

By: Fraser

S.B. No. 1842

A BILL TO BE ENTITLED

AN ACT

relating to the operation of the Texas Windstorm Insurance Association and to the resolution of certain disputes concerning claims made to that association.

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

SECTION 1. Section 83.002, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c) This chapter also applies to:

(1) a person appointed as a qualified inspector under Section 2210.254 or 2210.255; and

(2) 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. Section 541.152, Insurance Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) Except as provided by Subsection (c), on [On] a finding by the trier of fact that the defendant knowingly committed the act complained of, the trier of fact may award an amount not to exceed three times the amount of actual damages.

(c) Subsection (b) does not apply to an action under this subchapter brought against the Texas Windstorm Insurance Association by a person who is insured under Chapter 2210.

SECTION 3. Subchapter A, Chapter 2210, Insurance Code, is

1 amended by adding Section 2210.010 to read as follows:

2 Sec. 2210.010. EXPERT PANEL. (a) The commissioner shall
3 appoint a panel of experts to advise the commissioner concerning
4 the manner in which, following a storm, the association should
5 evaluate the extent to which a loss to insurable property was
6 incurred as a result of wind, waves, tidal surges, rising waters not
7 caused by waves or surges, and wind-driven rain associated with the
8 storm. The commissioner shall appoint one member of the panel to
9 serve as the presiding officer of the panel.

10 (b) To be a member of the panel, a person must have
11 professional expertise in, and be knowledgeable concerning, the
12 geography of the seacoast territory, the meteorological patterns
13 common in the seacoast territory, the scientific basis for
14 meteorological patterns in coastal areas, or the technology
15 necessary to evaluate the geography of, or meteorological patterns
16 common to, the seacoast territory.

17 (c) The panel shall meet at the call of the commissioner or
18 the call of the presiding officer of the panel.

19 (d) The panel shall collect and evaluate the data necessary
20 to perform the panel's general duties under Subsection (a).

21 (e) Immediately following a storm, for geographic areas or
22 regions designated by the commissioner, the panel shall recommend
23 to the commissioner standardized data necessary to evaluate the
24 extent to which a loss to insurable property was incurred as a
25 result of wind, waves, tidal surges, rising waters not caused by
26 waves or surges, and wind-driven rain associated with the storm,
27 including wind speed, total rainfall, and the extent of wave action

1 or tidal surges.

2 (f) After consideration of the recommendations made by the
3 panel under Subsection (e), the commissioner by rule shall adopt
4 standardized data as part of the formula that the association will
5 use to settle claims following the storm from which the
6 standardized data recommendations were derived.

7 SECTION 4. Section 2210.072(b), Insurance Code, is amended
8 to read as follows:

9 (b) Public securities described by Subsection (a) shall be
10 issued as necessary in a principal amount not to exceed \$1 billion
11 per occurrence or series of occurrences in a calendar year that
12 results in insured losses.

13 SECTION 5. Section 2210.073(b), Insurance Code, is amended
14 to read as follows:

15 (b) Public securities described by Subsection (a) may be
16 issued as necessary in a principal amount not to exceed \$1 billion
17 per occurrence or series of occurrences in a calendar year that
18 results in insured losses. If the losses are paid with public
19 securities described by this section, the public securities shall
20 be repaid in the manner prescribed by Subchapter M.

21 SECTION 6. Section 2210.074(b), Insurance Code, is amended
22 to read as follows:

23 (b) Public securities described by Subsection (a) may be
24 issued as necessary in a principal amount not to exceed \$500 million
25 per occurrence or series of occurrences in a calendar year that
26 results in insured losses. If the losses are paid with public
27 securities described by this section, the public securities shall

1 be repaid in the manner prescribed by Subchapter M through member
2 assessments as provided by this section. The association shall
3 notify each member of the association of the amount of the member's
4 assessment under this section. The proportion of the losses
5 allocable to each insurer under this section shall be determined in
6 the manner used to determine each insurer's participation in the
7 association for the year under Section 2210.052. A member of the
8 association may not recoup an assessment paid under this subsection
9 through a premium surcharge or tax credit.

10 SECTION 7. Section 2210.105, Insurance Code, is amended by
11 amending Subsection (b) and adding Subsections (b-1), (e), and (f)
12 to read as follows:

13 (b) Except for a closed meeting authorized by Subchapter D,
14 Chapter 551, Government Code, a meeting of the board of directors or
15 of the members of the association is open to[+]

16 [~~(1) the commissioner or the commissioner's designated~~
17 ~~representative; and~~

18 [~~(2)~~] the public.

19 (b-1) A meeting of the board of directors or the members of
20 the association, including a closed meeting authorized by
21 Subchapter D, Chapter 551, Government Code, is open to the
22 commissioner or the commissioner's designated representative.

23 (e) The association shall:

24 (1) broadcast live on the association's Internet
25 website all meetings of the board of directors, other than closed
26 meetings; and

27 (2) maintain on the association's Internet website an

1 archive of meetings of the board of directors.

2 (f) A recording of a meeting must be maintained in the
3 archive required under Subsection (e) through and including the
4 second anniversary of the meeting.

5 SECTION 8. Subchapter C, Chapter 2210, Insurance Code, is
6 amended by adding Section 2210.108 to read as follows:

7 Sec. 2210.108. OPEN MEETINGS AND OPEN RECORDS. Except as
8 specifically provided by this chapter or another law, the
9 association is subject to Chapters 551 and 552, Government Code.

10 SECTION 9. Section 2210.152, Insurance Code, is amended by
11 adding Subsection (c) to read as follows:

12 (c) The plan of operation shall require the association to
13 use the standardized data recommendations adopted by the
14 commissioner under Section 2210.010(f) in evaluating the extent to
15 which a loss to insurable property is incurred as a result of wind,
16 waves, tidal surges, rising waters not caused by waves or surges, or
17 wind-driven rain associated with a storm.

18 SECTION 10. Section 2210.203, Insurance Code, is amended by
19 amending Subsection (a-1) and adding Subsection (a-2) to read as
20 follows:

21 (a-1) [~~This subsection applies only to a structure~~
22 ~~constructed, altered, remodeled, or enlarged on or after September~~
23 ~~1, 2009, and only for insurable property located in areas~~
24 ~~designated by the commissioner.] Notwithstanding Subsection (a),
25 if all or any part of the property to which this subsection applies
26 is located in Zone V or another similar zone with an additional
27 hazard associated with storm waves, as defined by the National~~

1 Flood Insurance Program, [~~and if flood insurance under that federal~~
2 ~~program is available,~~] the association may not issue an insurance
3 policy for initial or renewal coverage unless evidence is submitted
4 to the association that the property to be covered under the policy
5 is also covered by a flood insurance policy issued under the
6 National Flood Insurance Program. This subsection does not apply
7 to property for which flood insurance is not available under the
8 National Flood Insurance Program [~~is submitted to the association~~].

9 (a-2) An agent offering or selling a Texas windstorm and
10 hail insurance policy [~~in any area designated by the commissioner~~
11 ~~under this subsection~~] shall offer flood insurance coverage
12 required under Subsection (a-1) to a the prospective insured, if
13 that coverage is available.

14 SECTION 11. Section 2210.204(e), Insurance Code, is amended
15 to read as follows:

16 (e) For cancellation of insurance coverage under this
17 section, the minimum retained premium in the plan of operation must
18 be for a period of not less than 90 [~~180~~] days, except for events
19 specified in the plan of operation that reflect a significant
20 change in the exposure or the policyholder concerning the insured
21 property, including:

- 22 (1) the purchase of similar coverage in the voluntary
23 market;
- 24 (2) sale of the property to an unrelated party;
- 25 (3) death of the policyholder; or
- 26 (4) total loss of the property.

27 SECTION 12. Subchapter E, Chapter 2210, Insurance Code, is

1 amended by adding Section 2210.205 to read as follows:

2 Sec. 2210.205. REQUIRED POLICY PROVISION: DEADLINE FOR
3 FILING CLAIM. A windstorm and hail insurance policy issued by the
4 association must require an insured to file a claim under the policy
5 not later than the first anniversary of the date on which the damage
6 or loss that is the basis of the claim occurs.

7 SECTION 13. Section 2210.254, Insurance Code, is amended by
8 adding Subsection (e) to read as follows:

9 (e) The department may establish an annual renewal period
10 for persons appointed as qualified inspectors.

11 SECTION 14. Subchapter F, Chapter 2210, Insurance Code, is
12 amended by adding Section 2210.2551 to read as follows:

13 Sec. 2210.2551. EXCLUSIVE ENFORCEMENT AUTHORITY; RULES.

14 (a) The department has exclusive authority over all matters
15 relating to the appointment and oversight of qualified inspectors
16 for purposes of this chapter.

17 (b) The commissioner by rule shall establish criteria to
18 ensure that a person seeking appointment as a qualified inspector
19 under this subchapter, including an engineer seeking appointment
20 under Section 2210.255, possesses the knowledge, understanding,
21 and professional competence to perform windstorm inspections under
22 this chapter and to comply with other requirements of this chapter.

23 SECTION 15. The heading to Section 2210.256, Insurance
24 Code, is amended to read as follows:

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

27 SECTION 16. Section 2210.256, Insurance Code, is amended by

1 adding Subsection (a-2) to read as follows:

2 (a-2) In addition to any other action authorized under this
3 section, the commissioner ex parte may enter an emergency cease and
4 desist order under Chapter 83 against a qualified inspector, or a
5 person acting as a qualified inspector, if:

6 (1) the commissioner believes that:

7 (A) the qualified inspector has:

8 (i) through submitting or failing to submit
9 to the department sealed plans, designs, calculations, or other
10 substantiating information, failed to demonstrate that a structure
11 or a portion of a structure subject to inspection meets the
12 requirements of this chapter and department rules; or

13 (ii) refused to comply with requirements
14 imposed under this chapter or department rules; or

15 (B) the person acting as a qualified inspector is
16 acting without appointment as a qualified inspector under Section
17 2210.254 or 2210.255; and

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

21 SECTION 17. Section 2210.258(b), Insurance Code, is amended
22 to read as follows:

23 (b) The association may not insure a structure described by
24 Subsection (a) until:

25 (1) the structure has been inspected for compliance
26 with the plan of operation in accordance with Section 2210.251(a);
27 and

1 (2) except as provided by Section 2210.260, a
2 certificate of compliance has been issued for the structure in
3 accordance with Section 2210.251(g).

4 SECTION 18. Subchapter F, Chapter 2210, Insurance Code, is
5 amended by adding Section 2210.260 to read as follows:

6 Sec. 2210.260. ALTERNATIVE ELIGIBILITY FOR COVERAGE. (a)
7 On and after September 1, 2011, a person who has an insurable
8 interest in insurable property may obtain insurance coverage
9 through the association for a residential structure without
10 obtaining a certificate of compliance under Section 2210.251(g) if:

11 (1) within the 12-month period preceding the date of
12 the application for coverage by the association, the structure was
13 insured on an annual basis under a residential property insurance
14 policy that included windstorm and hail coverage;

15 (2) the insurer that issued the coverage described by
16 Subdivision (1) has ceased to:

17 (A) provide windstorm and hail insurance under
18 the policy; or

19 (B) issue residential property insurance
20 policies in the portion of the catastrophe area in which the
21 structure is located; and

22 (3) the applicant for coverage:

23 (A) complies with:

24 (i) the flood insurance requirement of
25 Section 2210.203(a-1), if applicable;

26 (ii) the mandatory building code
27 requirement of Section 2210.258(a); and

1 (iii) all other association underwriting
2 requirements, including maintaining the structure in an insurable
3 condition and paying premiums in the manner required by the
4 association; and

5 (B) provides evidence of declination as required
6 by Section 2210.202(a).

7 (b) Coverage issued under this section may be renewed by the
8 association only once.

9 SECTION 19. Section 2210.355, Insurance Code, is amended by
10 amending Subsection (i) and adding Subsections (j), (k), and (l) to
11 read as follows:

12 (i) The association shall ~~[may]~~ establish rating
13 territories and shall ~~[may]~~ vary rates among the territories in
14 accordance with Subsections (j) and (k) ~~[as provided by this~~
15 ~~subsection. A rating territory that subdivides a county may be used~~
16 ~~only if the rate for any subdivision in the county is not more than:~~

17 ~~[(A) five percent higher than the rate used by~~
18 ~~the association in 2009 in any other subdivision in the county;~~

19 ~~[(B) six percent higher than the rate used by the~~
20 ~~association in 2010 in any other subdivision in the county;~~

21 ~~[(C) seven percent higher than the rate used by~~
22 ~~the association in 2011 in any other subdivision in the county; and~~

23 ~~[(D) eight percent higher than the rate used by~~
24 ~~the association in 2012 in any other subdivision in the county].~~

25 (j) Notwithstanding Section 2210.351, the association may
26 use rate relativities for rating territories that subdivide a
27 county without prior commissioner approval if the resulting rate

1 for any subdivision in the county:

2 (1) is not more than 15 percent greater than the
3 resulting rate used in any other subdivision in that county for
4 identical coverage for insureds having risk characteristics that
5 are identical except for rating territory; and

6 (2) is not unfairly discriminatory.

7 (k) The association may use rate relativities for rating
8 territories that subdivide a county only with prior commissioner
9 approval if the resulting rate for any subdivision in the county is
10 not described by Subsection (j)(1).

11 (l) A rate relativity described by Subsection (k) must be
12 based on sound actuarial principles supported by data filed with
13 the department, including reasonable output from recognized
14 catastrophe models, and must produce rates that comply with the
15 statutory and regulatory requirements of this chapter.

16 SECTION 20. The heading to Subchapter H, Chapter 2210,
17 Insurance Code, is amended to read as follows:

18 SUBCHAPTER H. RATES; DISCOUNTS AND CREDITS

19 SECTION 21. Subchapter H, Chapter 2210, Insurance Code, is
20 amended by adding Section 2210.363 to read as follows:

21 Sec. 2210.363. PREMIUM DISCOUNTS; SURCHARGE CREDITS. (a)
22 The association may offer a person insured under this chapter a
23 premium discount on a policy issued by the association, or a credit
24 against any surcharge assessed against the person, if:

25 (1) the person elects a voluntary binding arbitration
26 endorsement under Section 2210.555; or

27 (2) the construction, alteration, remodeling,

1 enlargement, or repair of, or an addition to, insurable property
2 exceeds applicable building code standards set forth in the plan of
3 operation.

4 (b) The commissioner shall adopt rules necessary to
5 implement and enforce this section.

6 SECTION 22. Section 2210.502, Insurance Code, is amended by
7 adding Subsection (e) to read as follows:

8 (e) Notwithstanding Subsection (a), the maximum liability
9 limit described by Section 2210.501(b)(1) may not exceed \$500,000
10 if all or any part of the property on which the dwelling, including
11 an individually owned townhouse, is located in a geographic area
12 with a hazard associated with storm waves.

13 SECTION 23. Section 2210.551, Insurance Code, is amended to
14 read as follows:

15 Sec. 2210.551. APPEAL BY THE ASSOCIATION. [~~APPEALS~~] (a)
16 ~~This section applies to:~~

17 ~~(1) a person insured under this chapter or an~~
18 ~~authorized representative of the person, or~~

19 ~~(2) an affected insurer.~~

20 [~~(b) A person or entity described by Subsection (a) who is~~
21 ~~aggrieved by an act, ruling, or decision of the association may~~
22 ~~appeal to the commissioner not later than the 30th day after the~~
23 ~~date of that act, ruling, or decision.]~~

24 [e] If the association is aggrieved by the action of the
25 commissioner with respect to a ruling, order, or determination of
26 the commissioner, the association may, not later than the 30th day
27 after the date of the action, make a written request to the

1 commissioner for a hearing on the action.

2 (b [~~d~~]) On 10 days' written notice of the time and place of
3 the hearing, the commissioner shall conduct a hearing on the
4 association's request or the appeal from an act, ruling, or
5 decision of the association, not later than the 30th day after the
6 date of receipt of the request or appeal.

7 ~~[(c) A hearing on an act, ruling, or decision of the~~
8 ~~association relating to the payment of, the amount of, or the denial~~
9 ~~of a particular claim shall be held, at the request of the claimant,~~
10 ~~in the county in which the insured property is located or in Travis~~
11 ~~County.]~~

12 (c [~~f~~]) Not later than the 30th day after the date of the
13 hearing, the commissioner shall affirm, reverse, or modify the
14 commissioner's previous action or the act, ruling, or decision
15 appealed to the commissioner. Pending the hearing and decision,
16 the commissioner may suspend or postpone the effective date of the
17 previous action or of the act, ruling, or decision appealed to the
18 commissioner.

19 (d [~~g~~]) The association [~~, or the person or entity aggrieved~~
20 ~~by the order or decision of the commissioner,~~] may appeal to a
21 district court in the county in which the covered property is
22 located or a district court in Travis County.

23 (e [~~h~~]) An action brought under this section is subject to
24 the procedures established under Subchapter D, Chapter 36.

25 SECTION 24. Section 2210.552, Insurance Code, is amended to
26 read as follows:

27 Sec. 2210.552. DEFINITIONS. "Damages" means all claims

1 under common law, statutory and equitable causes of action, for
2 actual damages including economic and non-economic damages, and all
3 forms of additional damages including without limitation
4 additional damages, knowing damages, punitive damages, trebling of
5 damages of any kind, penalties, prejudgment interest, post judgment
6 interest, attorneys fees, litigation costs, costs of court, and all
7 other damages of any kind or character.

8 ~~[CLAIM DISPUTES, VENUE. (a) Except as provided by Sections~~
9 ~~2210.007 and 2210.106, a person insured under this chapter who is~~
10 ~~aggrieved by an act, ruling, or decision of the association~~
11 ~~relating to the payment of, the amount of, or the denial of a claim~~
12 ~~may:~~

13 ~~[(1) bring an action against the association,~~
14 ~~including an action under Chapter 541, or~~

15 ~~[(2) appeal the act, ruling, or decision under Section~~
16 ~~2210.551.~~

17 ~~[(b) A person may not proceed under both Section 2210.551~~
18 ~~and this section for the same act, ruling, or decision.~~

19 ~~[(c) Except as provided by Subsection (d), venue in an~~
20 ~~action brought under this section, including an action under~~
21 ~~Chapter 541, against the association is in the county in which the~~
22 ~~insured property is located or in a district court in Travis County.~~

23 ~~[(d) Venue in an action, including an action under Chapter~~
24 ~~541, brought under this section in which the claimant joins the~~
25 ~~department as a party to the action is only in a district court in~~
26 ~~Travis County.]~~

27 SECTION 25. Subchapter L, Chapter 2210, Insurance Code, is

1 amended by adding Sections 2210.553, 2210.554, 2210.555, 2210.556,
2 2210.557, 2210.558, 2210.559, 2210.560, 2210.561, and 2210.562 to
3 read as follows:

4 Sec. 2210.553. APPEALS TO BOARD OF DIRECTORS. A person
5 aggrieved by a decision of the association relating to eligibility
6 for or amount of benefits payable to the person, or for damages
7 claimed by a person related to the eligibility for or amount of
8 benefits payable to a person may appeal the decision to the
9 Executive Director. An appeal to the Executive Director shall be
10 filed no more than 30 days after the date of the decision is made for
11 which review is sought. This subchapter provides the sole remedy
12 for the aggrieved person.

13 Sec. 2210.554. HEARING BY STATE OFFICE OF ADMINISTRATIVE
14 HEARINGS. The executive director or a person designated by the
15 executive director shall refer an appeal under this section to the
16 State Office of Administrative Hearings to conduct a hearing as
17 provided by Chapter 2001, Government Code.

18 Sec. 2210.555. CONTESTED CASE. An appeal under this
19 section is a contested case as defined by Chapter 2001, Government
20 Code. An aggrieved person appealing a decision under this section
21 has the burden of proof on all issues, including any affirmative
22 defense.

23 Sec. 2210.556. FINAL DECISION. A decision by the State
24 Office of Administrative Hearings is final within the meaning of
25 Sec. 2210.557

26 Sec. 2210.557. NEGOTIATED SETTLEMENT. (a) Notwithstanding
27 this Section, the association and a person aggrieved by a decision

1 of the association may at any time informally negotiate a
2 settlement of a claim.

3 (b) A negotiated settlement must be approved by the board of
4 directors if the settlement amount is in excess of \$25,000, or
5 includes consideration for attorney fees.

6 (c) A settlement negotiated under this section may not
7 exceed the applicable maximum liability limit established under the
8 policy.

9 Sec. 2210.558. JUDICIAL REVIEW. (a) A person aggrieved by
10 a final decision of the State Office of Administrative Hearings in
11 a contested case under this section is entitled to judicial review
12 in accordance with Chapter 2001, Government Code.

13 (b) The venue for appeal from a final decision of the State
14 Office of Administrative Hearings under this section is in
15 district court in Travis County.

16 (c) The review on appeal is governed by the substantial
17 evidence rule as described by Section 2001.174, Government Code.

18 Sec. 2210.559. PLAN OF OPERATION. The board of directors
19 may submit proposed changes to the plan of operation to implement
20 this subchapter.

21 Sec. 2210.560. NOTICE; INSPECTION. (a) As a prerequisite
22 to filing a an appeal under Sec. 2210.552 of this subchapter, a
23 person covered by an association policy shall give written notice
24 to the association at least 60 days before filing the appeal
25 advising the association in reasonable detail of the person's
26 specific complaint and the amount of damage and expenses,
27 including attorneys' fees, if any, reasonably incurred to date by

1 the person in asserting the claim against the association. During
2 the 60-day period a written request to inspect, in a reasonable
3 manner and at a reasonable time and place, the property that is the
4 subject of the person's action or claim may be presented to the
5 person.

6 (b) If the giving of 60 days' written notice is rendered
7 impracticable by reason of the necessity of filing a claim in order
8 to prevent the expiration of the statute of limitations or if the
9 person's claim is asserted by way of counterclaim, the notice
10 provided for in Subsection (a) of this section is not required, but
11 the tender provided for by this subchapter may be made within 60
12 days after filing the appeal or counterclaim.

13 (c) If the association does not receive written notice, as
14 required by Subsection (a), then the association may file a plea in
15 abatement not later than the 30th day after the date the person
16 files an original answer in the venue in which the appeal is
17 pending. This subsection does not apply if Subsection (b) applies.

18 (d) The State Office of Administrative Hearings shall abate
19 the appeal if the administrative law judge, after a hearing, finds
20 that the association is entitled to an abatement because notice was
21 not provided as required by this section. An appeal is
22 automatically abated without the order of the administrative law
23 judge beginning on the 11th day after the date a plea in abatement
24 is filed under Subsection (c) if the plea in abatement:

25 (1) is verified and alleges that the association did
26 not receive the written notice as required by Subsection (a); and

27 (2) is not controverted by an affidavit filed by the

1 person before the 11th day after the date on which the plea in
2 abatement is filed.

3 (e) An abatement under Subsection (d) continues until the
4 60th day after the date that written notice is served in compliance
5 with Subsection (a).

6 Sec. 2210.561 (a) A person must file an appeal based in
7 whole or in part on an association policy not later than two years
8 after the day the cause of action accrues. The cause of action
9 accrues on the date of the loss.

10 (b) Civil Practices and Remedies Code Sec. 33.004 (e) does
11 not apply to a claim, civil action or appeal against or involving
12 the association, an officer agent or employee of the association,
13 or anyone acting on behalf of the association.

14 (c) A person is barred from filing an appeal or an original
15 civil action against the association, an officer, agent or employee
16 of the association, or anyone acting on behalf of association more
17 than four years of the date of the loss. This subsection is
18 intended as a statute of repose so that all claims of any type or
19 description must be brought within four years or they are time
20 barred.

21 (d) An appeal must be filed with the association within one
22 year of the date the right to file the appeal accrued.

23 Sec. 2210.562. STATE OF DISASTER. (a) When the Governor
24 issues a Declaration of State of Disaster pursuant to Gov. Code Sec.
25 418.014 then the Commissioner of Insurance shall toll the
26 application of Chapters 541 and 542 to the association. (b) The
27 Commissioner's authority under this section is limited (1) to the

1 geographical area identified in the Declaration and (2) for the
2 duration of the Declaration.

3 SECTION 26. Section 2210.604, Insurance Code, is amended by
4 amending Subsection (b) and adding Subsection (d) to read as
5 follows:

6 (b) The association shall specify in the association's
7 request to the board the maximum principal amount of the public
8 securities and the maximum term of the public securities. The
9 maximum principal requested under this subsection may not exceed
10 the amount of public securities the association determines to be
11 marketable.

12 (d) If the amount of marketable Class 1 public securities is
13 insufficient to pay the excess losses for which the securities are
14 issued, marketable Class 2 public securities may be issued. If the
15 amount of marketable Class 2 public securities is insufficient to
16 pay the excess losses for which the securities are issued,
17 marketable Class 3 public securities may be issued.

18 SECTION 27. Sections 2210.613(b), (c), and (d), Insurance
19 Code, are amended to read as follows:

20 (b) Seventy percent of the cost of the public securities
21 shall be paid by a [~~nonrefundable~~] premium surcharge collected
22 under this section in an amount set by the commissioner. On
23 approval by the commissioner, each insurer, the association, and
24 the Texas FAIR Plan Association shall assess, as provided by this
25 section, a premium surcharge to each policyholder of a policy that
26 is in effect on or after the 180th day after the date the
27 commissioner issues notice of the approval of the public securities

1 ~~[its policyholders as provided by this section]~~. The premium
2 surcharge must be set in an amount sufficient to pay, for the
3 duration of the issued public securities, all debt service not
4 already covered by available funds and all related expenses on the
5 public securities.

6 (c) The premium surcharge under Subsection (b) shall be
7 assessed on all policyholders of policies that cover ~~[who reside or~~
8 ~~have operations in, or whose]~~ insured property that is located in a
9 catastrophe area, including automobiles principally garaged in a
10 catastrophe area. The premium surcharge shall be assessed on ~~[for]~~
11 each Texas windstorm and hail insurance policy and each property
12 and casualty insurance policy, including an automobile insurance
13 policy, issued for automobiles and other property located in the
14 catastrophe area. A premium surcharge under Subsection (b) applies
15 to:

16 (1) all policies written under the following lines of
17 insurance:

18 (A) fire and allied lines;

19 (B) farm and ranch owners;

20 (C) residential property insurance;

21 (D) private passenger automobile liability and
22 physical damage insurance; and

23 (E) commercial passenger automobile liability
24 and physical damage insurance; and

25 (2) the property insurance portion of a commercial
26 multiple peril insurance ~~[that provide coverage on any premises,~~
27 ~~locations, operations, or property located in the area described by~~

1 ~~this subsection for all property and casualty lines of insurance,~~
2 ~~other than federal flood insurance, workers' compensation~~
3 ~~insurance, accident and health insurance, and medical malpractice~~
4 ~~insurance].~~

5 (d) A premium surcharge under Subsection (b) is a separate
6 ~~[nonrefundable]~~ charge in addition to the premiums collected and is
7 not subject to premium tax or commissions. Failure by a
8 policyholder to pay the surcharge constitutes failure to pay
9 premium for purposes of policy cancellation.

10 SECTION 28. Section 2210.6135(a), Insurance Code, is
11 amended to read as follows:

12 (a) The association shall pay Class 3 public securities
13 issued under Section 2210.074 as provided by this section through
14 member assessments. The association, for the payment of the
15 losses, shall assess the members of the association an amount not to
16 exceed \$500 million per occurrence or series of occurrences that
17 results in insured losses in a calendar year ~~[for the payment of the~~
18 ~~losses]~~. The association shall notify each member of the
19 association of the amount of the member's assessment under this
20 section.

21 SECTION 29. (a) The commissioner of insurance shall
22 appoint an advisory committee to advise the Texas Department of
23 Insurance and Texas Windstorm Insurance Association concerning
24 appropriate building code standards to be used by the association
25 in the performance of its duties under Chapter 2210, Insurance
26 Code. The commissioner shall designate one member of the committee
27 to serve as the presiding officer of the committee.

1 (b) The commissioner of insurance shall ensure that the
2 following groups or interests are represented on the advisory
3 committee:

4 (1) insurers that write windstorm insurance in the
5 private windstorm insurance market in this state;

6 (2) policyholders of windstorm insurance issued both
7 by the association and by insurers in the private windstorm
8 insurance market in this state; and

9 (3) building and construction professionals,
10 including qualified inspectors appointed under Sections 2210.254
11 and 2210.255, Insurance Code.

12 (c) The advisory committee shall submit a report to the
13 association, for inclusion in the association's biennial report to
14 be submitted on or before December 31, 2012, under Section
15 2210.0025, Insurance Code, containing recommendations concerning
16 appropriate building code standards to be used by the association
17 in the performance of its duties under Chapter 2210, Insurance
18 Code.

19 (d) Chapter 2110, Government Code, does not apply to the
20 size, composition, or duration of the advisory committee or to the
21 appointment of the committee's presiding officer.

22 (e) The advisory committee shall meet at least once each
23 year and may meet at other times at the call of the commissioner of
24 insurance or the committee's presiding officer.

25 (f) The advisory committee may meet by telephone conference
26 call, video conference call, or other similar audiovisual
27 telecommunication.

1 (g) This section expires January 1, 2013.

2 SECTION 30. (a) The change in law made by this Act applies
3 only to an appeal from a decision of the Texas Windstorm Insurance
4 Association made on or after January 1, 2012. An appeal from a
5 decision of that association made before January 1, 2012, applies
6 to the law as it existed immediately before the effective date of
7 this Act, and that law is continued in effect for that purpose.

8 (b) This Act, applies to all claims filed with the Texas
9 Windstorm Insurance Association on or after the effective date of
10 the Act.

11 SECTION 31. The Texas Windstorm Insurance Association
12 shall, not later than January 1, 2012, amend the association's plan
13 of operation as necessary to conform to the changes in law made by
14 this Act.

15 SECTION 32. This Act takes effect immediately if it
16 receives a vote of two-thirds of all the members elected to each
17 house, as provided by Section 39, Article III, Texas Constitution.
18 If this Act does not receive the vote necessary for immediate
19 effect, this Act takes effect September 1, 2011.