009

TO: Honorable John Carona, Chair, Senate Committee on Transportation & Homeland Security

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB4409 by Taylor (Relating to emergency preparation and management.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for HB4409, As Engrossed: a negative impact of (\$620,776) through the biennium ending August 31, 2011.

In addition to the negative fiscal impact related to the retail water and utility provisions in SECTION 2 of the bill, components of SECTION 3 could have an indeterminate fiscal impact to the state due to the unknown nature of any future disaster.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	(\$323,388)
2011	(\$297,388)
2012	(\$297,388)
2013	(\$297,388)
2014	(\$297,388)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>General Revenue Fund</i> 1	Change in Number of State Employees from FY 2009
2010	(\$323,388)	4.0
2011	(\$297,388)	4.0
2012	(\$297,388)	4.0
2013	(\$297,388)	4.0
2014	(\$297,388)	4.0

Fiscal Analysis

SECTION 2, Subsection 16, parts A and B of the bill would require retail public utilities within 100 miles of the Gulf of Mexico to adopt and submit annually to the Texas Commission on Environmental Quality (TCEQ), for its approval, an emergency preparedness plan (EPP) that ensures that in the event of a local power outage during the next year, the retail utility maintains the ability to provide minimum water pressure as prescribed by commission rules (35 pounds per square inch at flow of 1.5 gallons per minute per connection) and to provide sewer services to all existing customers. The bill also would require that a retail public utility's EPP would provide for: 1) the maintenance of automatically starting auxiliary generators for that purpose or 2) the participation in a recognized

statewide mutual aid program, if the TCEQ would find that the utility's participation in the program will provide the utility with access to auxiliary generators and other necessary aid or equipment sufficient for the utility to restore service not later than the 36th hour after the hour the local power outage begins. The bill would require a retail public utility that utilizes auxiliary generators to maintain a log of their regular servicing, testing, and operation of the generator(s).

The bill would further require that the TCEQ prescribe standards relating to the servicing, testing, and operation of auxiliary power generators used in the implementation of an EPP. Although the bill would not require the TCEQ to conduct inspections, the agency would be authorized to inspect a utility's generator servicing, testing, and operation log at any time. The bill provides for the imposition of administrative penalties for non-compliance including revoking the retail public utilities license to operate.

SECTION 3 of the bill would likely have a negative fiscal impact to the General Revenue Fund depending on the timing, magnitude, location, and number of natural disasters that might occur, which cannot be determined. The bill amends Chapter 418 of the Government Code by adding section 418.126, which directs the General Land Office (GLO), the Texas Department of Transportation (TxDOT), and the Texas Department of Housing and Community Affairs (TDHCA) to solicit and enter into pre-event contracts for weather-related disaster response activities after a disaster. GLO shall solicit and contract for debris removal from beaches, TxDOT shall solicit and contract for debris removal from the state highway system, and TDHCA shall solicit and contract to provide temporary or emergency shelter or housing. The bill further directs that funds from the Disaster Contingency Fund (0453) shall be used to pay for these contract services. The Department of Emergency Management reports that the bill would expand the scope of activities that can be paid for with the Disaster Contingency Fund and therefore could potentially increase the number of requests for funding from the fund. Currently, the Comptroller reports that the Disaster Contingency Fund has no available balance and no existing funding mechanism that would appropriate funds to the account in the future.

Methodology

TCEQ estimates that 29 counties would be affected by the bill. Based on approximately 1,118 wastewater facilities in those counties that would be required to submit EPPs to the TCEQ for approval on an annual basis, it is estimated that the TCEQ would need 4.0 additional FTEs and related costs to review the plans for compliance with standards relating to the servicing, testing, and operation of auxiliary power generators used in the implementation of an EPP. This estimate assumes that costs to implement the bill, as outlined in the table above, would be paid out of the General Revenue Fund.

For the purpose of analyzing SECTION 3 of the bill, Hurricane Ike, the state's most recent weather-related disaster, was used as a source of comparison. The fiscal impact of Hurricane Ike to state agencies is an estimated \$2.0 billion. Of that amount, GLO and TxDOT report that debris removal costs for their agencies totaled an estimated \$39.0 and \$18.4 million respectively. Some of these costs could potentially be offset by federal assistance from the Federal Emergency Management Agency (FEMA). While debris removal for Hurricane Ike is currently being reimbursed at 100 percent, the federal Stafford Act sets federal assistance for this type of work at 75 percent for a presidentially-declared disaster. Similar assistance would not be available for a state disaster that is not presidentially-declared or for costs associated with debris removal from private property.

According to the analysis provided by TDHCA, the agency estimates that following Hurricane Ike, approximately 35,000 individuals sought emergency shelter solutions. TDHCA estimates that in the event of a similar disaster, the agency's costs to provide temporary shelter and housing to an estimated 5,000 households could be as much as \$441 million for fiscal years 2010 through 2014. The majority of those costs, an estimated \$315 million, would be one-time expenditures in the first year associated with purchasing and furnishing 5,000 manufactured homes. The remaining costs would be for delivery and set up, utilities, removal costs, and associated FTE costs. If all or part of the housing solutions were contracted out, TDHCA's costs could be significantly lower due to not having to purchase temporary housing units.

Local Government Impact

Preparation and submission of an emergency preparedness plan would not create a significant cost. In addition, it is assumed that affected counties already have the generators that must be included in the plan. Affected entities reported that maintenance costs for the equipment are not significant. Any other costs associated with implementation would depend on additional standards imposed by TCEQ.

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 582 Commission on Environmental Quality

LBB Staff: JOB, KJG, MH, ER, GD

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 24, 2009

TO: Honorable Frank Corte Jr., Chair, House Committee on Defense & Veterans' Affairs

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB4409 by Taylor (relating to emergency preparation and management.), **Committee Report 1st House, Substituted**

Due to the unknown nature of any future disaster, the bill could have an indeterminate fiscal impact to the state.

The bill would not make an appropriation, but would establish the basis for an appropriation.

The negative fiscal impact to the General Revenue Fund would depend on the timing, magnitude, location, and number of natural disasters that might occur, which cannot be determined. For the purpose of this analysis, Hurricane Ike, the state's most recent weather-related disaster, was used as a source of comparison.

The bill amends Chapter 418 of the Government Code by adding section 418.126, which directs the General Land Office (GLO), the Texas Department of Transportation (TxDOT), and the Texas Department of Housing and Community Affairs (TDHCA) to solicit and enter into pre-event contracts for weather-related disaster response activities after a disaster. GLO shall solicit and contract for debris removal from beaches, TxDOT shall solicit and contract for debris removal from the state highway system, and TDHCA shall solicit and contract to provide temporary or emergency shelter or housing. The bill further directs that funds from the Disaster Contingency Fund (0453) shall be used to pay for these contract services. The Department of Emergency Management reports that the bill would expand the scope of activities that can be paid for with the Disaster Contingency Fund and therefore could potentially increase the number of requests for funding from the fund. Currently, the Comptroller reports that the Disaster Contingency Fund has no available balance and no existing funding mechanism that would appropriate funds to the account in the future.

The fiscal impact of Hurricane Ike to state agencies is an estimated \$2.0 billion. Of that amount, GLO and TxDOT report that debris removal costs for their agencies totaled an estimated \$39.0 and \$18.4 million respectively. Some of these costs could potentially be offset by federal assistance from the Federal Emergency Management Agency (FEMA). While debris removal for Hurricane Ike is currently being reimbursed at 100 percent, the federal Stafford Act sets federal assistance for this type of work at 75 percent for a presidentially-declared disaster. Similar assistance would not be available for a state disaster that is not presidentially-declared or for costs associated with debris removal from private property.

According to the analysis provided by TDHCA, the agency estimates that following Hurricane Ike, approximately 35,000 individuals sought emergency shelter solutions. TDHCA estimates that in the event of a similar disaster, the agency's costs to provide temporary shelter and housing to an estimated 5,000 households could be as much as \$441 million for fiscal years 2010-2014. The majority of those costs, an estimated \$315 million, would be one-time expenditures in the first year associated with purchasing and furnishing 5,000 manufactured homes. The remaining costs would be for delivery and set up, utilities, removal costs, and associated FTE costs. If all or part of the housing solutions were contracted out, TDHCA's costs could be significantly lower due to not having to purchase temporary housing units.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 301 Office of the Governor, 305 General Land Office and Veterans' Land Board, 332 Department of Housing and Community Affairs, 401 Adjutant General's Department, 405 Department of Public Safety, 601 Department of Transportation

LBB Staff: JOB, KK, MH, ER, BTA

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 8, 2009

TO: Honorable Frank Corte Jr., Chair, House Committee on Defense & Veterans' Affairs

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB4409 by Taylor (Relating to emergency preparation and management.), **As Introduced**

Due to the unknown nature of any future disaster, the bill could have an indeterminate fiscal impact to the state.

The bill would not make an appropriation, but would establish the basis for an appropriation.

The negative fiscal impact to the General Revenue Fund would depend on the timing, magnitude, location, and number of natural disasters that might occur, which cannot be determined. For the purpose of this analysis, Hurricane Ike, the state's most recent weather-related disaster, was used as a source of comparison.

The bill amends Chapter 418 of the Government Code by designating that after a weather-related disaster the General Land Office (GLO) shall contract for debris removal from beaches, the Texas Department of Transportation (TxDOT) shall contract for debris removal from the state highway system, and the Texas Department of Housing and Community Affairs (TDHCA) shall contract to provide temporary shelter or housing.

The fiscal impact of Hurricane Ike to state agencies is an estimated \$2.0 billion. Of that amount, GLO and TxDOT report that debris removal costs for their agencies totaled an estimated \$39.0 and \$18.4 million respectively. Some of these costs could potentially be offset by federal assistance from the Federal Emergency Management Agency (FEMA). While debris removal for Hurricane Ike is currently being reimbursed at 100 percent, the federal Stafford Act sets federal assistance for this type of work at 75 percent for a presidentially-declared disaster. Similar assistance would not be available for a state disaster that is not presidentially-declared or for costs associated with debris removal from private property.

According to the analysis provided by TDHCA, the agency estimates that following Hurricane Ike, approximately 35,000 individuals sought emergency shelter solutions. TDHCA estimates that in the event of a similar disaster, the agency's costs to provide temporary shelter and housing to an estimated 5,000 households could be as much as \$441 million for fiscal years 2010-2014. The majority of those costs, an estimated \$315 million, would be one-time expenditures in the first year associated with purchasing and furnishing 5,000 manufactured homes. The remaining costs would be for delivery and set up, utilities, removal costs, and associated FTE costs.

The bill further directs that funds from the Disaster Contingency Fund (0453) may be used to pay for these contract services. Currently, the Comptroller reports that the Disaster Contingency Fund has no available balance and no existing funding mechanism that would appropriate funds to the account in the future.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 301 Office of the Governor, 305 General Land Office and Veterans' Land Board, 332 Department of Housing and Community Affairs, 401 Adjutant General's Department, 405 Department of Public Safety, 601 Department of Transportation

LBB Staff: JOB, KK, MH, ER, BTA

