

BILL ANALYSIS

Senate Research Center
82S11169 KCR-D

C.S.H.B. 3
By: Smithee (Carona)
Business & Commerce
6/22/2011
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.H.B. 3 amends current law relating to the operation and name of the Texas Windstorm Insurance Association, to the resolution of certain disputes concerning claims made to that association, and to the issuance of windstorm and hail insurance policies in the private insurance market by certain insurers, and provides penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to commissioner of insurance in SECTION 8 (Section 2210.072, Insurance Code), SECTION 20 (Section 2210.2551, Insurance Code), SECTION 23 (Section 2210.259, Insurance Code), SECTION 24 (Section 2210.260, Insurance Code), SECTION 28 (Section 2210.363, Insurance Code), SECTION 29 (Section 2210.403, Insurance Code), SECTION 38 (Section 2210.553, Insurance Code), and SECTION 39 (Sections 2210.575 and 2210.577, Insurance Code) of this bill.

Rulemaking authority is expressly granted to the legislative interim study committee in SECTION 56 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 83.002, Insurance Code, by adding Subsection (c), to provide that this chapter also applies to a person appointed as a qualified inspector under Section 2210.254 or 2210.255, and a person acting as a qualified inspector under Section 2210.254 or 2210.255 without being appointed as a qualified inspector under either of those sections.

SECTION 2. Amends Section 542.052, Insurance Code, as follows:

Sec. 542.052. APPLICABILITY OF SUBCHAPTER. (a) Creates this subsection from existing text and makes no further changes.

(b) Provides that this subchapter does not apply to the Texas Windstorm Insurance Association (association).

SECTION 3. Amends Subchapter A, Chapter 2110, Insurance Code, by adding Sections 2210.0081 and 2210.010, as follows:

Sec. 2210.0081. CERTAIN ACTIONS BROUGHT AGAINST ASSOCIATION BY COMMISSIONER. Provides that in an action brought by the commissioner of insurance (commissioner) against the association under Chapter 441 (Supervision and Conservatorship):

(1) the association's inability to satisfy obligations under Subchapter M (Public Securities Program) related to the issuance of public securities under this chapter constitutes a condition that makes the association's continuation in business hazardous to the public or to the association's policyholders for the purposes of Section 441.052 (Circumstances Constituting Insurer Exceeding Powers);

(2) the time for the association to comply with the requirements of supervision or for the conservator to complete the conservator's duties, as applicable, is limited to three years from the date the commissioner commences the action against the association; and

(3) unless the commissioner takes further action against the association under Chapter 441, as a condition of release from supervision, the association is required to demonstrate to the satisfaction of the commissioner that the association is able to satisfy obligations under Subchapter M related to the issuance of public securities under this chapter.

Sec. 2210.010. CERTAIN CONDUCT IN DISPUTE RESOLUTION PROHIBITED.

(a) Defines, for purposes of this section, "presiding officer."

(b) Requires the presiding officer, if a person insured under this chapter is assigned to act as presiding officer to preside over or resolve a dispute involving the association and another person insured under this chapter, to, not later than the seventh day after the date of assignment, give written notice to the association and to each other party to the dispute, or the association's or other party's attorney, that the presiding officer is insured under this chapter.

(c) Authorizes, the association or other party that receives notice under Subsection (b), in a proceeding with respect to which the commissioner has authority to designate the presiding officer, to file with the commissioner a written objection to the assignment of the presiding officer to the dispute. Requires that the written objection contain the factual basis on which the association or other party objects to the assignment.

(d) Requires the commissioner to assign a different presiding officer to the dispute if, after reviewing the objection filed under Subsection (c), the commissioner determines that the presiding officer originally assigned to the dispute has a direct financial or personal interest in the outcome of the dispute.

(e) Requires the association or another party to file an objection under Subsection (c) not later than the earlier of the seventh day after the date the association or other party receives actual notice that the presiding officer is insured under this chapter; or the seventh day before the date of the first proceeding concerning the dispute.

(f) Authorizes the commissioner to, on a showing of good cause, extend the deadline to file an objection under Subsection (e).

SECTION 4. Amends Section 2210.054(a), Insurance Code, to require the association to file annually with the Texas Department of Insurance (TDI) and the state auditor's office a statement covering periods designated by TDI that summarizes the transactions, conditions, operations, and affairs of the association during the preceding year.

SECTION 5. Amends Section 2210.056(c), Insurance Code, to provide that on dissolution of the association, all assets of the association, other than assets pledged for the repayment of public securities issued under this chapter, revert to this state.

SECTION 6. Amends Subchapter B, Chapter 2210, Insurance Code, by adding Sections 2210.058, 2210.059, and 2210.061, as follows:

Sec. 2210.058. AUDIT OF ASSOCIATION. (a) Provides that the association is subject to audit by the state auditor and is required to pay the costs incurred by the state auditor in performing an audit under this section.

(b) Requires the association to pay the costs described by Subsection (a) promptly after receipt of a statement from the state auditor's office regarding the amount of those costs.

Sec. 2210.059. CLAIMS PRACTICES AUDIT. (a) Requires TDI, if the commissioner determines that 1,000 or more claims have been filed under association policies the bases of which are damage to insured property caused by the same storm, to conduct a random audit of the claim files of those claims to:

(1) determine whether the association is adequately and properly documenting claims decisions in each claim file; and

(2) ensure that each claim is being handled appropriately, including being handled in accordance with the terms of the policy under which the claim is filed.

(b) Requires TDI to conduct an audit required under this section as soon as possible after the filing of the 1,000th claim described by Subsection (a) to ensure the quality of the process with which the association is handling claims described by Subsection (a).

(c) Requires the commissioner, if, following an audit conducted under this section, the commissioner determines that the association is not adequately and properly documenting claims decisions or that claims described by Subsection (a) are not otherwise being handled appropriately, to:

(1) notify the board of directors of the association (board of directors) of that determination; and

(2) identify the manner in which the association should correct any deficiencies identified by the commissioner.

Sec. 2210.061. CONTRACTORS AND MANAGERIAL EMPLOYEES: COMPENSATION AND BONUSES. Requires the association to post on the association's Internet website any compensation, monetary or otherwise, and any bonus that, when aggregated, exceed \$100,000 in a 12-month period and that are paid or given by the association to a vendor or independent contractor with whom the association has a contract, and to an association employee who serves in a managerial capacity.

SECTION 7. Amends Section 2210.071, Insurance Code, by adding Subsection (c), to require losses not paid under Subsection (b) (relating to requiring the association to pay losses in excess of premium and other revenue of the association from available reserves of the association and available amounts in the reserve trust fund) to be paid from the proceeds from public securities issued in accordance with this subchapter and Subchapter M and, notwithstanding Subsection (a) (relating to payment of excess losses), authorizes them to be paid from the proceeds of public securities issued under Section 2210.072(a) before an occurrence or series of occurrences that results in insured losses.

SECTION 8. Amends Section 2210.072, Insurance Code, by amending Subsections (a) and (b) and adding Subsections (a-1) and (a-2), as follows:

(a) Authorizes Class 1 public securities, on request of the association and approval by the commissioner, and subject to Subsection (a-2), to be issued under this section at any time during a calendar year, including before, on, or after an occurrence or series of occurrences that results in insured losses, if the association determines that insured losses in the calendar year have exceeded, or are likely to exceed, the amount available for the payment of losses under Section 2210.071(b).

(a-1) Requires the commissioner by rule, subject to Subsection (a-2), to establish, for each calendar year, the maximum principal amount in which public securities may be

issued under this section before an occurrence or series of occurrences that results in insured losses. Requires the commissioner to consult the Texas Public Finance Authority when adopting rules under this subsection.

(a-2) Requires that public securities issued under this section be repaid within a period not to exceed 14 years, rather than 10 years, and is authorized to be repaid sooner if the board of directors elects to do so and the commissioner approves. Prohibits the amount of outstanding public securities issued under this section before an occurrence or series of occurrences that results in insured losses from, in the aggregate, exceeding \$1 billion at any one time, regardless of the calendar year or years in which the outstanding public securities were issued. Deletes existing text requiring that losses not paid under Section 2210.071 (Payment of Excess Losses; Payment from Reserves and Trust Fund) be paid as provided by this section from the proceeds from Class 1 public securities authorized to be issued in accordance with Subchapter M on or after the date of any occurrence or series of occurrences that results in insured losses.

(b) Requires that public securities described by Subsection (a) be issued as necessary in a principal amount not to exceed \$1 billion in the aggregate whether for a single occurrence or a series of occurrences that takes place in a calendar year and results in insured losses; and may be issued, in one or more issuances or tranches, during the calendar year in which the occurrence or series of occurrences occurs or, if the public securities cannot reasonably be issued in the calendar year in which the occurrence or series of occurrences takes place, during the following calendar year. Deletes existing text requiring that public securities described by Subsection (a) be issued as necessary in principal amount not to exceed \$1 billion per year.

SECTION 9. Amends Section 2210.073, Insurance Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Authorizes public securities described by Subsection (a) to be issued as necessary in a principal amount not to exceed \$1 billion in the aggregate whether for a single occurrence or a series of occurrences that takes place in a calendar year and results in insured losses; and to be issued, in one or more issuances or tranches, during the calendar year in which the occurrence or series of occurrences occurs or, if the public securities cannot reasonably be issued in the calendar year in which the occurrence or series of occurrences takes place, during the following calendar year. Deletes existing text authorizing that public securities described by Subsection (a) be issued as necessary in principal amount not to exceed \$1 billion per year.

(c) Creates this subsection from existing text and makes no further changes.

SECTION 10. Amends Section 2210.074, Insurance Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Authorizes public securities described by Subsection (a) to be issued as necessary in a principal amount not to exceed \$500 million in the aggregate, whether for a single occurrence or a series of occurrences that takes place in a calendar year, and results in insured losses, and to be issued, in one or more issuances or tranches, during the calendar year in which the occurrence or series of occurrences occurs or, if the public securities cannot reasonably be issued in the calendar year in which the occurrence or series of occurrences takes place, during the following calendar year. Deletes existing text authorizing that public securities described by Subsection (a) be issued as necessary in principal amount not to exceed \$500 million per year.

(c) Creates this subsection from existing text and makes no further changes.

SECTION 11. Amends Section 2210.075, Insurance Code, as follows:

Sec. 2210.075. REINSURANCE. (a) Authorizes an insurer, before any occurrence or series of occurrences, to elect to purchase reinsurance to cover an assessment for which

the insurer would otherwise be liable under Section 2210.074(c), rather than Subsection 2210.074(b).

(b) Makes a conforming change.

SECTION 12. Amends Section 2210.102, Insurance Code, by adding Subsection (i), as follows:

(i) Authorizes the commissioner, notwithstanding Subsection (f) (relating to nominating a vacancy on the board), for a vacancy occurring in a position under Subsection (b) (relating to requiring four members of the board to be representatives of the insurance industry), to appoint, for the lesser of 120 days or until the vacancy is filled, a person who has demonstrated knowledge in insurance principles. Provides that this subsection does not apply to a vacancy due to the expiration of a term occurring under Section 2210.103 (Terms). Provides that this subsection expires December 31, 2012, and any appointment in effect on that date is continued until the expiration of the term of the appointment.

SECTION 13. Amends Section 2210.105, Insurance Code, by amending Subsections (a) and (b) and adding Subsections (b-1), (e), and (f), as follows:

(a) Requires the association, except for an emergency meeting, to:

(1) notify TDI not later than the 11th day before the date of a meeting of the board of directors or of the members of the association; and

(2) not later than the seventh day before the date of a meeting of the board of directors, post notice of the meeting on the association's Internet website and TDI's Internet website.

(b) Provides that, except for a closed meeting authorized by Subchapter D (Exceptions to Requirement that Meetings be Open), Chapter 551 (Open Meetings), Government Code, a meeting of the board of directors or of the members of the association is open to the public. Deletes existing text providing that, except for a closed meeting authorized by Subchapter D, Chapter 551, Government Code, a meeting of the board of directors or of the members of the association is open to the commissioner or the commissioner's designated representative and the public.

(b-1) Authorizes the commissioner or the commissioner's designated representative to attend a meeting of the board of directors or the members of the association, including a closed meeting authorized by Subchapter D, Chapter 551, Government Code, except for those portions of a closed meeting that involve the rendition of legal advice to the board concerning a regulatory matter or that would constitute an ex parte communication with the commissioner.

(e) Requires the association to broadcast live on the association's Internet website all meetings of the board of directors, other than closed meetings, and archive the recording of a meeting until the second anniversary of the meeting.

(f) Provides that the presence of the commissioner or the commissioner's designated representative at a closed meeting does not waive or impair any privilege, including attorney-client privilege, that exists in statute or at common law.

SECTION 14. Amends Section 2210.107, Insurance Code, as follows:

Sec. 2210.107. PRIMARY BOARD OBJECTIVES; REPORT. (a) Creates this subsection from existing text. Provides that the primary objectives of the board of directors are to ensure that the association:

(1)-(2) Makes no changes to these subdivisions; and

(3) meets all standards imposed under this chapter, including that claims against the association are promptly and fairly resolved.

(b) Requires the general manager of the association, every two months, to submit to the board a report evaluating the extent to which the association met the objectives described by Subsection (a) in the two-month period immediately preceding the date of the report.

(c) Requires the association, not later than June 1 of each year, to submit to the commissioner, the legislative oversight board established under Subchapter N (Legislative Oversight Board), the governor, the lieutenant governor, and the speaker of the house of representatives a report evaluating the extent to which the board met the objectives described by Subsection (a) in the 12-month period immediately preceding the date of the report.

SECTION 15. Amends Subchapter C, Chapter 2210, Insurance Code, by adding Section 2210.108, as follows:

Sec. 2210.108. OPEN MEETINGS AND OPEN RECORDS. (a) Provides that except as specifically provided by this chapter or another law, the association is subject to Chapters 551 (Open Meetings) and 552 (Public Information), Government Code.

(b) Provides that except as provided by Subsection (c), the following information is exempt from disclosure under Chapter 552, Government Code:

(1) a name, address, telephone number, tax identification number, social security number, or policy or claim number of a person insured under this chapter;

(2) policy information related to insured amounts; or insured items that identify specific property or could reasonably be used to identify specific property;

(3) claim file information, including photographs and descriptive reports, that identifies specific property or could reasonably be used to identify specific property; and

(4) other information that could be considered personally identifiable financial information.

(c) Prohibits this section from being construed to limit a request:

(1) by a person insured under this chapter, or the person's counsel, for information contained in that person's association policy or for claim information related to a loss claimed under that policy;

(2) by the commissioner or TDI for information for a purpose authorized under this code, including for the purposes of developing and implementing incentive programs under Sections 2210.009(b) and 2210.053(b);

(3) for aggregate policy, coverage, and claims information; or

(4) for discovery in a judicial or administrative proceeding.

SECTION 16. Amends Section 2210.202, Insurance Code, as follows:

Sec. 2210.202. APPLICATION FOR COVERAGE. (a) Provides that notwithstanding Section 2210.203(c), evidence of one declination every three calendar years is also required with an application for renewal of an association policy.

(b) Requires a property and casualty agent to submit an application for initial, rather than the, insurance coverage on behalf of the application on forms prescribed by the association. Requires the association to develop a simplified renewal process that allows for the acceptance of an application for renewal coverage, and payment of premiums, from a property and casualty agent or a person insured under this chapter. Requires that an application for initial or renewal coverage contain:

(1) a statement as to whether the applicant has submitted or will submit the premium in full from personal funds or, if not, to whom a balance is or will be due; and

(2) a statement that the agent acting on behalf of the applicant possesses proof of the declination described by Subsection (a) and proof of flood insurance coverage or unavailability of that coverage as described by Section 2210.203(a-1). Makes nonsubstantive changes.

SECTION 17. Amends Section 2210.203, Insurance Code, by amending Subsections (a-1) and (c) and adding Subsections (a-2) and (a-3), as follows:

(a-1) Prohibits the association, notwithstanding Subsection (a), if all or any part of the property to be insured is located in Zone V or another similar zone with an additional hazard associated with storm waves, as defined by the National Flood Insurance Program, or is a residential structure located in an area described by Section 2210.004(g)(2) (relating to conditions a property is insurable), from issuing an insurance policy for initial or renewal coverage unless evidence is submitted to the association that the property to be covered under the policy is also covered by a flood insurance policy that has a deductible or self-insurance amount comparable to the association policy to be issued and that is issued under the National Flood Insurance Program or by an insurer in an aggregate amount that is:

(1) equal to or greater than the amount of coverage under the policy to be issued by the association; or

(2) equal to the maximum amount obtainable through the National Flood Insurance Program or an insurer.

Deletes existing text providing that this subsection applies only to a structure constructed, altered, remodeled, or enlarged on or after September 1, 2009, and only for insurable property located in areas designated by the commissioner. Deletes existing text prohibiting the association, notwithstanding Subsection (a), if all or any part of the property to which this subsection applies is located in Zone V or another similar zone with an additional hazard associated with storm waves, as defined by the National Flood Insurance Program, from issuing an insurance policy for initial or renewal coverage unless evidence that the property is covered by a flood insurance policy is submitted to the association.

(a-2) Provides that Subsection (a-1) does not apply to property for which flood insurance is not available under the National Flood Insurance Program.

(a-3) Creates this subsection from existing text. Requires an agent offering or selling a Texas windstorm and hail insurance policy, rather than a Texas windstorm and hail insurance policy in any area designated, to offer flood insurance coverage required under Subsection (a-1) to prospective insured, if that coverage is available. Makes a nonsubstantive change.

(c) Provides that a policy is automatically renewed annually as long as the property continues to be insurable property. Deletes existing text authorizing a policy to be

renewed annually on application for renewal as long as the property continues to be insurable property.

SECTION 18. Amends Subchapter E, Chapter 2210, Insurance Code, by adding Sections 2210.205, 2210.210, and 2210.211, as follows:

Sec. 2210.205. **REQUIRED POLICY PROVISIONS: DEADLINE FOR FILING CLAIM; NOTICE CONCERNING DISPUTE RESOLUTION.** (a) Requires that a windstorm and hail insurance policy issued by the association:

(1) require an insured to file a claim under the policy not later than the first anniversary of the date on which the loss that is the basis of the claim occurs; and

(2) contain a conspicuous notice concerning the resolution of disputes under the policy, including describing the appraisal process under Section 2210.576; describing the alternative dispute resolution process under Section 2210.577; and stating that compliance with the provisions described by Paragraphs (A) and (B) is a condition precedent to seeking administrative relief under Subchapter L-1.

(b) Requires the association to extend the one-year period described by Subsection (a)(1) for an additional period not to exceed 120 days if, before the 120th day after the expiration of the one-year period, the insured shows good cause in a written request to the association.

Sec. 2210.210. **COVERAGE OF CERTAIN STRUCTURES PROHIBITED.** Prohibits the association from issuing coverage for a wind turbine regardless of whether the turbine could otherwise be considered insurable property under this chapter.

Sec. 2210.211. **PROOF OF OTHER COVERAGE REQUIRED FOR SETTLEMENT OF CERTAIN CLAIMS; CLAIMS PAYMENT LIMITED.** (a) Provides that this section applies only to a claim filed under an association policy the issuance or renewal of which, under Section 2210.203(a-1), requires evidence of coverage by a flood insurance policy.

(b) Prohibits the association from paying or settling a portion of a claim filed under a policy described by Subsection (a) if:

(1) that portion of the claim is for damage that is covered by the flood insurance policy, if the required flood insurance coverage was in effect on the date the damage occurred; or

(2) that portion of the claim is for damage that would have been covered by the flood insurance policy, if the required flood insurance coverage was not in effect on the date the damage occurred.

SECTION 19. Amends Section 2210.254, Insurance Code, by adding Subsection (e) to authorize TDI to establish an annual renewal period for persons appointed as qualified inspectors.

SECTION 20. Amends Subchapter F, Chapter 2210, Insurance Code, by adding Section 2210.2551, as follows:

Sec. 2210.2551. **EXCLUSIVE ENFORCEMENT AUTHORITY; RULES.** (a) Provides that TDI has exclusive authority over all matters relating to the appointment and oversight of qualified inspectors for purposes of this chapter.

(b) Requires the commissioner by rule to establish criteria to ensure that a person seeking appointment as a qualified inspector under this subchapter, including an

engineer seeking appointment under Section 2210.255, possesses the knowledge, understanding, and professional competence to perform windstorm inspections under this chapter and to comply with other requirements of this chapter.

SECTION 21. Amends the heading to Section 2210.256, Insurance Code, to read as follows:

Sec. 2210.256. DISCIPLINARY PROCEEDINGS REGARDING APPOINTED INSPECTORS AND CERTAIN OTHER PERSONS.

SECTION 22. Amends Section 2210.256, Insurance Code, by adding Subsection (a-1), as follows:

(a-1) Authorizes the commissioner ex parte, in addition to any other action authorized under this section, to enter an emergency cease and desist order under Chapter 83 (Emergency Cease and Desist Orders) against a qualified inspector, or a person acting as a qualified inspector, if:

(1) the commissioner believes that the qualified inspector has through submitting or failing to submit to TDI sealed plans, designs, calculations, or other substantiating information, failed to demonstrate that a structure or a portion of a structure subject to inspection meets the requirements of this chapter and TDI rules; or refused to comply with requirements imposed under this chapter or TDI rules; or the person acting as a qualified inspector is acting without appointment as a qualified inspector under Section 2210.254 or 2210.255; and

(2) the commissioner determines that the conduct described by Subdivision (1) is fraudulent or hazardous or creates an immediate danger to the public.

SECTION 23. Amends Section 2210.259, Insurance Code, by adding Subsection (c), to authorize the commissioner by rule to provide for a discount of, or a credit against, a surcharge assessed under Subsection (a) (relating to a surcharge for certain noncompliant residential structures) in instances in which a policyholder demonstrates that the noncompliant structure was constructed with at least one structural building component that complies with the building code standards set forth in the plan of operation.

SECTION 24. Amends Subchapter F, Chapter 2210, Insurance Code, by adding Section 2210.260, as follows:

Sec. 2210.260. ALTERNATIVE ELIGIBILITY FOR COVERAGE. (a) Authorizes a person who has an insurable interest in a residential structure, on and after January 1, 2012, to obtain insurance coverage through the association for that structure without obtaining a certificate of compliance under Section 2210.251(g) in accordance with this section and rules adopted by the commissioner.

(b) Authorizes TDI to issue an alternative certification for a residential structure if the person who has an insurable interest in the structure demonstrates that at least one qualifying structural building component of the structure has been:

(1) inspected by a TDI inspector or by a qualified inspector; and

(2) determined to be in compliance with applicable building code standards, as set forth in the plan of operation.

(c) Requires the commissioner to adopt reasonable and necessary rules to implement this section. Requires that the rules adopted under this section establish which structural building components are considered qualifying structural building components for the purposes of Subsection (b), taking into consideration those items that are most probable to generate losses for the association's policyholders and the cost to upgrade those items.

(d) Requires a person who has an insurable interest in a residential structure that is insured by the association as of January 1, 2012, but for which the person has not obtained a certificate of compliance under Section 2210.251(g), except as provided in Section 2210.251(f), to obtain an alternative certification under this section before the association, on or after January 1, 2013, may renew coverage for the structure.

(e) Requires that each residential structure for which a person obtains an alternative certification under this section comply with:

(1) the requirements of this chapter, including Section 2210.258; and

(2) the association's underwriting requirements, including maintaining the structure in an insurable condition and paying premiums in the manner required by the association.

(f) Requires the association to develop and implement an actuarially sound rate, credit, or surcharge that reflects the risks presented by structures with reference to which alternative certifications have been obtained under this section. Authorizes a rate, credit, or surcharge under this subsection to vary based on the number of qualifying structural building components included in a structure with reference to which an alternative certification is obtained under this section.

SECTION 25. Amends the heading to Subchapter H, Chapter 2210, Insurance Code, to read as follows:

SUBCHAPTER H. RATES; DISCOUNTS AND CREDITS

SECTION 26. Amends Sections 2210.355(b) and (g), Insurance Code, as follows:

(b) Requires that, in adopting rates under this chapter, the following be considered:

(1)-(3) Makes no changes to this subdivision;

(4) payment of public security obligations for Class 1 public securities issued under this chapter, including the additional amount of any debt service coverage determined by the association to be required for the issuance of marketable public securities; and

(5) all other relevant factors, within and outside this state. Makes a nonsubstantive change.

(g) Requires that a commission paid to an agent for a windstorm and hail insurance policy issued by the association comply with the commission structure approved by the commissioner under Section 2210.356 and be reasonable, adequate, not unfairly discriminatory, and nonconfiscatory.

SECTION 27. Amends Subchapter H, Chapter 2210, Insurance Code, by adding Section 2210.356, as follows:

Sec. 2210.356. AGENT COMMISSIONS. (a) Requires the commissioner, after receiving a recommendation from the board of directors, to approve a commission structure for payment of an agent who submits an application for coverage to the association on behalf of a person who has an insurable interest in insurable property.

(b) Requires that the commission structure adopted by the commissioner be fair and reasonable, taking into consideration the amount of work performed by an agent in submitting an application to the association and the prevailing commission structure in the private windstorm insurance market.

SECTION 28. Amends Subchapter H, Chapter 2210, Insurance Code, by adding Section 2210.363, as follows:

Sec. 2210.363. PREMIUM DISCOUNTS; SURCHARGE CREDITS. (a) Authorizes the association to offer a person insured under this chapter an actuarially justified premium discount on a policy issued by the association, or an actuarially justified credit against a surcharge assessed against the person, other than a surcharge assessed under Subchapter M, if the construction, alteration, remodeling, enlargement, or repair of, or an addition to, insurable property exceeds applicable building code standards set forth in the plan of operation.

(b) Requires the association to offer a person insured under this chapter an actuarially justified premium discount on a policy issued by the association, or an actuarially justified credit against a surcharge assessed against the person, other than a surcharge assessed under Subchapter M, if, in the policy period immediately preceding the policy period for which the premium is paid, the person chose binding arbitration offered by the association under Section 2210.553.

(c) Requires the commissioner to adopt rules necessary to implement and enforce this section.

SECTION 29. Amends Chapter 2210, Insurance Code, by adding Subchapter I, as follows:

SUBCHAPTER I. EXPERT PANEL

Sec. 2210.401. FUNDING AND RESOURCES. (a) Requires the association, at the request of the commissioner, to provide the funds and resources necessary to implement Section 2210.402, including:

- (1) employing or retaining persons to perform the functions necessary or proper under Section 2210.402;
- (2) providing administrative assistance and services, including planning, contracting, and purchasing; and
- (3) providing computer equipment and support.

(b) Provides that a person or entity employed or retained under Subsection (a) acts solely under the direction of, and performs duties assigned by, the commissioner.

Sec. 2210.402. EXPERT PANEL. (a) Provides that this section applies only to losses concurrently caused by wind and tidal surges in which no substantial portion of an insured structure, other than the foundation of the structure, remains.

(b) Requires the commissioner to appoint a panel of experts to advise the association concerning the extent to which a loss to insurable property that is described by Subsection (a) was caused by wind and tidal surges. Provides that the panel consists of the number of experts determined by the commissioner, and requires the commissioner to appoint one member of the panel to serve as the presiding officer of the panel.

(c) Requires members of the panel to have professional expertise in, and be knowledgeable concerning, the geography and meteorology of the seacoast territory as well as the scientific basis for determining the extent to which a loss is caused by wind and tidal surges. Authorizes the areas of expertise of the panel members to include structural engineering, hydrology, statistical science, actuarial science, claims adjusting, and other areas of expertise determined to be necessary and advisable by the commissioner.

(d) Requires the panel to meet at the request of the commissioner or the call of the presiding officer of the panel.

(e) Requires the panel to investigate, collect, and evaluate the information necessary to provide recommendations under Subsection (f).

(f) Requires the panel, at the request of the commissioner, to recommend to the commissioner methods or models for determining the extent to which a loss to insurable property may be or was caused by wind and tidal surges with respect to any weather-related event for geographic areas or regions designated by the commissioner. Requires the panel, at the request of the commissioner, to develop both pre-event and post-event methods or models for determining the extent to which a loss to insurable property may be or was caused by wind and tidal surges. Requires that the methods or models developed by the panel provide guidance to the commissioner on the issue of whether loss to insurable property resulting from a weather-related event may be or has been caused by wind and tidal surges. Requires that the methods or models be based on sound scientific principles.

(g) Requires the commissioner, after consideration of the recommendations made by the panel under Subsection (f), to publish guidelines that the association will use to settle or pay a claim based on a loss described by this section.

Sec. 2210.403. RULES. Authorizes the commissioner to adopt rules as necessary to implement this subchapter.

SECTION 30. Amends Section 2210.452(c), Insurance Code, as follows:

(c) Requires the association, at the end of each calendar year or policy year, to use the net gain from operations of the association, including all premium and other revenue of the association in excess of incurred losses, operating expenses, public security obligations, and public security administrative expenses, to make payments to the trust fund, to procure reinsurance, or to make payments to the trust fund and to procure reinsurance. Makes a nonsubstantive change.

SECTION 31. Amends the heading to Section 2210.453, Insurance Code, to read as follows:

Sec. 2210.453. RISK TRANSFER FINANCING; REINSURANCE.

SECTION 32. Amends Section 2210.453, Insurance Code, by adding Subsections (c), (d), and (e), as follows:

(c) Requires the board of directors, not later than January 1 of each year, to establish the solvency level required under this chapter, to determine the association's current probable maximum loss, based on an average of at least two recognized catastrophe models, as follows:

(1) for calendar years 2011 and 2012, at not less than a one in 50 year occurrence;

(2) for calendar year 2013, at not less than a one in 75 year occurrence; and

(3) for each calendar year after calendar year 2013, at not less than a one in 100 year occurrence.

(d) Requires the board of directors, on January 1 of each year, to develop a plan to obtain pre-event risk transfer financing from private sector sources determined by the board of directors to be reasonable and appropriate to the association's risk of loss and in an amount sufficient to maintain the claims paying ability of the association in the event of a catastrophe with estimated damages of \$2.5 billion or more. Provides that the plan

submitted under this subsection is for informational purposes only and does not bind the association to a particular course of action. Requires the plan to, at a minimum, include:

- (1) a certification to the governor, lieutenant governor, speaker of the house of representatives, and commissioner stating whether or not the required solvency level of the association is satisfied for that calendar year;
- (2) an analysis of the claims paying ability of the association both with and without reliance upon borrowing authorized by this chapter;
- (3) consideration of the costs, availability, and effects of reinsurance, bonds, and other risk transfer financing mechanisms;
- (4) the likelihood and maximum size of assessments authorized by this chapter; and
- (5) the probability of exhausting the association's financial resources.

(e) Requires the board of trustees, not later than June 1 of each year, if the association does not purchase reinsurance as authorized by this section, to submit to the commissioner, the legislative oversight board established under Subchapter N, the governor, the lieutenant governor, and the speaker of the house of representatives a report containing an actuarial plan for paying losses in the event of a catastrophe with estimated damages of \$2.5 billion or more. Provides that the report submitted under this subsection is for informational purposes only and does not bind the association to a particular course of action.

SECTION 33. Amends Section 2210.502, Insurance Code, by adding Subsection (e) to prohibit, notwithstanding Subsection (a) (relating to requiring the board of directors to propose inflation adjustments) the maximum liability limit described by Section 2210.501(b)(1) (relating to the maximum liability limits on a single insurable property) from exceeding \$1.5 million.

SECTION 34. Amends the heading to Subchapter L, Chapter 2210, Insurance Code, to read as follows:

SUBCHAPTER L. CERTAIN APPEALS AND OTHER ACTIONS

SECTION 35. Amends Sections 2210.551(a) and (b), Insurance Code, as follows:

(a) Provides that this section:

(1) does not apply to:

(A) a claimant who has made a claim, as those terms are defined by Section 2210.571; or

(B) a person insured under this chapter who has elected binding arbitration offered by the association under Section 2210.553; and

(2) applies only to a person not described by Subdivision (1) who is insured under this chapter or an authorized representative of the person; or an affected insurer. Makes nonsubstantive changes.

(b) Authorizes a person or entity described by Subsection (a)(2), rather than Subsection (a), who is aggrieved by an act, ruling, or decision of the association to appeal to the commissioner not later than the 30th day after the date of that act, ruling, or decision.

SECTION 36. Amends the heading to Section 2210.552, Insurance Code, to read as follows:

Sec. 2210.552. CERTAIN DISPUTES; VENUE AND NOTICE OF INTENT TO BRING ACTION.

SECTION 37. Amends Section 2210.552, Insurance Code, by amending Subsection (a) and adding Subsections (e) and (f), as follows:

(a) Authorizes a person insured under this chapter who is aggrieved by an act, ruling, or decision of the association relating to the payment of, the amount of, or the denial of a claim, except as provided by Sections 2210.007 and 2210.106 and subject to Subsection (e), to:

(1) after providing the association the notice that meets the requirements of Section 541.154 (Prior Notice of Action), bring an action against the association, including an action under Chapter 541 (Unfair Methods of Competition and Unfair or Deceptive Acts or Practices); or

(2) if applicable, appeal the act, ruling, or decision under Section 2210.551.

(e) Provides that this subchapter and Subchapter L-1 provide the exclusive remedies for a claimant to resolve a dispute with the association concerning the payment of, the amount of, or the denial of a claim. Prohibits a claimant from bringing an action under this section, including an action under Section 2210.578, against the association concerning the payment of, the amount of, or the denial of a claim before exhausting all other remedies under Subchapter L-1. Requires the court, if a claimant brings an action against the association concerning the payment of, the amount of, or the denial of a claim before exhausting those remedies, to abate the action until those remedies have been exhausted. Provides that for purposes of this subsection, "claim" and "claimant" have the meanings assigned by Section 2210.571.

(f) Provides that a claimant who prevails in an action against the association under this section may recover the relief described in Sections 541.152(a) and 2210.575, and prejudgment interest, and may recover damages under Section 541.152(b) or under Section 17.50 (Relief for Consumers), Business & Commerce Code, not to exceed two times the amount of actual damages, only if the claimant proves by clear and convincing evidence that the association intentionally or knowingly committed an act prohibited by Chapter 541 as an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

SECTION 38. Amends Subchapter L, Chapter 2210, Insurance Code, by adding Sections 2210.553 and 2210.554, as follows:

Sec. 2210.553. VOLUNTARY ARBITRATION OF CERTAIN COVERAGE AND CLAIM DISPUTES. (a) Authorizes the association, if a person insured under this chapter has a dispute with the association involving an act, ruling, or decision of the association relating to the payment of, the amount of, or the denial of a claim filed by the person, to offer to the person that the association and the person resolve the dispute through binding arbitration.

(b) Requires that an arbitration under this section be conducted in the manner and under rules and deadlines prescribed by the commissioner by rule.

Sec. 2210.554. LIMITATIONS PERIOD. Requires a person insured under this chapter who brings an action against the association, notwithstanding any other law, including Section 541.162, to bring the action not later than the second anniversary of the date of the act, ruling, or decision of the association by which the insured is aggrieved.

SECTION 39. Amends Chapter 2210, Insurance Code, by adding Subchapter L-1, as follows:

SUBCHAPTER L-1. CLAIMS: SETTLEMENT, APPRAISAL, AND DISPUTE
RESOLUTION

Sec. 2210.571. DEFINITIONS. Defines, in this subchapter, "association policy," "claim," and "claimant."

Sec. 2210.572. FILING OF CLAIM. Requires an insured, subject to the good cause extension to which a claimant is entitled under Section 2210.205(b), to file a claim under an association policy not later than the first anniversary of the date on which the damage to property that is the basis of the claim occurs.

Sec. 2210.573. RECEIPT OF NOTICE OF CLAIM. (a) Requires the association, not later than the 30th day after the date the association receives notice of a claim, to:

- (1) acknowledge receipt of the claim;
- (2) commence any investigation of the claim; and
- (3) request from the claimant all items, statements, and forms that the association reasonably believes, at that time, will be required from the claimant.

(b) Authorizes the association to make additional requests for information if during the investigation of the claim the additional requests are necessary.

(c) Requires the association, if the acknowledgment of receipt of a claim is not made in writing, to make a record of the date, manner, and content of the acknowledgment.

Sec. 2210.574. NOTICE OF ACCEPTANCE OR REJECTION OF CLAIM. (a) Requires the association, except as provided by Subsection (c), to notify a claimant in writing of the acceptance or rejection of a claim not later than the 30th day after the date the association receives all items, statements, and forms required by the association to secure final proof of loss.

(b) Requires the notice required by Subsection (a) to state the reasons for the rejection if the association rejects the claim.

(c) Requires the association, if the association is unable to accept or reject the claim within the period specified by Subsection (a), to, within that same period, notify the claimant of the reasons that the association needs additional time. Requires the association to accept or reject the claim not later than the 30th day after the date the association notifies a claimant under this subsection.

Sec. 2210.575. PAYMENT OF CLAIM; DELAY IN PAYMENT OF CLAIM; INTEREST ON CLAIM. (a) Requires the association, except as provided by Subsection (b) or (c), if the association notifies a claimant under Section 2210.574 that the association will pay a claim or part of a claim, to pay the claim not later than the 10th day after the date notice is made.

(b) Requires the association, except as provided by Subsection (c), if payment of the claim or part of the claim is conditioned on the performance of an act by the claimant, to pay the claim not later than the 10th day after the date the act is performed.

(c) Authorizes the commissioner by rule, if the association does not have sufficient cash on hand or available in the catastrophe reserve trust fund to comply with this section, to extend the periods described by Subsections (a) and (b) by an additional period not to exceed 120 days.

Sec. 2210.5751. EXTENSION OF CERTAIN DEADLINES. Provides that, in the event of a weather-related catastrophe or major natural disaster, as defined by the

commissioner, the claim-handling deadlines under Sections 2210.573, 2210.574, and 2210.575 are extended for an additional 15 days.

Sec. 2210.576. DISPUTES CONCERNING AMOUNT OF LOSS. (a) Authorizes the claimant or the association, if a claimant disputes the amount of loss determined by the association, to resolve that dispute by, not later than the 60th day after the date the claimant receives the notice from the association that gives rise to the dispute, requesting appraisal in accordance with the terms of the insurance policy.

(b) Authorizes the 60-day period described by Subsection (a) to be extended for:

(1) an agreed period of time by mutual consent of the claimant and the association; or

(2) 30 days by the claimant if, before the expiration of the 60-day period described by Subsection (a), the claimant is unable to retain an appraiser and provides written notice of that inability to the association.

(c) Provides that if a claimant or the association requests appraisal under this section, the claimant is responsible for paying any costs incurred or charged by an appraiser retained by and on behalf of the claimant, the association is responsible for paying any costs incurred or charged by an appraiser retained by and on behalf of the association, and the claimant and the association are responsible in equal shares for any costs incurred or charged by any umpire.

(d) Provides that except as provided by Subsection (b), if the association or a claimant does not demand appraisal before the expiration of the 60-day period described by Subsection (a), the association or claimant, as applicable, waives the right to have the amount of loss determined by appraisal.

(e) Provides that this section applies only to disputes regarding the amount of loss and does not apply to disputes regarding the association's determination concerning coverage for a claim or causation of damage to property insured under an association policy that is the basis of a claim.

(f) Provides that the appraisal decision is binding on the claimant and the association as to the amount of loss and is subject to review only if the claimant brings an action against the association as described by Section 2210.578.

Sec. 2210.577. ALTERNATE DISPUTE RESOLUTION. (a) Authorizes the association, if a claimant disputes the association's determination concerning coverage for a claim or causation of damage to property insured under an association policy that is the basis of a claim and provides notice of intent to bring an action that meets the requirements of Section 541.154, to require the claimant, as a prerequisite to filing the action against the association, to submit the dispute to alternate dispute resolution by mediation or moderated settlement conference, as provided by Chapter 154 (Alternative Dispute Resolution Procedures), Civil Practice and Remedies Code.

(b) Requires the association to request alternate dispute resolution of a dispute described by Subsection (a) not later than the 60th day after the date the association receives from the claimant notice of intent to bring an action.

(c) Requires alternate dispute resolution under this section to be completed not later than the 60th day after the date a request for alternate dispute resolution is made under Subsection (b). Authorizes the 60-day period described by this subsection to be extended by the commissioner by rule or by the association and a claimant by mutual consent.

(d) Authorizes the claimant, if alternate dispute resolution is not completed before the expiration of the 60-day period described by Subsection (c) or, if

applicable, any extension under that subsection, to bring an action against the association as described by Section 2210.578.

(e) Authorizes a moderated settlement conference under this section to be conducted by a panel consisting of one or more impartial third parties.

(f) Requires the commissioner to establish rules to implement this section, including provisions for expediting alternate dispute resolution, facilitating the ability of a claimant to appear with or without counsel, and providing that formal rules of evidence shall not apply to the proceedings.

Sec. 2210.578. ACTION BY CLAIMANT. (a) Authorizes a claimant aggrieved by the association's decision concerning a claim under this subchapter, including an appraisal process under Section 2210.576 or the outcome of alternate dispute resolution under Section 2210.577, subject to providing notice of intent to bring an action that meets the requirements of Section 541.154, to bring an action against the association.

(b) Requires that an action brought against the association under this section be presided over by a judge appointed by the judicial panel on multidistrict litigation designated under Section 74.161 (Judicial Panel on Multidistrict Litigation), Government Code, if six or more claimants file civil actions against the association as a result of a weather-related event. Requires that a judge appointed under this section be an active judge in Travis County, for suits filed in Travis County, or an active judge in the county in which suit is filed, for a suit filed in a county other than Travis County. Provides that "active judge" shall be defined as in Section 74.041 (Definitions), Government Code.

(c) Provides that an action brought against the association is governed by this subchapter and Sections 2210.552 and 2210.554.

Sec. 2210.579. CONSTRUCTION WITH OTHER LAW. (a) Provides that to the extent of any conflict between a provision of this subchapter and any other law, the provision of this subchapter prevails.

(b) Prohibits the association, notwithstanding any other law, from bringing an action against a claimant, for declaratory or other relief, before the 180th day after the date an appraisal under Section 2210.576, or alternate dispute resolution under Section 2210.577, is completed.

SECTION 40. Amends Section 2210.602, Insurance Code, by amending Subdivisions (1) and (2) and adding Subdivisions (1-a), (1-b), (5-a), (6-a), (6-b), (6-c), and (6-d), to define "authority," "catastrophic event," "gross premium," "marketable," "member assessment trust fund," "net premium," "premium surcharge trust fund" and to redefine "class 1 public securities."

SECTION 41. Amends Section 2210.604, Insurance Code, by amending Subsection (b) and (c) and adding Subsection (d), as follows:

(b) Prohibits the maximum principal requested under this subsection from exceeding the amount of public securities the association, in consultation with the Texas Public Finance Authority, determines to be marketable.

(c) Authorizes the principal amount determined by the association under Subsection (b) to be increased to include an amount sufficient to:

(1)-(3) Makes no changes to these subdivisions; and

(4) provide the amount of debt service coverage for public securities determined by the association, in consultation with the authority, to be required for the issuance of marketable public securities.

(d) Authorizes marketable Class 2 public securities to be issued, if the amount of marketable Class 1 public securities is insufficient to pay the excess losses for which the securities are issued. Authorizes marketable Class 3 public securities to be issued if the amount of marketable Class 2 public securities is insufficient to pay the excess losses for which the securities issued.

SECTION 42. Amends Section 2210.605(c), Insurance Code, to provide that public securities issued under Section 2210.6136, rather than this chapter, are eligible obligations under Section 404.027 (Liquidity), Government Code.

SECTION 43. Amends Section 2210.608(a), Insurance Code, as follows:

(a) Authorizes the association to use the public security proceeds to:

(1)-(5) Makes no changes to this subdivision;

(6) pay private financial agreements entered into by the association as temporary sources of payment of losses and operating expenses of the association; and

(7) reimburse the association for any cost described by Subdivisions (1)-(6) paid by the association before issuance of the public securities.

SECTION 44. Amends Section 2210.609, Insurance Code, as follows:

Sec. 2210.609. REPAYMENT OF ASSOCIATION'S PUBLIC SECURITY OBLIGATIONS. (a) Requires the association, if the association determines that it is unable to pay the public security obligations and public security administrative expenses, if any, with available funds, to pay those obligations and expenses in accordance with Sections 2210.612, 2210.613 (Payment of Class 2 Public Securities), 2210.6135 (Payment of Class 3 Public Securities), and 2210.6136, as applicable. Makes a nonsubstantive change.

(b) Requires the authority, rather than the board of directors of the Texas Public Finance Authority (board; authority), if any public securities issued under this chapter are outstanding, to notify the association of the amount of the public security obligations and the estimated amount of public security administrative expenses, if any, each year in a period sufficient, as determined by the association, to permit the association to determine the availability of funds, assess members of the association under Sections 2210.613 and 2210.6135, and assess a premium surcharge if necessary.

(c) Requires the association to deposit all revenue collected under Section 2210.612, rather than Sections 2210.612, 2210.613, and 2210.6135, in the public security obligation revenue fund, all revenue collected under Section 2210.613(b) in the premium surcharge trust fund, and all revenue collected under Sections 2210.613(a) and 2210.6135 in the member assessment trust fund. Authorizes the board, if the association has not transferred amounts sufficient to pay the public security obligations to the board's designated interest and sinking fund in a timely manner, to direct the Texas Treasury Safekeeping Trust Company to transfer from the public security obligation revenue fund, the premium surcharge trust fund, or the member assessment trust fund to the appropriate account the amount necessary to pay the public security obligation.

(d) Requires the association to provide for the payment of the public security obligations and the public security administrative expenses by irrevocably pledging revenues received from premiums, member assessments, premium surcharges, and amounts on deposit in the public security obligation revenue fund, the premium surcharge trust fund, and the member assessment trust fund, together with any public security reserve fund, as provided in the proceedings authorizing the public securities and related credit agreements.

(e) Requires that an amount owed by the board under a credit agreement be payable from and secured by a pledge of revenues received by the association or amounts from the public security obligation trust fund, the premium surcharge trust fund, and the member assessment trust fund to the extent provided in the proceedings authorizing the credit agreement.

SECTION 45. Amends Section 2210.610(a), Insurance Code, to authorize that revenues received from the premium surcharges under Section 2210.613 and member assessments under Sections 2210.613 and 2210.6135 be applied only as provided by this subchapter.

SECTION 46. Amends Section 2210.611, Insurance Code, as follows:

Sec. 2210.611. EXCESS REVENUE COLLECTIONS AND INVESTMENT EARNINGS. Authorizes revenue collected in any year from a premium surcharge under Section 2210.613 and member assessments under Sections 2210.613 and 2210.6135 that exceeds the amount of the public security obligations and public security administrative expenses payable in that year and interest earned on the public security obligation fund, in the discretion of the association, to be:

(1) used to pay public security obligations payable in the subsequent year, offsetting the amount of the premium surcharge and member assessments, as applicable, that would otherwise be required to be levied for the year under this subchapter;

(2)-(3) Makes no changes to these subdivisions.

SECTION 47. Amends Section 2210.612, Insurance Code, as follows:

Sec. 2210.612. PAYMENT OF CLASS 1 PUBLIC SECURITIES. (a) Requires the association to pay Class 1 public securities issued under Section 2210.072 from its net premium and other revenue.

(b) Authorizes the association to enter financing arrangements as described by Section 2210.072(d) as necessary to obtain public securities issued under Section 2210.072. Requires that nothing in this subsection prevent the authorization and creation of one or more programs for the issuance of commercial paper before the date of an occurrence or series of occurrences that results in insured losses under Section 2210.072(a). Deletes existing text requiring that nothing in this subsection prevents the authorization and creation of one or more programs for the issuance of commercial paper before the date of an occurrence that results in insured losses under Section 2210.072(a) so long as no tranche of commercial paper is issued under a commercial paper program until after such an occurrence. Makes a nonsubstantive change.

SECTION 48. Amends Sections 2210.613(b), (c), and (d), Insurance Code, as follows:

(b) Requires that seventy percent of the cost of the public securities be paid by a premium surcharge, rather than a nonrefundable premium surcharge, collected under this section in an amount set by the commissioner. Requires each insurer, the association, and the Texas FAIR Plan Association, on approval by the commissioner, to assess, as provided by this section, a premium surcharge to each policyholder of a policy that is in effect on or after the 180th day after the date the commissioner issues notice of the approval of the public securities, rather than a premium surcharge to its policyholders as provided by this section. Requires that the premium surcharge be set in an amount sufficient to, for the duration of the issued public securities, pay all debt service not already covered by available funds or member assessments and all related expenses on the public securities.

(c) Requires that the premium surcharge under Subsection (b) be assessed on all policyholders of policies that cover insured property that is located in a catastrophe area, including automobiles principally garaged in a catastrophe area. Requires that the premium surcharge be assessed on each Texas windstorm and hail insurance policy and each property and casualty insurance policy, including an automobile insurance policy, issued for automobiles and other property located in the catastrophe area. Requires that a premium surcharge under Subsection (b) applies to:

(1) all policies written under the following lines of insurance: fire and allied lines; farm and ranch owners; residential property insurance; private passenger automobile liability and physical damage insurance; and commercial passenger automobile liability and physical damage insurance; and

(2) the property insurance portion of a commercial multiple peril insurance policy.

Deletes existing text requiring that the premium surcharge under Subsection (b) be assessed on all policyholders who reside or have operations in, or whose insured property is located in a catastrophe area for each Texas windstorm and hail insurance policy and each property and casualty insurance policy issued for property located in the catastrophe area. Deletes existing text providing that a premium surcharge under Subsection (b) applies to all policies that provide coverage on any premises, locations, operations, or property located in the area described by this subsection for all property and casualty lines of insurance, other than federal flood insurance, workers' compensation insurance, accident and health insurance, and medical malpractice insurance.

(d) Provides that a premium surcharge under Subsection (b) is a separate charge, rather than a separate nonrefundable charge, in addition to the premiums collected and is not subject to premium tax or commissions.

SECTION 49. Amends Section 2210.6135(a), Insurance Code, to require the association, for the payment of the losses, to assess the members of the association an amount not to exceed \$500 million per occurrence or series of occurrences in a calendar year that results in insured losses. Deletes existing text requiring the association to assess the members of the association an amount not to exceed \$500 million per year for the payment of the losses.

SECTION 50. Amends Subchapter M, Chapter 2210, Insurance Code, by adding Section 2210.6136, as follows:

Sec. 2210.6136. **COMBINED SOURCES OF PAYMENT.** (a) Authorizes the board, in lieu of issuing distinct Class 1, Class 2, or Class 3 public securities, on request of the association and approval by the commissioner, to issue public securities payable from all of the sources described in Sections 2210.612, 2210.613, and 2210.6135 with:

(1) the first source of payment being as described in Section 2210.612, to the extent public securities described by that section are marketable;

(2) the second source of payment being as described in Section 2210.613, in an amount not to exceed the amount of Class 2 public securities that could be issued under Section 2210.073 in the calendar year in which securities are issued under this section;

(3) the third source of payment being as described in Section 2210.6135, in an amount not to exceed the amount of Class 3 public securities that could be issued under Section 2210.074 (Payment Through Class 3 Public Securities) in the calendar year in which securities are issued under this section; and

(4) the fourth source of payment, if necessary, being a distribution among member assessment and premium surcharges described in Sections 2210.613 and 2210.6135 that complies with the commissioner's order issued under Subsection (b).

(b) Requires the commissioner by order to specify the distribution of the fourth source of payment under Subsection (a)(4) based on the amount of public securities issued under this section, the total amount of outstanding public securities issued under this chapter, the sources of payment for the outstanding public securities, and any other factors the commissioner determines to be relevant.

(c) Prohibits the aggregate principal amount of public securities issued in the manner described by this section from exceeding \$2.5 billion in any consecutive 12-month period from the earlier of, as applicable:

(1) the date on which public securities are issued under Section 2210.072(a) before an occurrence or series of occurrences that results in insured losses; or

(2) the date of an occurrence or series of occurrences in a calendar year that results in insured losses in excess of premium and other revenue of the association from available reserves of the association and available amounts in the catastrophe reserve trust fund.

SECTION 51. Amends Section 2210.614, Insurance Code, as follows:

Sec. 2210.614. REFINANCING PUBLIC SECURITIES. (a) Creates this subsection from existing text. Authorizes the association to request the board to refinance, in accordance with Chapter 1207 (Refunding Bonds), Government Code, any public securities issued in accordance with Subchapter B-1, whether Class 1, Class 2, or Class 3 public securities, with public securities payable from any of the sources described by Section 2210.612, 2210.613, 2210.6135, or 2210.6136. Prohibits the amount of public securities that may be refinanced under this subsection with the proceeds of Class 1 public securities from exceeding \$1 billion for a single occurrence or a series of occurrences that takes place in a calendar year. Deletes existing text authorizing the association to request the board to refinance any public securities issued in accordance with Subchapter B-1, whether Class 1, Class 2, or Class 3 public securities, with public securities payable from the same sources as the original public securities.

(b) Prohibits public securities refinanced under this section, notwithstanding Section 1207.006 (Maturity), Government Code, from having a term that is greater than 14 years.

SECTION 52. Amends Section 2210.616, Insurance Code, as follows:

Sec. 2210.616. STATE NOT TO IMPAIR PUBLIC SECURITY OBLIGATIONS. (a) Provides that the state pledges for the benefit and protection of financing parties, the board, and the association that the state will not take or permit any action that would:

(1) impair the collection of member assessments and premium surcharges or the deposit of those funds into the member assessment trust fund or premium surcharge trust fund;

(2) reduce, alter, or impair the member assessments or premium surcharges to be imposed, collected, and remitted to financing parties until the principal, interest, and premium, and any other charges incurred and contracts to be performed in connection with the related public securities, have been paid and performed in full; or

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

Deletes existing text prohibiting the state, if public securities under this subchapter are outstanding from taking action to limit or restrict the rights of the association to fulfill its responsibility to pay public security obligations.

(b) Authorizes a party issuing public securities under this subchapter to include the pledge described by Subsection (a) in any documentation relating to those securities.

SECTION 53. Amends Subchapter M, Chapter 2210, Insurance Code, by adding Section 2210.6165, as follows:

Sec. 2210.6165. PROPERTY RIGHTS. Provides that if public securities issued under this subchapter are outstanding, the rights and interests of the association, a successor to the association, any member of the association, or any member of the Texas FAIR Plan Association, including the right to impose, collect, and receive a premium surcharge or a member assessment authorized under this subchapter, are only contract rights until those revenues are first pledged for the repayment of the association's public security obligations as provided by Section 2210.609.

SECTION 54. Repealers: Sections 2210.502(c) (relating to authorizing the board of directors to propose additional increases in the maximum liability limits), and 2210.551(e) (relating to requiring a hearing on an act to be held at the request of the claimant, in the county in which the insured property is located or in Travis County), Insurance Code.

SECTION 55. (a) Requires TDI and the association to jointly study whether the association's using a single adjuster program would improve the effectiveness and efficiency with which the association receives, processes, settles, and pays claims filed under insurance policies issued by the association under Chapter 2210, Insurance Code.

(b) Requires the commissioner to study the feasibility of the association writing policies directly and the impact the association writing policies directly would have on rates for policies issued by the association. Requires the commissioner to submit the finding of the study conducted under this subsection to the board of directors of the association.

(c) Requires that the results of the studies conducted under Subsections (a) and (b) of this section be included in the 2012 biennial report submitted to the legislature by the association under Section 2210.0025, Insurance Code.

SECTION 56. (a) Requires a legislative interim study committee (committee) to conduct a study of alternative ways to provide insurance to the seacoast territory of this state through a quasi-governmental entity.

(b) Provides that the committee is composed of 12 members appointed as follows:

(1) four members of the senate appointed by the lieutenant governor, two of whom represent one or more first tier coastal counties and two of whom do not represent a first tier coastal county;

(2) four members of the house of representatives appointed by the speaker of the house of representatives, two of whom represent one or more first tier coastal counties and two of whom do not represent a first tier coastal county; and

(3) four public members with a background in actuarial science, law, business, or insurance, as follows:

(A) two members who do not reside in a first tier coastal county, appointed by the governor;

(B) one member who resides in a first tier coastal county, appointed by the lieutenant governor; and

(C) one member who resides in a first tier coastal county, appointed by the speaker of the house of representatives.

(c) Requires the speaker of the house of representatives and the lieutenant governor to jointly designate a chair or, alternatively, designate two co-chairs, from among the committee membership, one of whom represents or resides in a first tier coastal county.

(d) Requires the committee to examine alternative ways to provide insurance to the seacoast territory of this state through a quasi-governmental entity, including providing insurance coverage through a system or program in which insurers in this state provide insurance in the seacoast territory of this state in proportion to the percentage of insurance coverage provided in geographic areas of this state other than the seacoast territory; study the residual markets for windstorm and hail insurance in other states to determine if those markets operate more efficiently and effectively than the residual market for windstorm and hail insurance coverage in this state; recommend the appropriate scope of authority and responsibility for the entity to provide insurance to the seacoast territory of this state; an organizational structure to exercise authority and responsibility over the provision of insurance to the seacoast territory of this state; a timetable for implementation; and specific amendments to state laws and rules that are necessary to implement the committee's recommendations under this subdivision; and estimate funding requirements to implement the recommendations.

(e) Authorizes the committee to adopt rules necessary to conduct business under and implement this section.

(f) Authorizes the committee, except as specifically provided by this section, to operate in the same manner as a joint committee of the 82nd Legislature.

(g) Requires the committee, not later than December 1, 2012, to report to the governor and the legislature the recommendations made under this section.

(h) Provides that this section expires June 1, 2013.

SECTION 57. (a) Provides that the adjuster advisory board established under this section is composed of the following nine members appointed by the commissioner:

(1) two public insurance adjusters;

(2) two members who represent the general public;

(3) two independent adjusters;

(4) one adjuster who represents a domestic insurer authorized to engage in business in this state;

(5) one adjuster who represents a foreign insurer authorized to engage in business in this state; and

(6) one representative of the Independent Insurance Agents of Texas.

(b) Prohibits a member who represents the general public from being:

(1) an officer, director, or employee of:

- (A) an adjuster or adjusting company;
- (B) an insurance agent or agency;
- (C) an insurance broker;
- (D) an insurer; or
- (E) any other business entity regulated by TDI;

(2) a person required to register as a lobbyist under Chapter 305, Government Code; or

(3) a person related within the second degree of affinity or consanguinity to a person described by Subdivision (1) or (2).

(c) Requires the advisory board to make recommendations to the commissioner regarding:

(1) matters related to the licensing, testing, and continuing education of licensed adjusters;

(2) matters related to claims handling, catastrophic loss preparedness, ethical guidelines, and other professionally relevant issues; and

(3) any other matter the commissioner submits to the advisory board for a recommendation.

(d) Provides that a member of the advisory board serves without compensation. Entitles a member to reimbursement for reasonable expenses incurred in attending meetings of the advisory board if authorized by the commissioner.

(e) Provides that the advisory board is subject to Chapter 2110 (State Agency Advisory Committees), Government Code.

SECTION 58. Provides that this Act applies only to a Texas windstorm and hail insurance policy, and a claim or dispute arising under a Texas windstorm and hail insurance policy, delivered, issued for delivery, or renewed by the association on or after the 30th day after the effective date of this Act. Provides that a Texas windstorm and hail insurance policy, and a claim or dispute arising under a Texas windstorm and hail insurance policy, delivered, issued for delivery, or renewed by the Texas Windstorm Insurance Association before the 30th day after the effective date of this Act, are governed by the law in effect on the date the policy was delivered, issued for delivery, or renewed, and the former law is continued in effect for that purpose.

SECTION 59. Requires the association to amend the association's plan of operation to conform to the changes in law made by this Act not later than January 1, 2012.

SECTION 60. Makes application of Section 2210.605(c), Insurance Code, as amended by this Act, and Section 2210.6136, Insurance Code, as added by this Act, apply to the issuance and repayment of public securities issued by the Texas Windstorm Insurance Association under Chapter 2210, Insurance Code, in response to an occurrence or series of occurrences that takes place on or after the effective date of this Act. Provides that the issuance and repayment of public securities issued by the association under Chapter 2210, Insurance Code, before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 61. Effective date: upon passage or on the 91st day after the last day of the legislative session.