

SENATE AMENDMENTS

2nd Printing

By: Smithee, Chisum, Hancock, Margo, Sheets,
et al.

H.B. No. 272

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the operation and name of the Texas Windstorm Insurance
3 Association and to the resolution of certain disputes concerning
4 claims made to that association; providing penalties.

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

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

8 (c) This chapter also applies to:

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

11 (2) a person acting as a qualified inspector under
12 Section 2210.254 or 2210.255 without being appointed as a qualified
13 inspector under either of those sections.

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

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

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

24 SECTION 3. The heading to Chapter 2210, Insurance Code, is

1 amended to read as follows:

2 CHAPTER 2210. TEXAS COASTAL [~~WINDSTORM~~] INSURANCE PLAN
3 [~~ASSOCIATION~~]

4 SECTION 4. Section 2210.002, Insurance Code, is amended to
5 read as follows:

6 Sec. 2210.002. SHORT TITLE; SUNSET PROVISION. (a) This
7 chapter may be cited as the Texas Coastal [~~Windstorm~~] Insurance
8 Plan [~~Association~~] Act. A reference to the Texas Windstorm
9 Insurance Act means this chapter.

10 (b) The association is subject to review under Chapter 325,
11 Government Code (Texas Sunset Act), but is not abolished under that
12 chapter. The association shall be reviewed during the period in
13 which state agencies abolished in 2013 [~~2015~~] are reviewed. The
14 association shall pay the costs incurred by the Sunset Advisory
15 Commission in performing the review of the association under this
16 subsection. The Sunset Advisory Commission shall determine the
17 costs of the review performed under this subsection, and the
18 association shall pay the amount of those costs promptly on receipt
19 of a statement from the Sunset Advisory Commission regarding those
20 costs. This subsection expires September 1, 2013 [~~2015~~].

21 SECTION 5. Section 2210.003(1), Insurance Code, is amended
22 to read as follows:

23 (1) "Association" means the Texas Coastal [~~Windstorm~~]
24 Insurance Plan Association.

25 SECTION 6. Section 2210.003, Insurance Code, is amended by
26 adding Subdivision (3-b) to read as follows:

27 (3-b) "Catastrophe year" means a calendar year in

1 which an occurrence or a series of occurrences results in insured
2 losses, regardless of when the insured losses are ultimately paid.

3 SECTION 7. Subchapter A, Chapter 2210, Insurance Code, is
4 amended by adding Sections 2210.0081, 2210.010, 2210.012, and
5 2210.013 to read as follows:

6 Sec. 2210.0081. CERTAIN ACTIONS BROUGHT AGAINST
7 ASSOCIATION BY COMMISSIONER. In an action brought by the
8 commissioner against the association under Chapter 441:

9 (1) the association's inability to satisfy obligations
10 under Subchapter M related to the issuance of public securities
11 under this chapter constitutes a condition that makes the
12 association's continuation in business hazardous to the public or
13 to the association's policyholders for the purposes of Section
14 441.052;

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

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

26 Sec. 2210.010. APPLICABILITY OF CERTAIN OTHER LAW. (a) A
27 person may not bring a private action against the association,

1 including a claim against an agent or representative of the
2 association, under Chapter 541 or 542.

3 (b) Chapter 542 does not apply to the processing and
4 settlement of claims by the association.

5 Sec. 2210.012. STANDARDS OF CONDUCT: BOARD OF DIRECTORS AND
6 EMPLOYEES; REPORT OF CERTAIN FRAUDULENT CONDUCT. (a) A member of
7 the board of directors or an employee of the association may not:

8 (1) accept or solicit any gift, favor, or service that
9 might reasonably tend to influence the member or employee in the
10 discharge of duties related to the operation or business of the
11 association or that the member or employee knows or should know is
12 being offered with the intent to influence the member's or
13 employee's conduct related to the operation or business of the
14 association;

15 (2) accept other employment or engage in a business or
16 professional activity that the member or employee might reasonably
17 expect would require or induce the member or employee to disclose
18 confidential information acquired by reason of the member's or
19 employee's position with the association;

20 (3) accept other employment or compensation that could
21 reasonably be expected to impair the member's or employee's
22 independence of judgment in the performance of the member's or
23 employee's duties related to the operation or business of the
24 association;

25 (4) make personal investments that could reasonably be
26 expected to create a substantial conflict between the member's or
27 employee's private interest and the interest of the association; or

1 (5) intentionally or knowingly solicit, accept, or
2 agree to accept any benefit for having exercised the member's or
3 employee's powers related to the operation or business of the
4 association or having performed, in favor of another, the member's
5 or employee's duties related to the operation or business of the
6 association.

7 (b) An association employee who violates Subsection (a) or a
8 code of conduct established under Section 2210.107(a)(4) is subject
9 to an employment-related sanction, including termination of the
10 employee's employment with the association.

11 (c) A member of the board of directors or an association
12 employee who violates Subsection (a) is subject to any applicable
13 civil or criminal penalty if the violation also constitutes a
14 violation of another statute or rule.

15 (d) A board member, employee of the association, or member
16 of the windstorm insurance legislative oversight board established
17 under Subchapter N who reasonably suspects that a fraudulent
18 insurance act has been or is about to be committed by any board
19 member, employee of the association, or member of the windstorm
20 insurance legislative oversight board established under Subchapter
21 N shall, not later than the 30th day after discovering the conduct,
22 report the conduct and identity of the person engaging in the
23 conduct to the Travis County district attorney or the department.

24 Sec. 2210.013. CERTAIN EMPLOYMENT AND CONTRACTS
25 PROHIBITED. A member of the board of directors or an employee of
26 the association may not appoint or employ, or contract with, the
27 following individuals for the provision of goods or services in

1 connection with the operation or business of the association, if
2 the individual to be appointed or employed, or with whom a contract
3 is to be entered into, is to be directly or indirectly compensated
4 from funds of the association:

5 (1) an individual related to the member or employee
6 within a degree of relationship described by Section 573.002,
7 Government Code; or

8 (2) an individual related to any member of the board of
9 directors or employee of the association within a degree of
10 relationship described by Section 573.002, Government Code.

11 SECTION 8. Section 2210.053, Insurance Code, is amended by
12 adding Subsection (c) to read as follows:

13 (c) The association may not be considered a debtor
14 authorized to file a petition or seek relief in bankruptcy under
15 Title 11, United States Code.

16 SECTION 9. Subchapter B, Chapter 2210, Insurance Code, is
17 amended by adding Section 2210.058 to read as follows:

18 Sec. 2210.058. CLAIMS PRACTICES AUDIT. (a) If the
19 commissioner determines that 100 or more claims have been filed
20 under association policies the bases of which are damage to insured
21 property caused by the same storm, the department shall conduct a
22 random audit of the claim files of those claims to:

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

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

1 (b) The department shall conduct an audit required under
2 this section as soon as possible after the filing of the 100th claim
3 described by Subsection (a) to ensure the quality of the process
4 with which the association is handling claims described by
5 Subsection (a).

6 (c) If, following an audit conducted under this section, the
7 commissioner determines that the association is not adequately and
8 properly documenting claims decisions or that claims described by
9 Subsection (a) are not otherwise being handled appropriately, the
10 commissioner shall:

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

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

15 SECTION 10. Section 2210.071(a), Insurance Code, is amended
16 to read as follows:

17 (a) If, in a catastrophe year, an occurrence or series of
18 occurrences in a catastrophe area results in insured losses and
19 operating expenses of the association in excess of premium and
20 other revenue of the association, the excess losses and operating
21 expenses shall be paid as provided by this subchapter.

22 SECTION 11. Section 2210.072, Insurance Code, is amended by
23 amending Subsections (a), (b), and (c) and adding Subsection (b-1)
24 to read as follows:

25 (a) Losses not paid under Section 2210.071 shall be paid as
26 provided by this section from the proceeds from Class 1 public
27 securities authorized to be issued in accordance with Subchapter M

1 before, on, or after the date of any occurrence or series of
2 occurrences that results in insured losses. Public securities
3 issued under this section must be repaid within a period not to
4 exceed 10 years, and may be repaid sooner if the board of directors
5 elects to do so and the commissioner approves.

6 (b) Public securities described by Subsection (a) that are
7 issued before an occurrence or series of occurrences that results
8 in incurred losses may be issued if the board of directors
9 determines, before the date of any occurrence, that the amount
10 available from premium and other revenue, in combination with the
11 amounts available from the catastrophe reserve trust fund, may be
12 insufficient to pay insured losses.

13 (b-1) Public securities described by Subsection (a) shall
14 be issued as necessary in a principal amount not to exceed \$1
15 billion per catastrophe year, in the aggregate, for securities
16 issued before the occurrence or series of occurrences that results
17 in incurred losses in that year and securities issued on or after
18 the date of that occurrence or series of occurrences.

19 (c) If [~~the losses are paid with~~] public securities are
20 issued as described by this section, the public securities shall be
21 repaid in the manner prescribed by Subchapter M from association
22 premium revenue.

23 SECTION 12. Section 2210.073(b), Insurance Code, is amended
24 to read as follows:

25 (b) Public securities described by Subsection (a) may be
26 issued as necessary in a principal amount not to exceed \$1 billion
27 per catastrophe year. If the losses are paid with public securities

1 described by this section, the public securities shall be repaid in
2 the manner prescribed by Subchapter M.

3 SECTION 13. Section 2210.074(b), Insurance Code, is amended
4 to read as follows:

5 (b) Public securities described by Subsection (a) may be
6 issued as necessary in a principal amount not to exceed \$500 million
7 per catastrophe year. If the losses are paid with public securities
8 described by this section, the public securities shall be repaid in
9 the manner prescribed by Subchapter M through member assessments as
10 provided by this section. The association shall notify each member
11 of the association of the amount of the member's assessment under
12 this section. The proportion of the losses allocable to each
13 insurer under this section shall be determined in the manner used to
14 determine each insurer's participation in the association for the
15 year under Section 2210.052. A member of the association may not
16 recoup an assessment paid under this subsection through a premium
17 surcharge or tax credit.

18 SECTION 14. Section 2210.102, Insurance Code, is amended by
19 adding Subsection (i) to read as follows:

20 (i) Notwithstanding Subsection (f), for a vacancy occurring
21 in a position under Subsection (b), the commissioner may appoint,
22 for the lesser of 120 days or until the vacancy is filled, a person
23 who has demonstrated knowledge in insurance principles. This
24 subsection does not apply to a vacancy due to the expiration of a
25 term occurring under Section 2210.103. This subsection expires
26 December 31, 2012, and any appointment in effect on that date is
27 continued until the expiration of the term of the appointment.

1 SECTION 15. Section 2210.104, Insurance Code, is amended to
2 read as follows:

3 Sec. 2210.104. OFFICERS AND MANAGERIAL EMPLOYEES; SALARIES
4 AND BONUSES. (a) The board of directors shall elect from the
5 board's membership an executive committee consisting of a presiding
6 officer, assistant presiding officer, and secretary-treasurer.

7 (b) The association shall post on the association's
8 Internet website the salary of each association employee who serves
9 in a managerial capacity and any bonuses paid to those association
10 employees.

11 SECTION 16. Section 2210.105, Insurance Code, is amended by
12 amending Subsections (a) and (b) and adding Subsections (b-1), (e),
13 and (f) to read as follows:

14 (a) Except for an emergency meeting, the association shall:

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

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

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

25 [~~1~~] ~~the commissioner or the commissioner's designated~~
26 ~~representative; and~~

27 [~~2~~] the public.

1 (b-1) A meeting of the board of directors or the members of
2 the association, including a closed meeting authorized by
3 Subchapter D, Chapter 551, Government Code, is open to the
4 commissioner or the commissioner's designated representative. The
5 commissioner or the commissioner's designated representative shall
6 maintain the confidentiality of, and may not disclose the content
7 of, any confidential information discussed in a closed meeting
8 authorized by Subchapter D, Chapter 551, Government Code.

9 (e) The association shall:

10 (1) broadcast live on the association's Internet
11 website all meetings of the board of directors, other than closed
12 meetings; and

13 (2) maintain on the association's Internet website an
14 archive of meetings of the board of directors.

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

18 SECTION 17. Section 2210.107, Insurance Code, is amended to
19 read as follows:

20 Sec. 2210.107. PRIMARY BOARD OBJECTIVES; REPORT. (a) The
21 primary objectives of the board of directors are to ensure that the
22 board and the association:

23 (1) operate [~~operates~~] in accordance with this
24 chapter, the plan of operation, and commissioner rules;

25 (2) comply [~~complies~~] with sound insurance
26 principles; [~~and~~]

27 (3) meet [~~meets~~] all standards imposed under this

1 chapter;

2 (4) establish a code of conduct and performance
3 standards for association employees and persons with which the
4 association contracts; and

5 (5) establish, and adhere to terms of, an annual
6 evaluation of association management necessary to achieve the
7 statutory purpose, board objectives, and any performance or
8 enterprise risk management objectives established by the board.

9 (b) Not later than June 1 of each year, the association
10 shall submit to the commissioner, the legislative oversight board
11 established under Subchapter N, the governor, the lieutenant
12 governor, and the speaker of the house of representatives a report
13 evaluating the extent to which the board met the objectives
14 described by Subsection (a) in the 12-month period immediately
15 preceding the date of the report.

16 SECTION 18. Subchapter C, Chapter 2210, Insurance Code, is
17 amended by adding Section 2210.108 to read as follows:

18 Sec. 2210.108. OPEN MEETINGS AND OPEN RECORDS. (a) Except
19 as specifically provided by this chapter or another law, the
20 association is subject to Chapters 551 and 552, Government Code.

21 (b) A settlement agreement to which the association is a
22 party:

23 (1) is public information and is not exempted from
24 required disclosure under Chapter 552, Government Code; and

25 (2) if applicable, must contain the name of any
26 attorney or adjuster involved with the claim that is the basis of
27 the settlement.

1 (c) Subsection (b) may not be construed to limit or
2 otherwise restrict the categories of information that are public
3 information under Section 552.022, Government Code.

4 SECTION 19. Section 2210.152, Insurance Code, is amended by
5 adding Subsection (c) to read as follows:

6 (c) The plan of operation shall require the association to
7 use the claim settlement guidelines published by the commissioner
8 under Section 2210.577(f) in evaluating the extent to which a loss
9 to insured property is incurred as a result of wind, waves, tidal
10 surges, rising waters not caused by waves or surges, or wind-driven
11 rain associated with a storm.

12 SECTION 20. Section 2210.202, Insurance Code, is amended to
13 read as follows:

14 Sec. 2210.202. APPLICATION FOR COVERAGE. (a) A person who
15 has an insurable interest in insurable property may apply to the
16 association for insurance coverage provided under the plan of
17 operation and an inspection of the property, subject to any rules
18 established by the board of directors and approved by the
19 commissioner. The association shall make insurance available to
20 each applicant in the catastrophe area whose property is insurable
21 property but who, after diligent efforts, is unable to obtain
22 property insurance through the voluntary market, as evidenced by
23 one declination from an insurer authorized to engage in the
24 business of, and writing, property insurance providing windstorm
25 and hail coverage in the first tier coastal counties. For purposes
26 of this section, "declination" has the meaning assigned by the plan
27 of operation and shall include a refusal to offer coverage for the

1 perils of windstorm and hail and the inability to obtain
 2 substantially equivalent insurance coverage for the perils of
 3 windstorm and hail. Notwithstanding Section 2210.203(c), evidence
 4 of one declination every three calendar years is also required with
 5 an application for renewal of an association policy.

6 (b) A property and casualty agent must submit an application
 7 for initial ~~[the]~~ insurance coverage on behalf of the applicant on
 8 forms prescribed by the association. A person insured under this
 9 chapter may submit an application for renewal coverage directly to
 10 the association on forms prescribed by the association. An ~~[The]~~
 11 application for initial or renewal coverage must contain:

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

15 (2) ~~[. Each application for initial or renewal~~
 16 ~~coverage must also contain]~~ a statement that the agent acting on
 17 behalf of the applicant possesses proof of the declination
 18 described by Subsection (a) and proof of flood insurance coverage
 19 or unavailability of that coverage as described by Section
 20 2210.203(a-1), regardless of whether the agent or the applicant
 21 submits the application for coverage.

22 SECTION 21. Section 2210.203, Insurance Code, is amended by
 23 amending Subsection (a) and adding Subsection (d) to read as
 24 follows:

25 (a) If the association determines that the property for
 26 which an application for initial insurance coverage is made is
 27 insurable property, the association, on payment of the premium,

1 shall direct the issuance of an insurance policy as provided by the
2 plan of operation.

3 (d) The commissioner shall adopt rules governing the rate of
4 agent commissions on policies renewed under Subsection (c). Rules
5 adopted under this subsection must require that commission rates be
6 reasonable and not excessive, based on the time required of, and the
7 nature of work to be performed by, an agent.

8 SECTION 22. Sections 2210.204(d) and (e), Insurance Code,
9 are amended to read as follows:

10 (d) If an insured requests cancellation of the insurance
11 coverage, the association shall refund the unearned premium, less
12 any minimum retained premium set forth in the plan of operation,
13 payable to the insured and the holder of an unpaid balance. The
14 property and casualty agent who received a commission as the result
15 of the issuance of an association policy providing the canceled
16 coverage [~~submitted the application~~] shall refund the agent's
17 commission on any unearned premium in the same manner.

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

24 (1) the purchase of similar coverage in the voluntary
25 market;

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

27 (3) death of the policyholder; or

1 (4) total loss of the property.

2 SECTION 23. Subchapter E, Chapter 2210, Insurance Code, is
3 amended by adding Sections 2210.205 and 2210.210 to read as
4 follows:

5 Sec. 2210.205. REQUIRED POLICY PROVISIONS: DEADLINE FOR
6 FILING CLAIM; NOTICE CONCERNING RESOLUTION OF CERTAIN DISPUTES.

7 (a) A windstorm and hail insurance policy issued by the association
8 must:

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

12 (2) contain, in boldface type, a conspicuous notice
13 concerning the resolution of disputes under the policy, including:

14 (A) the processes and deadlines for appraisal
15 under Section 2210.575 and independent coverage review under
16 Section 2210.576; and

17 (B) the necessity of complying with the
18 requirements of Subchapter L-1 to seek administrative or judicial
19 relief.

20 (b) The commissioner, on a showing of good cause by a person
21 insured under this chapter, may extend the one-year period
22 described by Subsection (a)(1) for a period not to exceed 180 days.

23 Sec. 2210.210. COVERAGE OF CERTAIN STRUCTURES PROHIBITED.

24 The association may not issue coverage for the following
25 structures, regardless of whether the structure is otherwise
26 insurable property under this chapter:

27 (1) a wind turbine;

1 (2) a structure used primarily as a casino or other
2 gambling establishment;

3 (3) a structure used as a sexually oriented business,
4 as defined by Section 243.002, Local Government Code; or

5 (4) a structure in which, or in any portion of which,
6 an establishment is located that is used primarily for the
7 operation of video lottery machines, eight-liners, or other
8 gambling devices, regardless of whether the gambling devices are
9 regulated under state law.

10 SECTION 24. Section 2210.254, Insurance Code, is amended by
11 adding Subsection (e) to read as follows:

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

14 SECTION 25. Subchapter F, Chapter 2210, Insurance Code, is
15 amended by adding Section 2210.2551 to read as follows:

16 Sec. 2210.2551. EXCLUSIVE ENFORCEMENT AUTHORITY; RULES.

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

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

26 (c) Subsection (b) applies only to a determination
27 concerning the appointment of a qualified inspector under this

1 chapter. The exclusive jurisdiction of the department under this
2 section does not apply to the practice of engineering as defined by
3 Section 1001.003, Occupations Code, or to a license issued,
4 qualification required, determination made, order issued, judgment
5 rendered, or other action of a board operating under Chapter 1001,
6 Occupations Code. In the event of conflict, the authority of that
7 board prevails with regard to the practice of engineering.

8 SECTION 26. The heading to Section 2210.256, Insurance
9 Code, is amended to read as follows:

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

12 SECTION 27. Section 2210.256, Insurance Code, is amended by
13 adding Subsection (a-1) to read as follows:

14 (a-1) In addition to any other action authorized under this
15 section, the commissioner ex parte may enter an emergency cease and
16 desist order under Chapter 83 against a qualified inspector, or a
17 person acting as a qualified inspector, if:

18 (1) the commissioner believes that:

19 (A) the qualified inspector has:

20 (i) through submitting or failing to submit
21 to the department sealed plans, designs, calculations, or other
22 substantiating information, failed to demonstrate that a structure
23 or a portion of a structure subject to inspection meets the
24 requirements of this chapter and department rules; or

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

27 (B) the person acting as a qualified inspector is

1 acting without appointment as a qualified inspector under Section
2 2210.254 or 2210.255; and

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

6 SECTION 28. Subchapter F, Chapter 2210, Insurance Code, is
7 amended by adding Section 2210.260 to read as follows:

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

14 (b) The department may issue an alternative certification
15 for a residential structure if the person who has an insurable
16 interest in the structure demonstrates that at least one qualifying
17 structural building component of the structure has been:

18 (1) inspected by a department inspector or by a
19 qualified inspector; and

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

22 (c) The commissioner shall adopt reasonable and necessary
23 rules to implement this section. The rules adopted under this
24 section must establish which structural building components are
25 considered qualifying structural building components for the
26 purposes of Subsection (b), taking into consideration those items
27 that are most probable to generate losses for the association's

1 policyholders and the cost to upgrade those items.

2 (d) Except as provided in Section 2210.251(f), a person who
3 has an insurable interest in a residential structure that is
4 insured by the association as of January 1, 2012, but for which the
5 person has not obtained a certificate of compliance under Section
6 2210.251(g), must obtain an alternative certification under this
7 section before the association, on or after January 1, 2013, may
8 renew coverage for the structure.

9 (e) Each residential structure for which a person obtains an
10 alternative certification under this section must comply with:

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

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

16 (f) The association shall develop and implement an
17 actuarially sound rate, credit, or surcharge that reflects the
18 risks presented by structures with reference to which alternative
19 certifications have been obtained under this section. A rate,
20 credit, or surcharge under this subsection may vary based on the
21 number of qualifying structural building components included in a
22 structure with reference to which an alternative certification is
23 obtained under this section.

24 SECTION 29. Section 2210.453, Insurance Code, is amended by
25 adding Subsections (c) and (d) to read as follows:

26 (c) If the association does not purchase reinsurance as
27 authorized by this section, the board, not later than June 1 of each

1 year, shall submit to the commissioner, the legislative oversight
2 board established under Subchapter N, the governor, the lieutenant
3 governor, and the speaker of the house of representatives a report
4 containing an actuarial plan for paying losses in the event of a
5 catastrophe with estimated damages of \$2.5 billion or more. The
6 report required by this subsection must:

7 (1) document and denominate the association's
8 resources available to pay claims, including cash or other highly
9 liquid assets, assessments that the association is projected to
10 impose, pre-event and post-event bonding capacity, and
11 private-sector recognized risk-transfer mechanisms, including
12 catastrophe bonds and reinsurance;

13 (2) include an independent, third-party appraisal of
14 the likelihood of an assessment, the maximum potential size of the
15 assessment, and an estimate of the probability that the assessment
16 would not be adequate to meet the association's needs; and

17 (3) include an analysis of financing alternatives to
18 assessments that includes the costs of borrowing and the
19 consequences that additional purchase of reinsurance, catastrophe
20 bonds, or other private-sector recognized risk-transfer
21 instruments would have in reducing the size or potential of
22 assessments.

23 (d) A person who prepares a report required by Subsection
24 (c) may not contract to provide any other service to the
25 association, except for the preparation of similar reports, before
26 the third anniversary of the date the last report prepared by the
27 person under that subsection is submitted.

1 SECTION 30. Subchapter J, Chapter 2210, Insurance Code, is
2 amended by adding Section 2210.455 to read as follows:

3 Sec. 2210.455. CATASTROPHE PLAN. (a) Not later than June 1
4 of each year, the board shall submit to the commissioner, the
5 legislative oversight board established under Subchapter N, the
6 governor, the lieutenant governor, and the speaker of the house of
7 representatives a catastrophe plan covering the period beginning on
8 the date the plan is submitted and ending on the following May 31.

9 (b) The catastrophe plan must:

10 (1) describe the manner in which the association will,
11 during the period covered by the plan, evaluate losses and process
12 claims after the following windstorms affecting an area of maximum
13 exposure to the association:

14 (A) a windstorm with a four percent chance of
15 occurring during the period covered by the plan;

16 (B) a windstorm with a two percent chance of
17 occurring during the period covered by the plan; and

18 (C) a windstorm with a one percent chance of
19 occurring during the period covered by the plan; and

20 (2) include, if the association does not purchase
21 reinsurance under Section 2210.453 for the period covered by the
22 plan, an actuarial plan for paying losses in the event of a
23 catastrophe with estimated damages of \$2.5 billion or more.

24 (c) The catastrophe plan must include a description of how
25 losses under association policies will be paid, and how claims
26 under association policies will be administered and adjusted,
27 during the period covered by the plan.

1 SECTION 31. Sections 2210.551(a) and (b), Insurance Code,
2 are amended to read as follows:

3 (a) This section:

4 (1) does not apply to a person who is required to
5 resolve a dispute under Subchapter L-1; and

6 (2) applies only to:

7 (A) [~~(1)~~] a person not described by Subdivision
8 (1) who is insured under this chapter or an authorized
9 representative of the person; or

10 (B) [~~(2)~~] an affected insurer.

11 (b) A person or entity described by Subsection (a)(2) [~~(a)~~]
12 who is aggrieved by an act, ruling, or decision of the association
13 may appeal to the commissioner not later than the 30th day after the
14 date of that act, ruling, or decision.

15 SECTION 32. The heading to Section 2210.552, Insurance
16 Code, is amended to read as follows:

17 Sec. 2210.552. [~~CLAIM~~] DISPUTES OTHER THAN CLAIM DISPUTES;
18 VENUE.

19 SECTION 33. Section 2210.552, Insurance Code, is amended by
20 amending Subsection (a) and adding Subsection (e) to read as
21 follows:

22 (a) Except as provided by Sections 2210.007 and 2210.106 and
23 Subchapter L-1, a person insured under this chapter who is
24 aggrieved by an act, ruling, or decision of the association
25 [~~relating to the payment of, the amount of, or the denial of a~~
26 ~~claim~~] may:

27 (1) bring an action against the association[~~7~~

1 ~~including an action under Chapter 541]; or~~

2 (2) appeal the act, ruling, or decision under Section
3 2210.551.

4 (e) A person who brings an action against the association
5 under this section:

6 (1) may recover only the amount of actual damages,
7 plus court costs and reasonable and necessary attorney's fees; and

8 (2) may not recover consequential, punitive, or
9 exemplary damages, including damages under Section 541.152(b) of
10 this code or Section 17.50, Business & Commerce Code.

11 SECTION 34. Subchapter L, Chapter 2210, Insurance Code, is
12 amended by adding Section 2210.553 to read as follows:

13 Sec. 2210.553. LIMITATIONS PERIOD. (a) Notwithstanding
14 any other law, including Section 541.162, a person insured under
15 this chapter who brings an action against the association in the
16 manner described by Section 2210.552(a)(1) must bring the action
17 not later than the second anniversary of the date of the act,
18 ruling, or decision of the association by which the insured is
19 aggrieved.

20 (b) This section is a statute of repose and controls over
21 any other applicable limitations period.

22 SECTION 35. Chapter 2210, Insurance Code, is amended by
23 adding Subchapter L-1 to read as follows:

24 SUBCHAPTER L-1. CLAIMS: SETTLEMENT AND DISPUTE RESOLUTION

25 Sec. 2210.571. DEFINITIONS. In this subchapter:

26 (1) "Association policy" means a windstorm and hail
27 insurance policy issued by the association.

1 (2) "Causation dispute" means a dispute involving the
2 extent to which damage to property insured under an association
3 policy was caused by an event or peril covered under the policy.

4 (3) "Claim" means a request for payment under an
5 association policy. The term also includes any other claim against
6 the association, or an agent or representative of the association,
7 relating to an insured loss, under any theory or cause of action of
8 any kind, regardless of the theory under which the claim is
9 asserted, the cause of action brought, or the type of damages
10 sought.

11 (4) "Claimant" means a person who makes a claim.

12 (5) "Coverage dispute" means a dispute that involves
13 whether, or the extent to which, an association policy covers
14 damages to property alleged to be insured under the policy. The
15 term does not include a causation dispute.

16 (6) "Damage dispute" means a dispute that involves the
17 extent of damage to property, or the cost of repairing or replacing
18 property, insured under an association policy. The term does not
19 include a causation dispute or coverage dispute.

20 Sec. 2210.572. EXCLUSIVE REMEDIES AND LIMITATION ON AWARD.

21 (a) This subchapter provides the exclusive remedies for a claim
22 against the association, including an agent or representative of
23 the association.

24 (b) The association or an agent or representative of the
25 association may not be held liable for any amount on a claim other
26 than:

27 (1) amounts payable under the terms of the association

1 policy for loss to an insured structure, loss to contents of an
2 insured structure, and additional living expenses; and

3 (2) any costs and fees awarded under Section 2210.578.

4 (c) The association or an agent or representative of the
5 association may not be held liable for damages under Chapter 17,
6 Business & Commerce Code, or under any provision of any law
7 providing for trebling of damages or a penalty.

8 Sec. 2210.573. FILING OF CLAIM; CLAIM PROCESSING. (a)

9 Subject to Section 2210.205(b), an insured must file a claim under
10 an association policy not later than the first anniversary of the
11 date on which the damage to property that is the basis of the claim
12 occurs.

13 (b) Except as provided by Subsection (d), not later than the
14 90th day after the date the association receives a claim, the
15 association shall:

16 (1) notify the claimant in writing of the amount of
17 money, if any, the association will pay the claimant for the claim;
18 and

19 (2) provide the claimant with:

20 (A) a detailed description of the assumptions or
21 estimates used by the association in determining the amount of the
22 claim to be paid, including the estimated labor and materials
23 required and the estimated prices for the labor and materials; or

24 (B) if the association determines that, in whole
25 or in part, the property damaged is not insured under the
26 association policy, or that the property insured under the
27 association policy was damaged by an event or peril not covered by

1 the association policy, a detailed description of the factual and
2 legal basis on which the association determined that a coverage or
3 causation dispute exists concerning all or part of the claim.

4 (c) If the association does not notify the claimant within
5 the period required by Subsection (b), the claim is presumed to be
6 covered by the association policy.

7 (d) The association may extend the 90-day period described
8 by Subsection (b) for a period not to exceed 90 days, if, before the
9 end of the 90-day period described by Subsection (b), the
10 association determines that special circumstances require an
11 extension of the 90-day period described by Subsection (b) and
12 notifies the claimant in writing of that determination and those
13 circumstances.

14 (e) If a claimant fails to submit information necessary for
15 the association to determine whether to pay a claim or any portion
16 of a claim or to deny payment of a claim or any portion of a claim,
17 the association shall, not later than the 15th day after the date
18 the association receives notice of the claim, request in writing
19 any necessary information from the claimant. For good cause, the
20 association may make a request for additional information under
21 this subsection not later than the 30th day after the date the
22 association receives notice of a claim. If the association makes a
23 written request for information, the applicable period described by
24 Subsection (b) or (d) is tolled from the date the association
25 requests the information until the date the association receives
26 from the claimant information responsive to the request.

27 (f) In addition to the notice and information otherwise

1 required under this section, the association shall notify a
2 claimant of the time limits under Section 2210.574 to request
3 review of the association's determination under Subsection (e).

4 Sec. 2210.574. REQUEST FOR REVIEW OF ASSOCIATION
5 DETERMINATION. (a) A claimant aggrieved by a determination of the
6 association under Section 2210.573 may, not later than the 30th day
7 after the date the claimant receives the association's
8 determination, request in writing a review of the determination. A
9 claimant may submit written comments, documents, records, and other
10 information to the association with or following the request for
11 review.

12 (b) The association shall, on request and free of charge,
13 provide a claimant requesting review of an association
14 determination under Subsection (a) reasonable access to all
15 information relevant to the determination of the association that
16 is being reviewed. The claimant may copy the information at the
17 claimant's own cost or may request the association to provide a copy
18 of all or part of the information to the claimant. The association
19 may charge a claimant the actual cost incurred by the association in
20 providing a copy of information under this section, excluding any
21 amount for labor involved in making any information or copy of
22 information available to a claimant.

23 (c) Not later than the 60th day after the date the
24 association receives a request for review under Subsection (a), the
25 association shall notify the claimant in writing of the outcome of
26 the association's review. The association and the claimant may
27 agree to extend the 60-day period described by this subsection.

1 (d) The association's notice to the claimant of the outcome
2 of the association's review must be in writing, contain the reasons
3 for the outcome, and notify the claimant of the time limits to
4 request, as applicable, appraisal under Section 2210.575 or review
5 by an independent review panel under Section 2210.576.

6 Sec. 2210.575. APPRAISAL IN DAMAGE DISPUTES. (a) If, after
7 review of an association determination under Section 2210.574, a
8 damage dispute exists with reference to a claim filed under an
9 association policy, but a coverage or causation dispute does not
10 exist with reference to that claim, the claimant may request
11 appraisal of the extent of damage to the property, or the cost of
12 repairing or replacing the property, insured under the policy.

13 (b) A claimant must make a written request for appraisal not
14 later than the 30th day after the date the claimant receives actual
15 or constructive notice of the outcome of the association's review
16 of a determination under Section 2210.574 that is the basis of the
17 damage dispute. If a claimant, on a showing of good cause and not
18 later than the 60th day after the expiration of the 30-day period
19 described by this subsection, requests in writing that the 30-day
20 period to request appraisal be extended, the commissioner may grant
21 an additional 30-day period in which the claimant may request
22 appraisal.

23 (c) If a claimant requests appraisal under Subsection (b),
24 the claimant and the association shall resolve the damage dispute
25 through appraisal, in accordance with the terms of the association
26 policy. The results of the appraisal:

27 (1) are binding on the claimant and the association

1 and are subject to appeal and judicial review only in the manner
2 provided by Section 2210.578; and

3 (2) become final and appealable on the 15th day after
4 the date the appealing party receives actual or constructive notice
5 of the results.

6 (d) A request for appraisal, and participation in the
7 appraisal process, under this section is a condition precedent to
8 contesting a determination made by the association concerning the
9 extent of damage to property, or the cost of repairing or replacing
10 property, insured under an association policy. A claimant who does
11 not request appraisal within the applicable period described by
12 Subsection (b) waives the claimant's right to contest a
13 determination of the association concerning the extent of damage to
14 property, or the cost of repairing or replacing property, insured
15 under an association policy.

16 (e) If a claimant requests appraisal under this section, the
17 claimant is responsible for paying any costs incurred or charged by
18 an appraiser retained by and on behalf of the claimant, the
19 association is responsible for paying any costs incurred or charged
20 by an appraiser retained by and on behalf of the association, and
21 the claimant and the association are responsible in equal shares
22 for any costs incurred or charged by any other appraiser chosen by
23 the claimant's and the association's appraisers to participate in
24 the resolution of the dispute.

25 (f) The commissioner by rule shall establish policies and
26 procedures for an appraisal requested and conducted under this
27 section.

1 Sec. 2210.576. REVIEW BY INDEPENDENT REVIEW PANEL. (a) If,
2 after review of an association determination under Section
3 2210.574, a coverage or causation dispute exists with reference to
4 a claim filed under an association policy, the claimant may seek
5 resolution of all disputes concerning the claim, including a damage
6 dispute, through review by an independent review panel.

7 (b) A claimant must make a written request, mailed or served
8 on the association or the commissioner, for review by an
9 independent review panel not later than the 30th day after the date
10 the claimant receives actual or constructive notice of the outcome
11 of the association's review of a determination under Section
12 2210.574 that is the basis of the causation, coverage, or damage
13 dispute. If a claimant mails or serves a request for review by an
14 independent review panel, the association shall immediately
15 forward the request for review to the commissioner.

16 (c) If a claimant, on a showing of good cause and not later
17 than the 60th day after the expiration of the 30-day period
18 described by Subsection (b), requests in writing that the 30-day
19 period to request review by an independent review panel be
20 extended, the commissioner may grant an additional 30-day period in
21 which the claimant may request independent review under this
22 section.

23 (d) The commissioner shall appoint an independent review
24 panel to resolve a dispute in the manner described by this section.
25 A panel appointed under this section must consist of three members,
26 selected by the commissioner from a roster of qualified panel
27 members maintained and published by the commissioner. If a

1 selected panel member cannot serve or declines to serve for any
2 reason, the commissioner shall select a new panel member not later
3 than the 10th day after the date the panel member notifies the
4 commissioner of the member's inability or unwillingness to serve.
5 The commissioner shall appoint one member of the panel to serve as
6 the presiding officer of the panel.

7 (e) An independent review panel appointed under Subsection
8 (b) shall make a determination concerning, as applicable, the
9 causation, coverage, or damage dispute submitted to the panel for
10 review and notify the claimant and the association in writing of the
11 panel's determination as soon as practicable, but not later than
12 the 120th day after the date the independent review panel is
13 appointed. If the independent review panel does not make a
14 determination concerning a dispute before the 120th day, the
15 commissioner may grant a reasonable extension for the panel to make
16 a determination or dissolve the panel and appoint a new panel to
17 conduct the review.

18 (f) An independent review panel shall determine whether the
19 review of a dispute involves a technical issue requiring guidance
20 or information from the technical panel appointed under Section
21 2210.577. If the review of a dispute involves a technical issue, the
22 independent review panel shall request from the technical panel
23 guidance and any information relevant to the dispute.

24 (g) The 120-day period described by Subsection (e) is tolled
25 from the date the independent review panel requests guidance or
26 information from the technical panel through the date on which the
27 independent review panel receives the requested guidance or

1 information.

2 (h) The determination of an independent review panel:

3 (1) is binding on the claimant and the association and
4 is subject to appeal and judicial review only in the manner provided
5 by Section 2210.578; and

6 (2) becomes final and appealable on the 15th day after
7 the date the appealing party receives actual or constructive notice
8 of the determination.

9 (i) The commissioner by rule shall establish:

10 (1) the qualifications for members of the independent
11 review panel;

12 (2) procedures and deadlines to be used in independent
13 review;

14 (3) procedures and requirements relating to the
15 exchange of documents during the independent review process,
16 including the content of those documents; and

17 (4) procedures or requirements necessary for any other
18 matter regarding the handling of requests for review.

19 (j) The rules adopted by the commissioner under Subsection
20 (i) must ensure that the independent review process is fair to the
21 claimant and enables the claimant to participate in the independent
22 review process without engaging legal counsel.

23 Sec. 2210.577. TECHNICAL PANEL. (a) The commissioner
24 shall appoint a technical panel of experts to advise the
25 association concerning the extent to which damage to property
26 insured under an association policy was incurred as a result of
27 wind, waves, tidal surges, rising waters not caused by waves or

1 surges, and wind-driven rain associated with a storm. The panel
2 shall consist of a number of experts to be decided by the
3 commissioner. The commissioner shall appoint one member of the
4 panel to serve as the presiding officer of the panel.

5 (b) Members of the panel must have professional expertise
6 in, and be knowledgeable concerning, the geography and meteorology
7 of the Texas seacoast territory, as well as the scientific basis for
8 determining the extent to which damage to property is caused by
9 wind, waves, tidal surges, rising waters not caused by waves or
10 surges, and wind-driven rain associated with a storm.

11 (c) The panel shall meet at the request of the commissioner
12 or the call of the presiding officer of the panel.

13 (c-1) The commissioner shall adopt rules regarding notice
14 of panel meetings and the transparency of deliberations of the
15 technical panel.

16 (d) The panel shall investigate, collect, and evaluate the
17 information necessary to provide recommendations under Subsection
18 (e) and to provide guidance or other information requested by an
19 independent review panel under Section 2210.576.

20 (e) At the request of the commissioner, the technical panel
21 shall recommend to the commissioner methods for determining the
22 extent to which damage to property insured under an association
23 policy resulted from wind, waves, tidal surges, rising waters not
24 caused by waves or surges, and wind-driven rain associated with a
25 storm for geographic areas or regions designated by the
26 commissioner.

27 (f) After consideration of the recommendations made by the

1 panel under Subsection (e), the commissioner shall publish
2 guidelines that the association will use to settle claims.

3 (g) A member of the technical panel is not individually
4 liable for an act or failure to act in the performance of the
5 official duties in connection with the individual's work on the
6 panel.

7 Sec. 2210.578. JUDICIAL REVIEW. (a) A claimant who has
8 exhausted all administrative remedies under this subchapter and who
9 is aggrieved by an appraisal under Section 2210.575 or the
10 determination of an independent review panel under Section 2210.576
11 is entitled to judicial review. A claimant may not seek judicial
12 review before exhausting all administrative remedies under this
13 subchapter.

14 (b) A claimant may seek judicial review of an appraisal
15 under Section 2210.575 or the determination of an independent
16 review panel under Section 2210.576 in the manner provided for the
17 appeal of contested cases under Subchapter G, Chapter 2001,
18 Government Code. The standard for judicial review under this
19 section is the substantial evidence rule.

20 (c) In a proceeding for judicial review under this section,
21 the court may award only the amount described by Section
22 2210.572(b), plus court costs and reasonable and necessary
23 attorney's fees.

24 (d) Notwithstanding Subsection (b), a claimant aggrieved by
25 an appraisal process under Section 2210.575 or the determination of
26 an independent review panel under Section 2210.576 may appeal to a
27 district court in the county in which the loss that, as applicable,

1 is the subject of the appraisal or independent review occurred, for
2 a determination concerning:

3 (1) the amount of the loss;

4 (2) whether the loss is covered by or insured under the
5 association policy;

6 (3) whether the loss was caused by a hazard or risk
7 insured under the policy; and

8 (4) the amount of court costs and reasonable and
9 necessary attorney's fees.

10 (e) An appeal to a district court under Subsection (d) shall
11 be trial de novo. The only questions that may be presented and
12 determined at the trial de novo are:

13 (1) the amount of the loss;

14 (2) whether the loss is covered by or insured under the
15 association policy;

16 (3) whether the loss was caused by a hazard or risk
17 insured under the policy; and

18 (4) the amount of court costs and reasonable and
19 necessary attorney's fees.

20 (f) The only evidence that may be admitted in a trial de novo
21 under Subsection (d) is evidence that was admitted or presented in
22 the appraisal process under Section 2210.575 or the independent
23 review process under Section 2210.576. The Texas Rules of Evidence
24 govern whether evidence presented during the appraisal process
25 under Section 2210.575 or the independent review process under
26 Section 2210.576 is admissible in a trial de novo under Subsection
27 (d).

1 (g) A petition for trial de novo under Subsection (d) must
2 be filed with a district court in the county in which the loss that,
3 as applicable, is the subject of the appraisal or independent
4 review occurred, not later than the 30th day after the date on which
5 the determination being appealed is final and appealable under this
6 subchapter.

7 (h) The appeal seeking a trial de novo under Subsection (d)
8 shall be presided over by a judge appointed by the judicial panel on
9 multidistrict litigation designated under Section 74.161,
10 Government Code. A judge appointed under this section must be a
11 resident of a first tier coastal county or a second tier coastal
12 county.

13 (i) The Texas Supreme Court shall adopt rules governing the
14 proceedings of a trial de novo under Subsection (d).

15 Sec. 2210.579. CONSTRUCTION WITH OTHER LAW. To the extent
16 of any conflict between a provision of this subchapter and any other
17 law, the provision of this subchapter prevails.

18 Sec. 2210.580. MEDIATION; CERTAIN DEADLINES TOLLED. A
19 deadline imposed on a claimant under Section 2210.574, 2210.575, or
20 2210.576 is tolled for a single period not to exceed 45 consecutive
21 days during which the claimant is actively seeking resolution of
22 the causation dispute, coverage dispute, or damage dispute through
23 a mediation administered by the department.

24 SECTION 36. Section 2210.602(2), Insurance Code, is amended
25 to read as follows:

26 (2) "Class 1 public securities" means public
27 securities authorized to be issued before, on, or after an

1 occurrence or series of occurrences by Section 2210.072, including
2 a commercial paper program authorized before the occurrence of a
3 catastrophic event but in which [~~so long as~~] no tranche of
4 commercial paper is issued under the program until after the
5 catastrophic event.

6 SECTION 37. Section 2210.604, Insurance Code, is amended by
7 amending Subsection (a) and adding Subsection (a-1) to read as
8 follows:

9 (a) At the request of the association and with the approval
10 of the commissioner, the Texas Public Finance Authority shall issue
11 Class 1, Class 2, or Class 3 public securities. The association
12 shall submit to the commissioner a cost-benefit analysis of various
13 financing methods and funding structures when requesting the
14 issuance of public securities under this subsection.

15 (a-1) The association and the commissioner must approve
16 each tranche of commercial paper issued under a commercial paper
17 program established under this chapter.

18 SECTION 38. Section 2210.609(b), Insurance Code, is amended
19 to read as follows:

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

26 SECTION 39. Section 2210.611, Insurance Code, is amended to
27 read as follows:

1 Sec. 2210.611. EXCESS REVENUE COLLECTIONS AND INVESTMENT
2 EARNINGS. Revenue collected in any calendar year from a premium
3 surcharge under Section 2210.613 that exceeds the amount of the
4 public security obligations and public security administrative
5 expenses payable in that calendar year and interest earned on the
6 public security obligation fund may, in the discretion of the
7 association, be:

8 (1) used to pay public security obligations payable in
9 the subsequent calendar year, offsetting the amount of the premium
10 surcharge that would otherwise be required to be levied for the year
11 under this subchapter;

12 (2) used to redeem or purchase outstanding public
13 securities; or

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

15 SECTION 40. Section 2210.612(b), Insurance Code, is amended
16 to read as follows:

17 (b) The association may enter financing arrangements as
18 described by Section 2210.072(d) as necessary to obtain public
19 securities issued under that section. Nothing in this subsection
20 prevents [~~shall prevent~~] the authorization and creation of one or
21 more programs for the issuance of commercial paper before the date
22 of an occurrence that results in insured losses under Section
23 2210.072(a) but in which [~~so long as~~] no tranche of commercial paper
24 is issued under a commercial paper program until after such an
25 occurrence.

26 SECTION 41. Section 2210.613, Insurance Code, is amended to
27 read as follows:

1 Sec. 2210.613. PAYMENT OF CLASS 2 PUBLIC SECURITIES. (a)
2 The association shall pay Class 2 public securities issued under
3 Section 2210.073 as provided by this section. Thirty percent of the
4 cost of the public securities shall be paid through member
5 assessments as provided by this section. The association shall
6 notify each member of the association of the amount of the member's
7 assessment under this section. The proportion of the losses
8 allocable to each insurer under this section shall be determined in
9 the manner used to determine each insurer's participation in the
10 association for the year under Section 2210.052. A member of the
11 association:

12 (1) may not recoup an assessment paid under this
13 subsection through a premium surcharge or tax credit; and

14 (2) notwithstanding Section 2210.073(a), may elect to
15 pay an assessment under this subsection in a lump sum.

16 (b) Seventy percent of the cost of the public securities
17 shall be paid by a [~~nonrefundable~~] premium surcharge collected
18 under this section in an amount set by the commissioner. On
19 approval by the commissioner, each insurer, the association, and
20 the Texas FAIR Plan Association shall assess, as provided by this
21 section, a premium surcharge to each policyholder of a policy that
22 is in effect on or after the 180th day after the date the
23 commissioner issues notice of the approval of the public securities
24 [~~its policyholders as provided by this section~~]. The premium
25 surcharge must be set in an amount sufficient to pay, for the
26 duration of the issued public securities, all debt service not
27 already covered by available funds and all related expenses on the

1 public securities.

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

12 (1) all policies written under the following lines of
 13 insurance:

14 (A) fire and allied lines;

15 (B) farm and ranch owners;

16 (C) residential property insurance;

17 (D) private passenger automobile liability and
 18 physical damage insurance; and

19 (E) commercial passenger automobile liability
 20 and physical damage insurance; and

21 (2) the property insurance portion of a commercial
 22 multiple peril insurance [~~that provide coverage on any premises,~~
 23 ~~locations, operations, or property located in the area described by~~
 24 ~~this subsection for all property and casualty lines of insurance,~~
 25 ~~other than federal flood insurance, workers' compensation~~
 26 ~~insurance, accident and health insurance, and medical malpractice~~
 27 ~~insurance]~~.

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

6 SECTION 42. Sections 2210.6135(a) and (c), Insurance Code,
7 are amended to read as follows:

8 (a) The association shall pay Class 3 public securities
9 issued under Section 2210.074 as provided by this section through
10 member assessments. The association, for the payment of the
11 losses, shall assess the members of the association an amount not to
12 exceed \$500 million per catastrophe year [~~for the payment of the~~
13 ~~losses~~]. The association shall notify each member of the
14 association of the amount of the member's assessment under this
15 section.

16 (c) A member of the association:

17 (1) may not recoup an assessment paid under this
18 section through a premium surcharge or tax credit; and

19 (2) notwithstanding Section 2210.074(a), may elect to
20 pay an assessment under this section in a lump sum.

21 SECTION 43. Section 2210.551(e), Insurance Code, is
22 repealed.

23 SECTION 44. (a) A legislative interim study committee
24 shall conduct a study of alternative ways to provide insurance to
25 the seacoast territory of this state through a quasi-governmental
26 entity.

27 (b) The committee is composed of nine members appointed as

1 follows:

2 (1) three members of the senate appointed by the
3 lieutenant governor;

4 (2) three members of the house of representatives
5 appointed by the speaker of the house of representatives; and

6 (3) three public members with a background in
7 actuarial science or insurance appointed as follows:

8 (A) one by the governor;

9 (B) one by the lieutenant governor; and

10 (C) one by the speaker of the house of
11 representatives.

12 (c) The speaker of the house of representatives and the
13 lieutenant governor shall jointly designate a chair or,
14 alternatively, designate two co-chairs, from among the committee
15 membership.

16 (d) The committee shall:

17 (1) examine alternative ways to provide insurance to
18 the seacoast territory of this state through a quasi-governmental
19 entity;

20 (2) recommend:

21 (A) the appropriate scope of authority and
22 responsibility for the entity to provide insurance to the seacoast
23 territory of this state;

24 (B) an organizational structure to exercise
25 authority and responsibility over the provision of insurance to the
26 seacoast territory of this state;

27 (C) a timetable for implementation; and

1 (D) specific amendments to state laws and rules
2 that are necessary to implement the committee's recommendations
3 under this subdivision; and

4 (3) estimate funding requirements to implement the
5 recommendations.

6 (e) The committee may adopt rules necessary to conduct
7 business under and implement this section.

8 (f) Except as specifically provided by this section, the
9 committee may operate in the same manner as a joint committee of the
10 82nd Legislature.

11 (g) Not later than December 1, 2012, the committee shall
12 report to the governor and the legislature the recommendations made
13 under this section.

14 SECTION 45. (a) The name of the Texas Windstorm Insurance
15 Association is changed to the Texas Coastal Insurance Plan
16 Association.

17 (b) A reference in law to the Texas Windstorm Insurance
18 Association or the Texas Windstorm Insurance Association Act means
19 the Texas Coastal Insurance Plan Association or the Texas Coastal
20 Insurance Plan Act, respectively.

21 SECTION 46. (a) The adjuster advisory board established
22 under this section is composed of the following nine members
23 appointed by the commissioner:

- 24 (1) two public insurance adjusters;
25 (2) two members who represent the general public;
26 (3) two independent adjusters;
27 (4) one adjuster who represents a domestic insurer

1 authorized to engage in business in this state;

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

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

6 (b) A member who represents the general public may not be:

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

8 (A) an adjuster or adjusting company;

9 (B) an insurance agent or agency;

10 (C) an insurance broker;

11 (D) an insurer; or

12 (E) any other business entity regulated by the
13 department;

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

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

19 (c) The advisory board shall make recommendations to the
20 commissioner regarding:

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

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

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

1 (d) A member of the advisory board serves without
2 compensation. If authorized by the commissioner, a member is
3 entitled to reimbursement for reasonable expenses incurred in
4 attending meetings of the advisory board.

5 (e) The advisory board is subject to Chapter 2110,
6 Government Code.

7 SECTION 47. This Act applies only to a Texas windstorm and
8 hail insurance policy, and a claim or dispute arising under a Texas
9 windstorm and hail insurance policy, delivered, issued for
10 delivery, or renewed by the Texas Windstorm Insurance Association
11 on or after the 30th day after the effective date of this Act. A
12 Texas windstorm and hail insurance policy, and a claim or dispute
13 arising under a Texas windstorm and hail insurance policy,
14 delivered, issued for delivery, or renewed by the Texas Windstorm
15 Insurance Association before the 30th day after the effective date
16 of this Act, are governed by the law in effect immediately before
17 the effective date of this Act, and the former law is continued in
18 effect for that purpose.

19 SECTION 48. The Texas Windstorm Insurance Association shall
20 amend the association's plan of operation to conform to the changes
21 in law made by this Act not later than January 1, 2012.

22 SECTION 49. If any provision of this Act or its application
23 to any person or circumstance is held invalid, the invalidity does
24 not affect other provisions or applications of this Act that can be
25 given effect without the invalid provision or application, and to
26 this end the provisions of this Act are severable.

27 SECTION 50. This Act takes effect immediately if it

H.B. No. 272

1 receives a vote of two-thirds of all the members elected to each
2 house, as provided by Section 39, Article III, Texas Constitution.
3 If this Act does not receive the vote necessary for immediate
4 effect, this Act takes effect September 1, 2011.

ADOPTED

MAY 23 2011

Atty. Gen.
Secretary of the Senate

By: (Carroll) Rep. Smith

H.B. No. 272

Substitute the following for __.B. No. _____:

By: Carroll

C.S. __.B. No. _____

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the operation of the Texas Windstorm Insurance
3 Association and to the resolution of certain disputes concerning
4 claims made to that association; providing penalties.

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

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

8 (c) This chapter also applies to:

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

11 (2) a person acting as a qualified inspector under
12 Section 2210.254 or 2210.255 without being appointed as a qualified
13 inspector under either of those sections.

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

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

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

24 SECTION 3. Section 542.052, Insurance Code, is amended to

1 read as follows:

2 Sec. 542.052. APPLICABILITY OF SUBCHAPTER. (a) This
3 subchapter applies to any insurer authorized to engage in business
4 as an insurance company or to provide insurance in this state,
5 including:

- 6 (1) a stock life, health, or accident insurance
7 company;
- 8 (2) a mutual life, health, or accident insurance
9 company;
- 10 (3) a stock fire or casualty insurance company;
- 11 (4) a mutual fire or casualty insurance company;
- 12 (5) a Mexican casualty insurance company;
- 13 (6) a Lloyd's plan;
- 14 (7) a reciprocal or interinsurance exchange;
- 15 (8) a fraternal benefit society;
- 16 (9) a stipulated premium company;
- 17 (10) a nonprofit legal services corporation;
- 18 (11) a statewide mutual assessment company;
- 19 (12) a local mutual aid association;
- 20 (13) a local mutual burial association;
- 21 (14) an association exempt under Section 887.102;
- 22 (15) a nonprofit hospital, medical, or dental service
23 corporation, including a corporation subject to Chapter 842;
- 24 (16) a county mutual insurance company;
- 25 (17) a farm mutual insurance company;
- 26 (18) a risk retention group;
- 27 (19) a purchasing group;

1 (20) an eligible surplus lines insurer; and
2 (21) except as provided by Section 542.053(b), a
3 guaranty association operating under Chapter 462 or 463.

4 (b) This subchapter does not apply to the Texas Windstorm
5 Insurance Association.

6 SECTION 4. Subchapter A, Chapter 2210, Insurance Code, is
7 amended by adding Sections 2210.0081 and 2210.010 to read as
8 follows:

9 Sec. 2210.0081. CERTAIN ACTIONS BROUGHT AGAINST
10 ASSOCIATION BY COMMISSIONER. In an action brought by the
11 commissioner against the association under Chapter 441:

12 (1) the association's inability to satisfy obligations
13 under Subchapter M related to the issuance of public securities
14 under this chapter constitutes a condition that makes the
15 association's continuation in business hazardous to the public or
16 to the association's policyholders for the purposes of Section
17 441.052;

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

23 (3) unless the commissioner takes further action
24 against the association under Chapter 441, as a condition of
25 release from supervision, the association must demonstrate to the
26 satisfaction of the commissioner that the association is able to
27 satisfy obligations under Subchapter M related to the issuance of

1 public securities under this chapter.

2 Sec. 2210.010. CERTAIN CONDUCT IN DISPUTE RESOLUTION
3 PROHIBITED. (a) For purposes of this section, "presiding officer"
4 includes a judge, arbitrator, appraiser, or panel member.

5 (b) If a person insured under this chapter is assigned to
6 act as presiding officer to preside over or resolve a dispute
7 involving the association and another person insured under this
8 chapter, the presiding officer shall, not later than the seventh
9 day after the date of assignment, give written notice to the
10 association and to each other party to the dispute, or the
11 association's or other party's attorney, that the presiding officer
12 is insured under this chapter.

13 (c) In a proceeding with respect to which the commissioner
14 has authority to designate the presiding officer, the association
15 or other party that receives notice under Subsection (b) may file
16 with the commissioner a written objection to the assignment of the
17 presiding officer to the dispute. The written objection must
18 contain the factual basis on which the association or other party
19 objects to the assignment.

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

25 (e) The association or another party must file an objection
26 under Subsection (c) not later than the earlier of:

27 (1) the seventh day after the date the association or

1 other party receives actual notice that the presiding officer is
2 insured under this chapter; or

3 (2) the seventh day before the date of the first
4 proceeding concerning the dispute.

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

7 SECTION 5. Section 2210.054(a), Insurance Code, is amended
8 to read as follows:

9 (a) The association shall file annually with the department
10 and the state auditor's office a statement covering periods
11 designated by the department that summarizes the transactions,
12 conditions, operations, and affairs of the association during the
13 preceding year.

14 SECTION 6. Section 2210.056(c), Insurance Code, is amended
15 to read as follows:

16 (c) On dissolution of the association, all assets of the
17 association, other than assets pledged for the repayment of public
18 securities issued under this chapter, revert to this state.

19 SECTION 7. Subchapter B, Chapter 2210, Insurance Code, is
20 amended by adding Sections 2210.058, 2210.059, and 2210.061 to read
21 as follows:

22 Sec. 2210.058. AUDIT OF ASSOCIATION. (a) The association
23 is subject to audit by the state auditor and shall pay the costs
24 incurred by the state auditor in performing an audit under this
25 section.

26 (b) The association shall pay the costs described by
27 Subsection (a) promptly after receipt of a statement from the state

1 auditor's office regarding the amount of those costs.

2 Sec. 2210.059. CLAIMS PRACTICES AUDIT. (a) If the
3 commissioner determines that 100 or more claims have been filed
4 under association policies the bases of which are damage to insured
5 property caused by the same storm, the department shall conduct a
6 random audit of the claim files of those claims to:

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

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

12 (b) The department shall conduct an audit required under
13 this section as soon as possible after the filing of the 100th claim
14 described by Subsection (a) to ensure the quality of the process
15 with which the association is handling claims described by
16 Subsection (a).

17 (c) If, following an audit conducted under this section, the
18 commissioner determines that the association is not adequately and
19 properly documenting claims decisions or that claims described by
20 Subsection (a) are not otherwise being handled appropriately, the
21 commissioner shall:

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

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

26 Sec. 2210.061. CONTRACTORS AND MANAGERIAL EMPLOYEES:
27 COMPENSATION AND BONUSES. The association shall post on the

1 association's Internet website any compensation, monetary or
2 otherwise, and any bonus that, when aggregated, exceed \$100,000 in
3 a 12-month period and that are paid or given by the association to:

4 (1) a vendor or independent contractor with whom the
5 association has a contract; and

6 (2) an association employee who serves in a managerial
7 capacity.

8 SECTION 8. Section 2210.071, Insurance Code, is amended by
9 adding Subsection (c) to read as follows:

10 (c) Losses not paid under Subsection (b) shall be paid from
11 the proceeds from public securities issued in accordance with this
12 subchapter and Subchapter M.

13 SECTION 9. Section 2210.072, Insurance Code, is amended by
14 amending Subsections (a) and (b) and adding Subsections (a-1) and
15 (a-2) to read as follows:

16 (a) Losses not paid under Section 2210.071 shall be paid as
17 provided by this section from the proceeds from Class 1 public
18 securities authorized to be issued in accordance with Subchapter M.
19 Class 1 public securities may be issued under this section at any
20 time during a calendar year, on request of the association and
21 approval by the commissioner, if the association determines that
22 insured losses in the calendar year have exceeded, or are likely to
23 exceed, the amount available for the payment of losses under
24 Section 2210.071(b).

25 (a-1) The commissioner by rule shall establish, for each
26 calendar year, the maximum principal amount in which public
27 securities may be issued under this section before an occurrence or

1 series of occurrences that results in insured losses. The
2 commissioner shall consult the Texas Public Finance Authority when
3 adopting rules under this subsection.

4 (a-2) [on or after the date of any occurrence or series of
5 occurrences that results in insured losses.] Public securities
6 issued under this section must be repaid within a period not to
7 exceed 14 [10] years, and may be repaid sooner if the board of
8 directors elects to do so and the commissioner approves.

9 (b) Public securities described by Subsection (a):

10 (1) shall be issued as necessary in a principal amount
11 not to exceed \$1 billion in the aggregate whether for a single
12 occurrence or a series of occurrences that takes place in a calendar
13 [per] year and results in insured losses; and

14 (2) may be issued, in one or more issuances or
15 tranches, during the calendar year in which the occurrence or
16 series of occurrences occurs or, if the public securities cannot
17 reasonably be issued in the calendar year in which the occurrence or
18 series of occurrences takes place, during a subsequent calendar
19 year.

20 SECTION 10. Section 2210.073, Insurance Code, is amended by
21 amending Subsection (b) and adding Subsection (c) to read as
22 follows:

23 (b) Public securities described by Subsection (a):

24 (1) may be issued as necessary in a principal amount
25 not to exceed \$1 billion in the aggregate whether for a single
26 occurrence or a series of occurrences that takes place in a calendar
27 [per] year and results in insured losses; and

1 (2) may be issued, in one or more issuances or
2 tranches, during the calendar year in which the occurrence or
3 series of occurrences occurs or, if the public securities cannot
4 reasonably be issued in the calendar year in which the occurrence or
5 series of occurrences takes place, during a subsequent calendar
6 year.

7 (c) If the losses are paid with public securities described
8 by this section, the public securities shall be repaid in the manner
9 prescribed by Subchapter M.

10 SECTION 11. Section 2210.074, Insurance Code, is amended by
11 amending Subsection (b) and adding Subsection (c) to read as
12 follows:

13 (b) Public securities described by Subsection (a):

14 (1) may be issued as necessary in a principal amount
15 not to exceed \$500 million in the aggregate whether for a single
16 occurrence or a series of occurrences that takes place in a calendar
17 [per] year and results in insured losses; and

18 (2) may be issued, in one or more issuances or
19 tranches, during the calendar year in which the occurrence or
20 series of occurrences occurs or, if the public securities cannot
21 reasonably be issued in the calendar year in which the occurrence or
22 series of occurrences takes place, during a subsequent calendar
23 year.

24 (c) If the losses are paid with public securities described
25 by this section, the public securities shall be repaid in the manner
26 prescribed by Subchapter M through member assessments as provided
27 by this section. The association shall notify each member of the

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

8 SECTION 12. Section 2210.075, Insurance Code, is amended to
9 read as follows:

10 Sec. 2210.075. REINSURANCE. (a) Before any occurrence or
11 series of occurrences, an insurer may elect to purchase reinsurance
12 to cover an assessment for which the insurer would otherwise be
13 liable under Section 2210.074(c) [~~2210.074(b)~~].

14 (b) An insurer must notify the board of directors, in the
15 manner prescribed by the association whether the insurer will be
16 purchasing reinsurance. If the insurer does not elect to purchase
17 reinsurance under this section, the insurer remains liable for any
18 assessment imposed under Section 2210.074(c) [~~2210.074(b)~~].

19 SECTION 13. Section 2210.102, Insurance Code, is amended by
20 adding Subsection (i) to read as follows:

21 (i) Notwithstanding Subsection (f), for a vacancy occurring
22 in a position under Subsection (b), the commissioner may appoint,
23 for the lesser of 120 days or until the vacancy is filled, a person
24 who has demonstrated knowledge in insurance principles. This
25 subsection does not apply to a vacancy due to the expiration of a
26 term occurring under Section 2210.103. This subsection expires
27 December 31, 2012, and any appointment in effect on that date is

1 continued until the expiration of the term of the appointment.

2 SECTION 14. Section 2210.105, Insurance Code, is amended by
3 amending Subsections (a) and (b) and adding Subsections (b-1), (e),
4 and (f) to read as follows:

5 (a) Except for an emergency meeting, the association shall:

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

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

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) The commissioner or the commissioner's designated
20 representative may attend a meeting of the board of directors or the
21 members of the association, including a closed meeting authorized
22 by Subchapter D, Chapter 551, Government Code, except for those
23 portions of a closed meeting that involve the rendition of legal
24 advice to the board concerning a regulatory matter or that would
25 constitute an ex parte communication with the commissioner.

26 (e) The association shall:

27 (1) broadcast live on the association's Internet

1 website all meetings of the board of directors, other than closed
2 meetings; and

3 (2) archive the recording of a meeting until the
4 second anniversary of the meeting.

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

9 SECTION 15. Section 2210.107, Insurance Code, is amended to
10 read as follows:

11 Sec. 2210.107. PRIMARY BOARD OBJECTIVES; REPORT. (a) The
12 primary objectives of the board of directors are to ensure that the
13 association:

14 (1) operates in accordance with this chapter and
15 commissioner rules;

16 (2) complies with sound insurance principles; and

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

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

24 (c) Not later than June 1 of each year, the association
25 shall submit to the commissioner, the legislative oversight board
26 established under Subchapter N, the governor, the lieutenant
27 governor, and the speaker of the house of representatives a report

1 evaluating the extent to which the board met the objectives
2 described by Subsection (a) in the 12-month period immediately
3 preceding the date of the report.

4 SECTION 16. Subchapter C, Chapter 2210, Insurance Code, is
5 amended by adding Section 2210.108 to read as follows:

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

9 (b) Except as provided by Subsection (c), the following
10 information is exempt from disclosure under Chapter 552, Government
11 Code:

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

15 (2) policy information related to:

16 (A) insured amounts; or

17 (B) insured items that identify specific
18 property or could reasonably be used to identify specific property;

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

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

24 (c) This section may not be construed to limit a request:

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

1 claimed under that policy;

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

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

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

10 SECTION 17. Section 2210.202, Insurance Code, is amended to
11 read as follows:

12 Sec. 2210.202. APPLICATION FOR COVERAGE. (a) A person who
13 has an insurable interest in insurable property may apply to the
14 association for insurance coverage provided under the plan of
15 operation and an inspection of the property, subject to any rules
16 established by the board of directors and approved by the
17 commissioner. The association shall make insurance available to
18 each applicant in the catastrophe area whose property is insurable
19 property but who, after diligent efforts, is unable to obtain
20 property insurance through the voluntary market, as evidenced by
21 one declination from an insurer authorized to engage in the
22 business of, and writing, property insurance providing windstorm
23 and hail coverage in the first tier coastal counties. For purposes
24 of this section, "declination" has the meaning assigned by the plan
25 of operation and shall include a refusal to offer coverage for the
26 perils of windstorm and hail and the inability to obtain
27 substantially equivalent insurance coverage for the perils of

1 windstorm and hail. Notwithstanding Section 2210.203(c), evidence
2 of one declination every three calendar years is also required with
3 an application for renewal of an association policy.

4 (b) A property and casualty agent must submit an application
5 for initial ~~[the]~~ insurance coverage on behalf of the applicant on
6 forms prescribed by the association. The association shall develop
7 a simplified renewal process that allows for the acceptance of an
8 application for renewal coverage, and payment of premiums, from a
9 property and casualty agent or a person insured under this chapter.
10 An ~~[The]~~ application for initial or renewal coverage must contain:

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

14 (2) ~~[. Each application for initial or renewal~~
15 ~~coverage must also contain]~~ a statement that the agent acting on
16 behalf of the applicant possesses proof of the declination
17 described by Subsection (a) and proof of flood insurance coverage
18 or unavailability of that coverage as described by Section
19 2210.203(a-1).

20 SECTION 18. Section 2210.203, Insurance Code, is amended by
21 amending Subsections (a-1) and (c) and adding Subsections (a-2) and
22 (a-3) to read as follows:

23 (a-1) ~~[This subsection applies only to a structure~~
24 ~~constructed, altered, remodeled, or enlarged on or after September~~
25 ~~1, 2009, and only for insurable property located in areas~~
26 ~~designated by the commissioner.]~~ Notwithstanding Subsection (a),
27 if all or any part of the property to be insured ~~[which this~~

1 ~~subsection applies~~] is located in Zone V or another similar zone
2 with an additional hazard associated with storm waves, as defined
3 by the National Flood Insurance Program, or is a residential
4 structure located in an area described by Section 2210.004(g)(2),
5 ~~[and if flood insurance under that federal program is available,]~~
6 the association may not issue an insurance policy for initial or
7 renewal coverage unless evidence is submitted to the association
8 that the property to be covered under the policy is also covered by
9 a flood insurance policy that has a deductible or self-insurance
10 amount comparable to the association policy to be issued and that is
11 issued under the National Flood Insurance Program or by an insurer
12 in an aggregate amount that is:

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

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

17 (a-2) Subsection (a-1) does not apply to property for which
18 flood insurance is not available under the National Flood Insurance
19 Program ~~[is submitted to the association].~~

20 (a-3) An agent offering or selling a Texas windstorm and
21 hail insurance policy ~~[in any area designated by the commissioner~~
22 ~~under this subsection]~~ shall offer flood insurance coverage
23 required under Subsection (a-1) to a ~~[the]~~ prospective insured, if
24 that coverage is available.

25 (c) A policy is automatically ~~[may be]~~ renewed annually ~~[on~~
26 ~~application for renewal]~~ as long as the property continues to be
27 insurable property.

1 SECTION 19. Subchapter E, Chapter 2210, Insurance Code, is
2 amended by adding Sections 2210.205, 2210.210, and 2210.211 to read
3 as follows:

4 Sec. 2210.205. REQUIRED POLICY PROVISIONS: DEADLINE FOR
5 FILING CLAIM; NOTICE CONCERNING DISPUTE RESOLUTION. (a) A
6 windstorm and hail insurance policy issued by the association must:

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

10 (2) contain a conspicuous notice concerning the
11 resolution of disputes under the policy, including:

12 (A) describing the appraisal process under
13 Section 2210.576;

14 (B) describing the alternative dispute
15 resolution process under Section 2210.577; and

16 (C) stating that compliance with the provisions
17 described by Paragraphs (A) and (B) is a condition precedent to
18 seeking administrative relief under Subchapter L-1.

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

24 Sec. 2210.210. COVERAGE OF CERTAIN STRUCTURES PROHIBITED.
25 The association may not issue coverage for a wind turbine
26 regardless of whether the turbine could otherwise be considered
27 insurable property under this chapter.

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

6 (b) The association may not pay or settle a portion of a
7 claim filed under a policy described by Subsection (a) if:

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

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

15 SECTION 20. Section 2210.254, Insurance Code, is amended by
16 adding Subsection (e) to read as follows:

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

19 SECTION 21. Subchapter F, Chapter 2210, Insurance Code, is
20 amended by adding Section 2210.2551 to read as follows:

21 Sec. 2210.2551. EXCLUSIVE ENFORCEMENT AUTHORITY; RULES.

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

25 (b) The commissioner by rule shall establish criteria to
26 ensure that a person seeking appointment as a qualified inspector
27 under this subchapter, including an engineer seeking appointment

1 under Section 2210.255, possesses the knowledge, understanding,
2 and professional competence to perform windstorm inspections under
3 this chapter and to comply with other requirements of this chapter.

4 SECTION 22. The heading to Section 2210.256, Insurance
5 Code, is amended to read as follows:

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

8 SECTION 23. Section 2210.256, Insurance Code, is amended by
9 adding Subsection (a-1) to read as follows:

10 (a-1) In addition to any other action authorized under this
11 section, the commissioner ex parte may enter an emergency cease and
12 desist order under Chapter 83 against a qualified inspector, or a
13 person acting as a qualified inspector, if:

14 (1) the commissioner believes that:

15 (A) the qualified inspector has:

16 (i) through submitting or failing to submit
17 to the department sealed plans, designs, calculations, or other
18 substantiating information, failed to demonstrate that a structure
19 or a portion of a structure subject to inspection meets the
20 requirements of this chapter and department rules; or

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

23 (B) the person acting as a qualified inspector is
24 acting without appointment as a qualified inspector under Section
25 2210.254 or 2210.255; and

26 (2) the commissioner determines that the conduct
27 described by Subdivision (1) is fraudulent or hazardous or creates

1 an immediate danger to the public.

2 SECTION 24. Subchapter F, Chapter 2210, Insurance Code, is
3 amended by adding Section 2210.260 to read as follows:

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

10 (b) The department may issue an alternative certification
11 for a residential structure if the person who has an insurable
12 interest in the structure demonstrates that at least one qualifying
13 structural building component of the structure has been:

14 (1) inspected by a department inspector or by a
15 qualified inspector; and

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

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

25 (d) Except as provided in Section 2210.251(f), a person who
26 has an insurable interest in a residential structure that is
27 insured by the association as of January 1, 2012, but for which the

1 person has not obtained a certificate of compliance under Section
2 2210.251(g), must obtain an alternative certification under this
3 section before the association, on or after January 1, 2013, may
4 renew coverage for the structure.

5 (e) Each residential structure for which a person obtains an
6 alternative certification under this section must comply with:

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

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

12 (f) The association shall develop and implement an
13 actuarially sound rate, credit, or surcharge that reflects the
14 risks presented by structures with reference to which alternative
15 certifications have been obtained under this section. A rate,
16 credit, or surcharge under this subsection may vary based on the
17 number of qualifying structural building components included in a
18 structure with reference to which an alternative certification is
19 obtained under this section.

20 SECTION 25. The heading to Subchapter H, Chapter 2210,
21 Insurance Code, is amended to read as follows:

22 SUBCHAPTER H. RATES; DISCOUNTS AND CREDITS

23 SECTION 26. Sections 2210.355(b) and (g), Insurance Code,
24 are amended to read as follows:

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

27 (1) the past and prospective loss experience within

1 and outside this state of hazards for which insurance is made
2 available through the plan of operation, if any;

3 (2) expenses of operation, including acquisition
4 costs;

5 (3) a reasonable margin for profit and contingencies;

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

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

13 (g) A commission paid to an agent for a windstorm and hail
14 insurance policy issued by the association must comply with the
15 commission structure approved by the commissioner under Section
16 2210.356 and be reasonable, adequate, not unfairly discriminatory,
17 and nonconfiscatory.

18 SECTION 27. Subchapter H, Chapter 2210, Insurance Code, is
19 amended by adding Section 2210.356 to read as follows:

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

25 (b) The commission structure adopted by the commissioner
26 must be fair and reasonable, taking into consideration the amount
27 of work performed by an agent in submitting an application to the

1 association and the prevailing commission structure in the private
2 windstorm insurance market.

3 SECTION 28. Subchapter H, Chapter 2210, Insurance Code, is
4 amended by adding Section 2210.363 to read as follows:

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

14 (b) The association shall offer a person insured under this
15 chapter an actuarially justified premium discount on a policy
16 issued by the association, or an actuarially justified credit
17 against a surcharge assessed against the person, other than a
18 surcharge assessed under Subchapter M, if, in the policy period
19 immediately preceding the policy period for which the premium is
20 paid, the person chose binding arbitration offered by the
21 association under Section 2210.553.

22 (c) The commissioner shall adopt rules necessary to
23 implement and enforce this section.

24 SECTION 29. Chapter 2210, Insurance Code, is amended by
25 adding Subchapter I to read as follows:

26 SUBCHAPTER I. EXPERT PANEL

27 Sec. 2210.401. FUNDING AND RESOURCES. (a) At the request

1 of the commissioner, the association shall provide the funds and
2 resources necessary to implement Section 2210.402, including:

3 (1) employing or retaining persons to perform the
4 functions necessary or proper under Section 2210.402;

5 (2) providing administrative assistance and services,
6 including planning, contracting, and purchasing; and

7 (3) providing computer equipment and support.

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

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

15 (b) The commissioner shall appoint a panel of experts to
16 advise the association concerning the extent to which a loss to
17 insurable property that is described by Subsection (a) was caused
18 by wind and tidal surges. The panel consists of the number of
19 experts determined by the commissioner, and the commissioner shall
20 appoint one member of the panel to serve as the presiding officer of
21 the panel.

22 (c) Members of the panel must have professional expertise
23 in, and be knowledgeable concerning, the geography and meteorology
24 of the seacoast territory as well as the scientific basis for
25 determining the extent to which a loss is caused by wind and tidal
26 surges. The areas of expertise of the panel members may include
27 structural engineering, hydrology, statistical science, actuarial

1 science, claims adjusting, and other areas of expertise determined
2 to be necessary and advisable by the commissioner.

3 (d) The panel shall meet at the request of the commissioner
4 or the call of the presiding officer of the panel.

5 (e) The panel shall investigate, collect, and evaluate the
6 information necessary to provide recommendations under Subsection
7 (f).

8 (f) At the request of the commissioner, the panel shall
9 recommend to the commissioner methods or models for determining the
10 extent to which a loss to insurable property may be or was caused by
11 wind and tidal surges with respect to any weather-related event for
12 geographic areas or regions designated by the commissioner. The
13 panel shall, at the request of the commissioner, develop both
14 pre-event and post-event methods or models for determining the
15 extent to which a loss to insurable property may be or was caused by
16 wind and tidal surges. The methods or models developed by the panel
17 shall provide guidance to the commissioner on the issue of whether
18 loss to insurable property resulting from a weather-related event
19 may be or has been caused by wind and tidal surges. The methods or
20 models must be based on sound scientific principles.

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

25 Sec. 2210.403. RULES. The commissioner may adopt rules as
26 necessary to implement this subchapter.

27 SECTION 30. Section 2210.452(c), Insurance Code, is amended

1 to read as follows:

2 (c) At the end of each calendar year or policy year, the
3 association shall use the net gain from operations of the
4 association, including all premium and other revenue of the
5 association in excess of incurred losses, ~~and~~ operating expenses,
6 public security obligations, and public security administrative
7 expenses, to make payments to the trust fund, to procure
8 reinsurance, or to make payments to the trust fund and to procure
9 reinsurance.

10 SECTION 31. The heading to Section 2210.453, Insurance
11 Code, is amended to read as follows:

12 Sec. 2210.453. RISK TRANSFER FINANCING; REINSURANCE.

13 SECTION 32. Section 2210.453, Insurance Code, is amended by
14 adding Subsections (c), (d), and (e) to read as follows:

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

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

22 (2) for calendar year 2013, at not less than a one in
23 75 year occurrence; and

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

26 (d) The board of directors shall, on January 1 of each year,
27 develop a plan to obtain pre-event risk transfer financing from

1 private sector sources determined by the board of directors to be
2 reasonable and appropriate to the association's risk of loss and in
3 an amount sufficient to maintain the claims paying ability of the
4 association in the event of a catastrophe with estimated damages of
5 \$2.5 billion or more. The plan submitted under this subsection is
6 for informational purposes only and does not bind the association
7 to a particular course of action. The plan shall, at a minimum,
8 include:

9 (1) a certification to the governor, lieutenant
10 governor, speaker of the house of representatives, and commissioner
11 stating whether or not the required solvency level of the
12 association is satisfied for that calendar year;

13 (2) an analysis of the claims paying ability of the
14 association both with and without reliance upon borrowing
15 authorized by this chapter;

16 (3) consideration of the costs, availability, and
17 effects of reinsurance, bonds, and other risk transfer financing
18 mechanisms;

19 (4) the likelihood and maximum size of assessments
20 authorized by this chapter; and

21 (5) the probability of exhausting the association's
22 financial resources.

23 (e) If the association does not purchase reinsurance as
24 authorized by this section, the board, not later than June 1 of each
25 year, shall submit to the commissioner, the legislative oversight
26 board established under Subchapter N, the governor, the lieutenant
27 governor, and the speaker of the house of representatives a report

1 containing an actuarial plan for paying losses in the event of a
2 catastrophe with estimated damages of \$2.5 billion or more. The
3 report submitted under this subsection is for informational
4 purposes only and does not bind the association to a particular
5 course of action.

6 SECTION 33. 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 \$1.5
10 million.

11 SECTION 34. The heading to Subchapter L, Chapter 2210,
12 Insurance Code, is amended to read as follows:

13 SUBCHAPTER L. CERTAIN APPEALS AND OTHER ACTIONS

14 SECTION 35. Sections 2210.551(a) and (b), Insurance Code,
15 are amended to read as follows:

16 (a) This section:

17 (1) does not apply to a person insured under this
18 chapter who is required to resolve a dispute concerning a claim
19 under Subchapter L-1 or who has elected binding arbitration offered
20 by the association under Section 2210.553; and

21 (2) applies only to:

22 (A) [~~1~~] a person not described by Subdivision
23 (1) who is insured under this chapter or an authorized
24 representative of the person; or

25 (B) [~~2~~] an affected insurer.

26 (b) A person or entity described by Subsection (a)(2) [~~a~~]
27 who is aggrieved by an act, ruling, or decision of the association

1 may appeal to the commissioner not later than the 30th day after the
2 date of that act, ruling, or decision.

3 SECTION 36. The heading to Section 2210.552, Insurance
4 Code, is amended to read as follows:

5 Sec. 2210.552. CLAIM DISPUTES; VENUE AND NOTICE OF INTENT
6 TO BRING ACTION.

7 SECTION 37. Section 2210.552, Insurance Code, is amended by
8 amending Subsection (a) and adding Subsections (e) and (f) to read
9 as follows:

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

15 (1) after providing the association the notice that
16 meets the requirements of Section 541.154, bring an action against
17 the association, including an action under Chapter 541; or

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

20 (e) A person required to resolve a dispute concerning a
21 claim in accordance with Subchapter L-1 may not bring an action
22 against the association before exhausting all remedies under
23 Subchapter L-1. If a person required to resolve a dispute
24 concerning a claim in accordance with Subchapter L-1 brings an
25 action against the association before exhausting all remedies under
26 that subchapter, the court shall abate the action until all
27 remedies under that subchapter have been exhausted.

1 (f) A claimant who prevails in an action against the
2 association under this section:

3 (1) may recover:

4 (A) the relief described in Sections 541.152(a)
5 and 2210.575; and

6 (B) prejudgment interest; and

7 (2) may not recover damages under Section 541.152(b)
8 of this code or treble damages under Section 17.50, Business &
9 Commerce Code.

10 SECTION 38. Subchapter L, Chapter 2210, Insurance Code, is
11 amended by adding Sections 2210.553 and 2210.554 to read as
12 follows:

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

20 (b) An arbitration under this section shall be conducted in
21 the manner and under rules and deadlines prescribed by the
22 commissioner by rule.

23 Sec. 2210.554. LIMITATIONS PERIOD. Notwithstanding any
24 other law, including Section 541.162, a person insured under this
25 chapter who brings an action against the association must bring the
26 action not later than the second anniversary of the date of the act,
27 ruling, or decision of the association by which the insured is

1 aggrieved.

2 SECTION 39. Chapter 2210, Insurance Code, is amended by
3 adding Subchapter L-1 to read as follows:

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

6 Sec. 2210.571. DEFINITIONS. In this subchapter:

7 (1) "Association policy" means a windstorm and hail
8 insurance policy issued by the association.

9 (2) "Claim" means a request for payment under an
10 association policy following damage to property insured under the
11 policy.

12 (3) "Claimant" means a person who makes a claim.

13 Sec. 2210.572. FILING OF CLAIM. Subject to Section
14 2210.205(b), an insured must file a claim under an association
15 policy not later than the first anniversary of the date on which the
16 damage to property that is the basis of the claim occurs.

17 Sec. 2210.573. RECEIPT OF NOTICE OF CLAIM. (a) Not later
18 than the 30th day after the date the association receives notice of
19 a claim, the association shall:

20 (1) acknowledge receipt of the claim;

21 (2) commence any investigation of the claim; and

22 (3) request from the claimant all items, statements,
23 and forms that the association reasonably believes, at that time,
24 will be required from the claimant.

25 (b) The association may make additional requests for
26 information if during the investigation of the claim the additional
27 requests are necessary.

1 (c) If the acknowledgment of receipt of a claim is not made
2 in writing, the association shall make a record of the date, manner,
3 and content of the acknowledgment.

4 Sec. 2210.574. NOTICE OF ACCEPTANCE OR REJECTION OF CLAIM.

5 (a) Except as provided by Subsection (c), the association shall
6 notify a claimant in writing of the acceptance or rejection of a
7 claim not later than the 30th day after the date the association
8 receives all items, statements, and forms required by the
9 association to secure final proof of loss.

10 (b) If the association rejects the claim, the notice
11 required by Subsection (a) must state the reasons for the
12 rejection.

13 (c) If the association is unable to accept or reject the
14 claim within the period specified by Subsection (a), the
15 association, within that same period, shall notify the claimant of
16 the reasons that the association needs additional time. The
17 association shall accept or reject the claim not later than the 30th
18 day after the date the association notifies a claimant under this
19 subsection.

20 Sec. 2210.575. PAYMENT OF CLAIM; DELAY IN PAYMENT OF CLAIM;
21 INTEREST ON CLAIM. (a) Except as provided by Subsection (b) or
22 (e), if the association notifies a claimant under Section 2210.574
23 that the association will pay a claim or part of a claim, the
24 association shall pay the claim not later than the 10th day after
25 the date notice is made.

26 (b) Except as provided by Subsection (e), if payment of the
27 claim or part of the claim is conditioned on the performance of an

1 act by the claimant, the association shall pay the claim not later
2 than the 10th day after the date the act is performed.

3 (c) Except as otherwise provided, if the association, after
4 receiving all items, statements, and forms reasonably requested and
5 required under Section 2210.573, delays payment of the claim for
6 more than 60 days, the association shall pay damages and other items
7 as provided by Subsection (f).

8 (d) Subsection (c) does not apply in a case in which it is
9 finally determined, in accordance with this subchapter, that a
10 claim received by the association is invalid and should not be paid
11 by the association.

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

17 (f) If the association is liable for a claim under an
18 association policy and does not comply with the deadlines
19 prescribed under Subsection (a), (b), or (c) or any extension of
20 those deadlines under Subsection (e), or with Section 2210.573 or
21 2210.574, the association is liable to pay the claimant, in
22 addition to the amount of the claim, interest on the amount of the
23 claim at the rate of 18 percent a year as damages. A claimant may
24 bring an action as described by Section 2210.578 to enforce this
25 subsection.

26 Sec. 2210.576. DISPUTES CONCERNING AMOUNT OF LOSS. (a) If a
27 claimant disputes the amount of loss determined by the association,

1 the claimant or the association may resolve that dispute by, not
2 later than the 60th day after the date the claimant receives the
3 notice from the association that gives rise to the dispute,
4 requesting appraisal in accordance with the terms of the insurance
5 policy.

6 (b) The 60-day period described by Subsection (a) may be
7 extended for:

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

10 (2) 30 days by the claimant if, before the expiration
11 of the 60-day period described by Subsection (a), the claimant is
12 unable to retain an appraiser and provides written notice of that
13 inability to the association.

14 (c) If a claimant or the association requests appraisal
15 under this section, the claimant is responsible for paying any
16 costs incurred or charged by an appraiser retained by and on behalf
17 of the claimant, the association is responsible for paying any
18 costs incurred or charged by an appraiser retained by and on behalf
19 of the association, and the claimant and the association are
20 responsible in equal shares for any costs incurred or charged by any
21 umpire.

22 (d) Except as provided by Subsection (b), if the association
23 or a claimant does not demand appraisal before the expiration of the
24 60-day period described by Subsection (a), the association or
25 claimant, as applicable, waives the right to have the amount of loss
26 determined by appraisal.

27 (e) This section applies only to disputes regarding the

1 amount of loss and does not apply to disputes regarding the
2 association's determination concerning coverage for a claim or
3 causation of damage to property insured under an association policy
4 that is the basis of a claim.

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

9 Sec. 2210.577. ALTERNATE DISPUTE RESOLUTION. (a) If a
10 claimant disputes the association's determination concerning
11 coverage for a claim or causation of damage to property insured
12 under an association policy that is the basis of a claim and
13 provides notice of intent to bring an action that meets the
14 requirements of Section 541.154, the association may require the
15 claimant, as a prerequisite to filing the action against the
16 association, to submit the dispute to alternate dispute resolution
17 by mediation or moderated settlement conference, as provided by
18 Chapter 154, Civil Practice and Remedies Code.

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

23 (c) Alternate dispute resolution under this section must be
24 completed not later than the 60th day after the date a request for
25 alternate dispute resolution is made under Subsection (b). The
26 60-day period described by this subsection may be extended by the
27 commissioner by rule or by the association and a claimant by mutual

1 consent.

2 (d) If alternate dispute resolution is not completed before
3 the expiration of the 60-day period described by Subsection (c) or,
4 if applicable, any extension under that subsection, the claimant
5 may bring an action against the association as described by Section
6 2210.578.

7 (e) A moderated settlement conference under this section
8 may be conducted by a panel consisting of one or more impartial
9 third parties.

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

15 Sec. 2210.578. ACTION BY CLAIMANT. (a) Subject to
16 providing notice of intent to bring an action that meets the
17 requirements of Section 541.154, a claimant aggrieved by an
18 appraisal process under Section 2210.576 or the outcome of
19 alternate dispute resolution under Section 2210.577 or seeking to
20 enforce Section 2210.575(f) may bring an action against the
21 association.

22 (b) An action brought against the association under this
23 section must be presided over by a judge appointed by the judicial
24 panel on multidistrict litigation designated under Section 74.161,
25 Government Code. A judge appointed under this section must be a
26 resident of a first tier coastal county or a second tier coastal
27 county.

1 (c) An action brought against the association is governed by
2 this subchapter and Sections 2210.552 and 2210.554.

3 Sec. 2210.579. CONSTRUCTION WITH OTHER LAW. (a) To the
4 extent of any conflict between a provision of this subchapter and
5 any other law, the provision of this subchapter prevails.

6 (b) Notwithstanding any other law, the association may not
7 bring an action against a claimant, for declaratory or other
8 relief, before the 180th day after the date an appraisal under
9 Section 2210.576, or alternate dispute resolution under Section
10 2210.577, is completed.

11 SECTION 40. Section 2210.602, Insurance Code, is amended by
12 amending Subdivisions (1) and (2) and adding Subdivisions (1-a),
13 (1-b), (5-a), (6-a), (6-b), (6-c), and (6-d) to read as follows:

14 (1) "Authority" means the Texas Public Finance
15 Authority.

16 (1-a) "Board" means the board of directors of the
17 Texas Public Finance Authority.

18 (1-b) "Catastrophic event" means an occurrence or a
19 series of occurrences that occurs in a catastrophe area during a
20 calendar year and that results in insured losses and operating
21 expenses of the association in excess of premium and other revenue
22 of the association.

23 (2) "Class 1 public securities" means public
24 securities authorized to be issued [~~on or after an occurrence or~~
25 ~~series of occurrences~~] by Section 2210.072, including a commercial
26 paper program authorized before the occurrence of a catastrophic
27 event [~~so long as no tranche of commercial paper is issued under the~~

1 ~~program until after the catastrophic event]~~.

2 (5-a) "Gross premium" means association premium, less
3 premium returned to policyholders for canceled or reduced policies.

4 (6-a) "Marketable" means, with reference to public
5 securities, securities:

6 (A) for which the authority has determined there
7 to be demonstrable market demand; and

8 (B) that can be rated by at least two nationally
9 recognized rating agencies for municipal securities in:

10 (i) the highest rating category for a
11 short-term debt instrument; or

12 (ii) one of the three highest rating
13 categories for a long-term debt instrument.

14 (6-b) "Member assessment trust fund" means the
15 dedicated trust fund established by the board and held by the Texas
16 Safekeeping Trust Company into which member assessments collected
17 under Sections 2210.613 and 2210.6135 are deposited.

18 (6-c) "Net premium" means gross premium, less:

19 (A) premium collected by the association but that
20 has not yet been earned by the association;

21 (B) earned premium expected to be paid in
22 connection with the disposition of losses not associated with a
23 catastrophic event;

24 (C) operating expenses; and

25 (D) any amounts necessary to fund or replenish a
26 reasonable operating reserve for the association.

27 (6-d) "Premium surcharge trust fund" means the

1 dedicated trust fund established by the board and held by the Texas
2 Safekeeping Trust Company into which premium surcharges collected
3 under Section 2210.613 are deposited.

4 SECTION 41. Section 2210.604, Insurance Code, is amended by
5 amending Subsections (b) and (c) and adding Subsection (d) to read
6 as follows:

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

13 (c) The principal amount determined by the association
14 under Subsection (b) may be increased to include an amount
15 sufficient to:

16 (1) pay the costs related to issuance of the public
17 securities;

18 (2) provide a public security reserve fund; ~~and~~

19 (3) capitalize interest for the period determined
20 necessary by the association, not to exceed two years; and

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

25 (d) If the amount of marketable Class 1 public securities is
26 insufficient to pay the excess losses for which the securities are
27 issued, marketable Class 2 public securities may be issued. If the

1 amount of marketable Class 2 public securities is insufficient to
2 pay the excess losses for which the securities are issued,
3 marketable Class 3 public securities may be issued.

4 SECTION 42. Section 2210.605(c), Insurance Code, is amended
5 to read as follows:

6 (c) Public securities issued under Section 2210.6136 [~~this~~
7 ~~chapter~~] are eligible obligations under Section 404.027,
8 Government Code.

9 SECTION 43. Section 2210.608(a), Insurance Code, is amended
10 to read as follows:

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

14 (1) pay incurred claims and operating expenses of the
15 association;

16 (2) purchase reinsurance for the association;

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

19 (4) provide a public security reserve; [~~and~~]

20 (5) pay capitalized interest and principal on the
21 public securities for the period determined necessary by the
22 association;

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

26 (7) reimburse the association for any cost described
27 by Subdivisions (1)-(6) paid by the association before issuance of

1 the public securities.

2 SECTION 44. Section 2210.609, Insurance Code, is amended to
3 read as follows:

4 Sec. 2210.609. REPAYMENT OF ASSOCIATION'S PUBLIC SECURITY
5 OBLIGATIONS. (a) The board and the association shall enter into an
6 agreement under which the association shall provide for the payment
7 of all public security obligations from available funds collected
8 by the association and deposited into the public security
9 obligation revenue fund. If the association determines that it is
10 unable to pay the public security obligations and public security
11 administrative expenses, if any, with available funds, the
12 association shall pay those obligations and expenses in accordance
13 with Sections 2210.612, 2210.613, [~~and~~] 2210.6135, and 2210.6136 as
14 applicable. Class 1, Class 2, or Class 3 public securities may be
15 issued on a parity or subordinate lien basis with other Class 1,
16 Class 2, or Class 3 public securities, respectively.

17 (b) If any public securities issued under this chapter are
18 outstanding, the authority [~~The board~~] shall notify the association
19 of the amount of the public security obligations and the estimated
20 amount of public security administrative expenses, if any, each
21 year in a period sufficient, as determined by the association, to
22 permit the association to determine the availability of funds,
23 assess members of the association under Sections 2210.613 and
24 2210.6135, and assess a premium surcharge if necessary.

25 (c) The association shall deposit all revenue collected
26 under Section [~~Sections~~] 2210.612 [~~, 2210.613, and 2210.6135~~] in
27 the public security obligation revenue fund, all revenue collected

1 under Section 2210.613(b) in the premium surcharge trust fund, and
2 all revenue collected under Sections 2210.613(a) and 2210.6135 in
3 the member assessment trust fund. Money deposited in a ~~the~~ fund
4 may be invested as permitted by general law. Money in a ~~the~~ fund
5 required to be used to pay public security obligations and public
6 security administrative expenses, if any, shall be transferred to
7 the appropriate funds in the manner and at the time specified in the
8 proceedings authorizing the public securities to ensure timely
9 payment of obligations and expenses. This may include the board
10 establishing funds and accounts with the comptroller that the board
11 determines are necessary to administer and repay the public
12 security obligations. If the association has not transferred
13 amounts sufficient to pay the public security obligations to the
14 board's designated interest and sinking fund in a timely manner,
15 the board may direct the Texas Treasury Safekeeping Trust Company
16 to transfer from the public security obligation revenue fund, the
17 premium surcharge trust fund, or the member assessment trust fund
18 to the appropriate account the amount necessary to pay the public
19 security obligation.

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

1 (e) An amount owed by the board under a credit agreement
2 shall be payable from and secured by a pledge of revenues received
3 by the association or amounts from the public security obligation
4 trust fund, the premium surcharge trust fund, and the member
5 assessment trust fund to the extent provided in the proceedings
6 authorizing the credit agreement.

7 SECTION 45. Section 2210.610(a), Insurance Code, is amended
8 to read as follows:

9 (a) Revenues received from the premium surcharges under
10 Section 2210.613 and member assessments under Sections 2210.613 and
11 2210.6135 may be applied only as provided by this subchapter.

12 SECTION 46. Section 2210.611, Insurance Code, is amended to
13 read as follows:

14 Sec. 2210.611. EXCESS REVENUE COLLECTIONS AND INVESTMENT
15 EARNINGS. Revenue collected in any year from a premium surcharge
16 under Section 2210.613 and member assessments under Sections
17 2210.613 and 2210.6135 that exceeds the amount of the public
18 security obligations and public security administrative expenses
19 payable in that year and interest earned on the public security
20 obligation fund may, in the discretion of the association, be:

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

25 (2) used to redeem or purchase outstanding public
26 securities; or

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

1 SECTION 47. Section 2210.612, Insurance Code, is amended to
2 read as follows:

3 Sec. 2210.612. PAYMENT OF CLASS 1 PUBLIC SECURITIES. (a)
4 The association shall pay Class 1 public securities issued under
5 Section 2210.072 from its net premium and other revenue.

6 (b) The association may enter financing arrangements as
7 described by Section 2210.072(d) as necessary to obtain public
8 securities issued under Section 2210.072 [~~that section~~]. Nothing
9 in this subsection shall prevent the authorization and creation of
10 one or more programs for the issuance of commercial paper before the
11 date of an occurrence or series of occurrences that results in
12 insured losses under Section 2210.072(a) [~~so long as no tranche of~~
13 ~~commercial paper is issued under a commercial paper program until~~
14 ~~after such an occurrence~~].

15 SECTION 48. Sections 2210.613(b), (c), and (d), Insurance
16 Code, are amended to read as follows:

17 (b) Seventy percent of the cost of the public securities
18 shall be paid by a [~~nonrefundable~~] premium surcharge collected
19 under this section in an amount set by the commissioner. On
20 approval by the commissioner, each insurer, the association, and
21 the Texas FAIR Plan Association shall assess, as provided by this
22 section, a premium surcharge to each policyholder of a policy that
23 is in effect on or after the 180th day after the date the
24 commissioner issues notice of the approval of the public securities
25 [~~its policyholders as provided by this section~~]. The premium
26 surcharge must be set in an amount sufficient to pay, for the
27 duration of the issued public securities, all debt service not

1 already covered by available funds or member assessments and all
2 related expenses on the public securities.

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

13 (1) all policies written under the following lines of
14 insurance:

15 (A) fire and allied lines;

16 (B) farm and ranch owners;

17 (C) residential property insurance;

18 (D) private passenger automobile liability and
19 physical damage insurance; and

20 (E) commercial passenger automobile liability
21 and physical damage insurance; and

22 (2) the property insurance portion of a commercial
23 multiple peril insurance policy [~~that provide coverage on any~~
24 ~~premises, locations, operations, or property located in the area~~
25 ~~described by this subsection for all property and casualty lines of~~
26 ~~insurance, other than federal flood insurance, workers'~~
27 ~~compensation insurance, accident and health insurance, and medical~~

1 ~~malpractice insurance~~].

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

7 SECTION 49. Section 2210.6135(a), Insurance Code, is
8 amended to read as follows:

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

18 SECTION 50. Subchapter M, Chapter 2210, Insurance Code, is
19 amended by adding Section 2210.6136 to read as follows:

20 Sec. 2210.6136. COMBINED SOURCES OF PAYMENT. (a) In lieu
21 of issuing distinct Class 1, Class 2, or Class 3 public securities,
22 on request of the association and approval by the commissioner, the
23 board may issue public securities payable from all of the sources
24 described in Sections 2210.612, 2210.613, and 2210.6135 with the
25 first source of payment being as described in Section 2210.612 to
26 the extent public securities described by that section are
27 marketable, the second source of payment being as described in

1 Section 2210.613, and the third source of payment being as
2 described in Section 2210.6135.

3 (b) The aggregate principal amount of public securities
4 issued in the manner described by this section may not exceed \$2.5
5 billion in any consecutive 12-month period from the date of an
6 occurrence or series of occurrences in a calendar year that results
7 in insured losses in excess of premium and other revenue of the
8 association from available reserves of the association and
9 available amounts in the catastrophe reserve trust fund.

10 SECTION 51. Section 2210.614, Insurance Code, is amended to
11 read as follows:

12 Sec. 2210.614. REFINANCING PUBLIC SECURITIES. (a) The
13 association may request the board to refinance, in accordance with
14 Chapter 1207, Government Code, any public securities issued in
15 accordance with Subchapter B-1, whether Class 1, Class 2, or Class 3
16 public securities, with public securities payable from any of the
17 [same] sources described by Section 2210.612, 2210.613, 2210.6135,
18 or 2210.6136 [as the original public securities]. The amount of
19 public securities that may be refinanced under this subsection with
20 the proceeds of Class 1 public securities may not exceed \$1 billion
21 for a single occurrence or a series of occurrences that takes place
22 in a calendar year.

23 (b) Notwithstanding Section 1207.006, Government Code,
24 public securities refinanced under this section may not have a term
25 that is greater than 14 years.

26 SECTION 52. Section 2210.616, Insurance Code, is amended to
27 read as follows:

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

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

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

14 (3) [If public securities under this subchapter are
15 outstanding, the state may not:

16 ~~[(1) take action to limit or restrict the rights of the~~
17 ~~association to fulfill its responsibility to pay public security~~
18 ~~obligations; or~~

19 ~~[(2)]~~ in any way impair the rights and remedies of the
20 public security owners until the public securities are fully
21 discharged.

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

25 SECTION 53. Subchapter M, Chapter 2210, Insurance Code, is
26 amended by adding Section 2210.6165 to read as follows:

27 Sec. 2210.6165. PROPERTY RIGHTS. If public securities

1 issued under this subchapter are outstanding, the rights and
2 interests of the association, a successor to the association, any
3 member of the association, or any member of the Texas FAIR Plan
4 Association, including the right to impose, collect, and receive a
5 premium surcharge or a member assessment authorized under this
6 subchapter, are only contract rights until those revenues are first
7 pledged for the repayment of the association's public security
8 obligations as provided by Section 2210.609.

9 SECTION 54. Sections 2210.502(c) and 2210.551(e),
10 Insurance Code, are repealed.

11 SECTION 55. (a) The Texas Department of Insurance and the
12 Texas Windstorm Insurance Association shall jointly study whether
13 the association's using a single adjuster program would improve the
14 effectiveness and efficiency with which the association receives,
15 processes, settles, and pays claims filed under insurance policies
16 issued by the association under Chapter 2210, Insurance Code.

17 (b) The commissioner of insurance shall study the
18 feasibility of the association writing policies directly and the
19 impact the association writing policies directly would have on
20 rates for policies issued by the association. The commissioner
21 shall submit the finding of the study conducted under this
22 subsection to the board of directors of the association.

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

27 SECTION 56. (a) A legislative interim study committee

1 shall conduct a study of alternative ways to provide insurance to
2 the seacoast territory of this state through a quasi-governmental
3 entity.

4 (b) The committee is composed of 12 members appointed as
5 follows:

6 (1) four members of the senate appointed by the
7 lieutenant governor;

8 (2) four members of the house of representatives
9 appointed by the speaker of the house of representatives; and

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

12 (A) two by the governor;

13 (B) one by the lieutenant governor; and

14 (C) one by the speaker of the house of
15 representatives.

16 (c) The speaker of the house of representatives and the
17 lieutenant governor shall jointly designate a chair or,
18 alternatively, designate two co-chairs, from among the committee
19 membership.

20 (d) The committee shall:

21 (1) examine alternative ways to provide insurance to
22 the seacoast territory of this state through a quasi-governmental
23 entity, including providing insurance coverage through a system or
24 program in which insurers in this state provide insurance in the
25 seacoast territory of this state in proportion to the percentage of
26 insurance coverage provided in geographic areas of this state other
27 than the seacoast territory;

1 (2) study the residual markets for windstorm and hail
2 insurance in other states to determine if those markets operate
3 more efficiently and effectively than the residual market for
4 windstorm and hail insurance coverage in this state;

5 (3) recommend:

6 (A) the appropriate scope of authority and
7 responsibility for the entity to provide insurance to the seacoast
8 territory of this state;

9 (B) an organizational structure to exercise
10 authority and responsibility over the provision of insurance to the
11 seacoast territory of this state;

12 (C) a timetable for implementation; and

13 (D) specific amendments to state laws and rules
14 that are necessary to implement the committee's recommendations
15 under this subdivision; and

16 (4) estimate funding requirements to implement the
17 recommendations.

18 (e) The committee may adopt rules necessary to conduct
19 business under and implement this section.

20 (f) Except as specifically provided by this section, the
21 committee may operate in the same manner as a joint committee of the
22 82nd Legislature.

23 (g) Not later than December 1, 2012, the committee shall
24 report to the governor and the legislature the recommendations made
25 under this section.

26 SECTION 57. This Act applies only to a Texas windstorm and
27 hail insurance policy, and a claim or dispute arising under a Texas

1 windstorm and hail insurance policy, delivered, issued for
2 delivery, or renewed by the Texas Windstorm Insurance Association
3 on or after the 30th day after the effective date of this Act. A
4 Texas windstorm and hail insurance policy, and a claim or dispute
5 arising under a Texas windstorm and hail insurance policy,
6 delivered, issued for delivery, or renewed by the Texas Windstorm
7 Insurance Association before the 30th day after the effective date
8 of this Act, are governed by the law in effect on the date the policy
9 was delivered, issued for delivery, or renewed, and the former law
10 is continued in effect for that purpose.

11 SECTION 58. The Texas Windstorm Insurance Association shall
12 amend the association's plan of operation to conform to the changes
13 in law made by this Act not later than January 1, 2012.

14 SECTION 59. Section 2210.605(c), Insurance Code, as amended
15 by this Act, and Section 2210.6136, Insurance Code, as added by this
16 Act, apply to the issuance and repayment of public securities
17 issued by the Texas Windstorm Insurance Association under Chapter
18 2210, Insurance Code, in response to an occurrence or series of
19 occurrences that takes place on or after June 1, 2011. The issuance
20 and repayment of public securities issued by the association under
21 Chapter 2210, Insurance Code, before June 1, 2011, is governed by
22 the law as it existed immediately before the effective date of this
23 Act, and that law is continued in effect for that purpose.

24 SECTION 60. This Act takes effect immediately if it
25 receives a vote of two-thirds of all the members elected to each
26 house, as provided by Section 39, Article III, Texas Constitution.
27 If this Act does not receive the vote necessary for immediate

1 effect, this Act takes effect September 1, 2011.

ADOPTED

MAY 23 2011

Atay Spaw
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: *Caum*

1 Amend C.S.H.B. No. 272 (senate committee printing) as
2 follows:

3 (1) In SECTION 8 of the bill, in added Section 2210.071(c),
4 Insurance Code (page 3, line 47), between "Subchapter M" and the
5 underlined period, insert "and, notwithstanding Subsection (a),
6 may be paid from the proceeds of public securities issued under
7 Section 2210.072(a) before an occurrence or series of occurrences
8 that results in insured losses".

9 (2) In SECTION 50 of the bill, in added Section
10 2210.6136(b), Insurance Code (page 19, line 16), between "period
11 from" and "the date", insert:

12 "the earlier of, as applicable:

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

16 (2)".

ADOPTED

MAY 23 2011

Atay Law
Secretary of the Senate

Atay Law
Secretary of the Senate

FLOOR AMENDMENT NO. 2

BY: Lashon

1 Amend C.S.H.B. No. 272 (senate committee printing) as
2 follows:

3 (1) In SECTION 7 of the bill, in added Section 2210.059(a),
4 Insurance Code (page 3, line 11), strike "100" and substitute
5 "1,000".

6 (2) In SECTION 7 of the bill, in added Section 2210.059(b),
7 Insurance Code (page 3, line 21), strike "100th" and substitute
8 "1,000th".

9 (3) In SECTION 9 of the bill, in amended Section
10 2210.072(a), Insurance Code (page 3, line 54), strike "Class 1" and
11 substitute "On request of the association and approval by the
12 commissioner, and subject to Subsection (a-2), Class 1".

13 (4) In SECTION 9 of the bill, in amended Section
14 2210.072(a), Insurance Code (page 3, lines 55-56), strike "on
15 request of the association and approval by the commissioner" and
16 substitute "including before, on, or after an occurrence or series
17 of occurrences that results in insured losses".

18 (5) In SECTION 9 of the bill, in added Section
19 2210.072(a-1), Insurance Code (page 3, line 60), between "shall"
20 and "establish", insert ", subject to Subsection (a-2),".

21 (6) In SECTION 9 of the bill, in added Section
22 2210.072(a-2), Insurance Code (page 4, line 1), at the end of the
23 subsection, insert "The amount of outstanding public securities
24 issued under this section before an occurrence or series of
25 occurrences that results in insured losses may not, in the
26 aggregate, exceed \$1 billion at any one time, regardless of the
27 calendar year or years in which the outstanding public securities
28 were issued."

29 (7) In SECTION 9 of the bill, in amended Section

1 2210.072(b)(2), Insurance Code (page 4, line 11), strike "a
2 subsequent" and substitute "the following".

3 (8) In SECTION 10 of the bill, in amended Section
4 2210.073(b)(2), Insurance Code (page 4, line 25), strike "a
5 subsequent" and substitute "the following".

6 (9) In SECTION 11 of the bill, in amended Section
7 2210.074(b)(2), Insurance Code (page 4, line 42), strike "a
8 subsequent" and substitute "the following".

9 (10) In SECTION 56 of the bill (page 21, between lines 6 and
10 7), insert:

11 (h) This section expires June 1, 2013.

12 (11) Add the following appropriately numbered SECTION to
13 the bill and renumber subsequent SECTIONS of the bill accordingly:

14 SECTION _____. Section 2210.259, Insurance Code, is amended
15 by adding Subsection (c) to read as follows:

16 (c) The commissioner by rule may provide for a discount of,
17 or a credit against, a surcharge assessed under Subsection (a) in
18 instances in which a policyholder demonstrates that the
19 noncompliant structure was constructed with at least one structural
20 building component that complies with the building code standards
21 set forth in the plan of operation.

ADOPTED

FLOOR AMENDMENT NO. 3

MAY 23 2011

BY: Nathan

Astley Spaul
Secretary of the Senate

Amend C.S.H.B. 272 (Senate Committee Report) in SECTION 2 of the bill, amending Section 541.152 (b) and (c), Insurance Code by striking the subsection (c) on page 1, lines 29-31.

And amend C.S.H.B. 272 (senate committee report) in SECTION 37 of the bill, amending Section 2210.552(f), page 12, lines 42-44, by substituting the following:

"(2) may recover damages under Section 541.152(b) or under Section 17.50, 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 knowingly or intentionally 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."

ADOPTED

FLOOR AMENDMENT NO. 4

MAY 23 2011

BY:

John M. ...

John M. ...

Secretary of the Senate

1 Amend floor amendment to C.S.H.B. 272 by striking the
2 first paragraph and inserting the following:

3 Amend C.S.H.B. 272 (senate committee report) in SECTION 2
4 of the bill, amending Section 541.152 (b) and (c), Insurance
5 Code as follows:

6 (1) In Subsection (b), on page 1, line 25, strike "Except
7 as provided by Subsection (c), on [On]" and insert
8 "On"; and

9 (2) Strike Subsection (c), on page 1, lines 29-31.

ADOPTED

FLOOR AMENDMENT NO. 5

MAY 23 2011

Atay Law
Secretary of the Senate

BY:

W. H. R. R. R.

Amend C.S.H.B. 272 (Senate Committee Report) in SECTION 39 of the bill, adding Section 2210.578, Insurance Code, by striking subsection (b) on page 15, lines 12-17, and substituting the following:

"(b) If six or more claimants file civil actions against the association as a result of a weather-related event, an action brought against the association under this section must be presided over by a judge appointed by the judicial panel on multidistrict litigation designated under Section 74.161, Government Code. A judge appointed under this section must 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. 'Active judge' shall be defined as in Section 74.041, Government Code."

ADOPTED

MAY 23 2011

FLOOR AMENDMENT NO. 4

Atay Law
Secretary of the Senate

BY: Lachson

1 Amend C.S.H.B. No. 272 (senate committee printing), in
2 SECTION 50 of the bill, in added Section 2210.6136, Insurance Code
3 (page 19, lines 4-13), as follows:

4 (1) Strike added Subsection (a) and substitute:

5 (a) In lieu of issuing distinct Class 1, Class 2, or Class 3
6 public securities, on request of the association and approval by
7 the commissioner, the board may issue public securities payable
8 from all of the sources described in Sections 2210.612, 2210.613,
9 and 2210.6135 with:

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

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

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

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

27 (b) The commissioner by order shall specify the
28 distribution of the fourth source of payment under Subsection
29 (a)(4) based on the amount of public securities issued under this

1 section, the total amount of outstanding public securities issued
2 under this chapter, the sources of payment for the outstanding
3 public securities, and any other factors the commissioner
4 determines to be relevant.

5 (2) Reletter subsections of the section accordingly.

ADOPTED

MAY 23 2011

Atty. Gen.
Secretary of the Senate

FLOOR AMENDMENT NO. 7

BY: *Edna Lewis, Jr.*

1 Amend C.S.H.B. No. 272 (senate committee printing), in
2 SECTION 56 of the bill, by striking Subsections (b) and (c) of that
3 SECTION (page 20, lines 27-42), and substituting the following:

4 (b) The committee is composed of 12 members appointed as
5 follows:

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

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

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

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

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

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

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

ADOPTED

MAY 23 2011

FLOOR AMENDMENT NO. 8

Atty Gen
Secretary of the Senate

BY: *Brian Suter*

Amend C.S.H.B. No. 272 (house committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES of the bill accordingly:

ARTICLE ____ . ADJUSTER ADVISORY BOARD

SECTION __.001. (a) 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) A member who represents the general public may not be:

- (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 the department;
- (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) The advisory board shall 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.

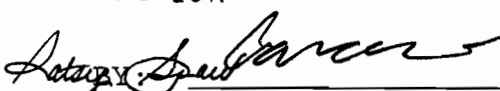
(d) A member of the advisory board serves without compensation. If authorized by the commissioner, a member is entitled to reimbursement for reasonable expenses incurred in attending meetings of the advisory board.

(e) The advisory board is subject to Chapter 2110, Government Code.

ADOPTED

MAY 23 2011

FLOOR AMENDMENT NO. 9


Secretary of the Senate

Amend C.S.H.B. No. 272 (senate committee printing) as follows:

(1) In SECTION 35 of the bill, strike amended Section 2210.551(a)(1), Insurance Code (page 11, line 67 through page 12, line 1), and substitute:

(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) In SECTION 36 of the bill, in the heading to Section 2210.552, Insurance Code (page 12, line 13), strike "CLAIM" and substitute "CERTAIN [~~CLAIM~~]".

(3) In SECTION 37 of the bill, strike added Subsections 2210.552(e), Insurance Code (page 12, lines 28-44), and substitute:

(e) This subchapter provides 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. A claimant may not bring an action against the association concerning the payment of, the amount of, or the denial of a claim before exhausting all remedies under Subchapter L-1 and 2210.578. If a claimant brings an action against the association concerning the payment of, the amount of, or the denial of a claim before exhausting all remedies under that subchapter, the court shall abate the action until all remedies under that subchapter have been exhausted. For purposes of this subsection, "claim" and "claimant" have the meanings assigned by Section 2210.571.

(5) In SECTION 39 of the bill, in added Section 2210.573, Insurance Code (page 13, line 10), between "(a)" and "Not later", insert:

Subject to the good cause extension to which a claimant is entitled under Section 2210.205(b), an insured must 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.

(b)

(6) In SECTION 39 of the bill, in added Section 2210.573, Insurance Code (page 13, lines 18 and 21), reletter subsections appropriately.

(7) In SECTION 39 of the bill, between added Sections 2210.575 and 2210.576 (page 14, between lines 3 and 4), insert:

Sec. 2210.5751. EXTENSION OF CERTAIN DEADLINES. 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.

(8) In SECTION 39 of the bill, in added Section 2210.578(a), Insurance Code (page 15, line 7), between "aggrieved by" and "an", insert "the association's decision concerning a claim under this subchapter, including".

(9) In SECTION 39 of the bill, in added Section 2210.578(a), Insurance Code (page 15, line 9), between "Section 2210.577" and "or seeking", insert an underlined comma.

(10) In SECTION 39 of the bill, in added Section 2210.578(a), Insurance Code (page 15, line 10), between "Section 2210.575(f)" and "may bring", insert an underlined comma.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 24, 2011

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

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

IN RE: HB272 by Smithee (Relating to the operation of the Texas Windstorm Insurance Association and to the resolution of certain disputes concerning claims made to that association; providing penalties.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for HB272, As Passed 2nd House: an impact of \$0 through the biennium ending August 31, 2013.

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

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2012	\$0
2013	\$0
2014	\$0
2015	\$0
2016	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain from <i>Insurance Maint Tax Fees 8042</i>	Probable (Cost) from <i>Insurance Maint Tax Fees 8042</i>	Probable Revenue Gain from <i>Appropriated Receipts 666</i>	Probable (Cost) from <i>Appropriated Receipts 666</i>
2012	\$164,563	(\$164,563)	\$750,000	(\$750,000)
2013	\$154,960	(\$154,960)	\$0	\$0
2014	\$154,960	(\$154,960)	\$0	\$0
2015	\$154,960	(\$154,960)	\$0	\$0
2016	\$154,960	(\$154,960)	\$0	\$0

Fiscal Year	Change in Number of State Employees from FY 2011
2012	2.0
2013	2.0
2014	2.0
2015	2.0
2016	2.0

Fiscal Analysis

The bill would amend the Insurance Code relating to the operation of the Texas Windstorm Insurance Association (TWIA) and to the resolution of certain disputes concerning claims made to that association; providing penalties.

The bill would impose certain limitations on certain claims and actions brought against TWIA; require TWIA to make random audits of claims practices following certain storms; and describe the process and requirements for the filing of claims against TWIA, for the processing of those claims, and for the resolution of disputes concerning those claims.

The bill would grant the Texas Department of Insurance (TDI) exclusive authority over the appointment and oversight of qualified inspectors and allow TDI to issue emergency cease and desist orders to inspectors and persons acting as inspectors.

The bill would allow the issuance of public securities to cover TWIA's excess losses on a per occurrence or series of occurrences basis instead of the current yearly basis; allow TWIA to issue pre-event public securities to cover anticipated losses; detail the policies subject to a premium surcharge imposed to pay for Class II securities issued by TWIA; make the inability of TWIA to meet obligations related to the issuance of certain securities a condition that constitutes a hazard to the public for the purposes of Section 441.052 of the Insurance Code; and establish the new Premium Surcharge Trust Fund and the Member Assessment Trust Fund as dedicated funds held by the Texas Safekeeping Trust Company to receive any premium surcharges and member assessments levied to repay certain public securities.

The bill would require TWIA to annually determine the association's maximum probable loss; to develop a plan to obtain reinsurance; and, if TWIA does not purchase reinsurance, to submit an actuarial plan for paying losses in the event of a catastrophe with estimated damage of \$2.5 billion or more.

The bill would require studies by TDI and TWIA to determine whether using a single adjuster program would improve effectiveness and efficiency; and by the Commissioner of Insurance to examine the feasibility of TWIA writing policies directly. In addition, the bill would require that a legislative interim committee conduct a study of alternative ways to provide insurance in coastal areas.

The bill would make TWIA subject to audit by the State Auditor; restrict coverage for property not covered by flood insurance located in certain areas; prohibit TWIA from issuing coverage for wind turbines; provide for alternative eligibility for coverage for structures for which the insured does not have a certificate of compliance; allow premium discounts for certain property exceeding building code standards and for certain insureds who chose binding arbitration in disputes with TWIA; and require the Commissioner of Insurance to appoint an expert panel to advise the association concerning the extent to which insured storm damage was incurred as a result of wind and tidal surges.

Additionally, the bill would make various administrative changes involving dispute resolution; reports; compensation of employees and contractors; appointment of persons to the TWIA board of directors; meetings of the board of directors; open records; applications for and renewals of coverage; agent commissions; rate setting; liability limits; and issuance and repayment of public securities.

The bill would authorize TDI by rule to provide a discount or credit for certain assessed surcharges. Additionally, the bill would create a new adjuster advisory board.

The bill would repeal Sections 2210.502(c) and 2210.551(e), regarding the increases in maximum liability limits and certain claims hearings, respectively, and would make conforming changes elsewhere in the code.

The bill would take effect immediately upon receiving a two-thirds majority vote in each house. If the bill does not receive a two-thirds vote in each house, the bill would take effect September 1, 2011.

Methodology

Based on the analysis provided by TDI, the bill would create new procedures and processes for TWIA policyholders to obtain a review of a loss claim, request appraisal and the review by an independent review panel and judicial review. The bill requires the Commissioner of Insurance to appoint the independent review panel, review the panel's recommendations, and publish the panel's recommendations. Additionally, the bill requires the Commissioner to review the qualifications of presiding officers upon objection and to replace those who are determined to have a direct financial or personal interest in the case. The bill further provides that the Commissioner may initiate cease and desist actions against appointed qualified inspectors who perform building code inspections on structures in the catastrophe area. Based on the analysis provided by TDI, the agency will require 2.0 FTEs, an Attorney III and a Program Specialist II, for the processes for finalizing the reviews and gathering of information for executions of the reviews during a year without significant storms. The 2.0 FTEs would cost \$119,142 in salaries and wages with benefits cost of \$33,193, other operating expenses of \$225, and telephone costs of \$2,400 each fiscal year of 2012 through 2016. Additional one-time equipment costs would be \$9,603 in fiscal year 2012. These costs would be funded by General Revenue – Insurance Maintenance Tax. Since insurance maintenance tax is self-leveling, this analysis assumes that the costs to implement this bill would come from fund balances or the maintenance tax would be set to recover a higher level of revenue.

Based on the analysis provided by the Sunset Advisory Commission, it is assumed that all duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing agency resources. TWIA is scheduled in statute for Sunset review in the 2014-15 biennium, depending on the Legislature's determination of agencies scheduled for Sunset review for that biennium and subsequent biennia. According to current statute, the Association would be responsible for paying the costs incurred by the Sunset Commission in performing the review, meaning the review would not have a fiscal impact to the State.

The changes to the Insurance Code regarding the issuance of public securities will require the Texas Public Finance Authority (TPFA) to revise the commercial paper program documents prepared for the sale of Class I public securities. Additionally, revisions to the source of revenue for repayments of all classes of public securities will require TPFA to obtain a new opinion from bond counsel on whether debt can be issued as taxable or tax exempt. Based on the analysis provided by TPFA, implementation of the bill will cost \$750,000 in fiscal year 2012 for professional services to revise the commercial paper program documents and to obtain a new opinion from bond counsel on all classes of public securities. If debt is issued, the cost would be reimbursed by proceeds for costs of the issuance. Since the timing of a natural disaster that would require the issuance cannot be predicted, it is assumed that TWIA will fund this cost in fiscal year 2012 and recoup the expense from a future debt issuance.

Based on the analysis by the Bond Review Board, the public securities are obligations solely of TWIA and do not create a pledge, gift, or loan of the faith, credit, or taxing authority of this state. Since the issuance of TWIA debt is not and may not constitute a legal or moral obligation of the state, it should have no direct impact on the fiscal health of the state.

Based on the analysis provided by the State Auditor's Office (SAO), the bill would require TWIA to be subject to an audit by the SAO and pay for the costs incurred by the SAO in performing the audit. According to the bill, TWIA would be responsible for paying the costs incurred by the SAO in performing the audit, meaning the review would not have a fiscal impact to the State. Based on the analysis provided by the SAO, any audit of TWIA would be subject to the SAO's risk assessment process for inclusion in the SAO's annual audit plan. In accordance with Section 321.013, Government Code, all additional duties and responsibilities prescribed by the bill would be evaluated for inclusion in the SAO's annual audit plan for Legislative Audit Committee approval.

The bill creates new funds, the Premium Surcharge Trust Fund and the Member Assessment Trust Fund, to be held outside the Treasury. This analysis does not consider fiscal impacts for these funds since they are held outside the treasury. Based on the analysis by the Comptroller of Public Accounts, this legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. Legislative policy, implemented as Government Code 403.094,

consolidated special funds (except those affected by constitutional, federal, or other restrictions) into the General Revenue Fund as of August 31, 1993 and eliminated all applicable statutory revenue dedications as of August 31, 1995. Each subsequent Legislature has reviewed bills that affect funds consolidation. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

Technology

The technology impact to TDI would be \$2,450 in fiscal year 2012.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 304 Comptroller of Public Accounts, 308 State Auditor's Office, 347 Public Finance Authority, 352 Bond Review Board, 454 Department of Insurance

LBB Staff: JOB, CH, AG, MW, KJG, JJO

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 19, 2011

TO: Honorable John Carona, Chair, Senate Committee on Business & Commerce

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

IN RE: HB272 by Smithee (Relating to the operation of the Texas Windstorm Insurance Association and to the resolution of certain disputes concerning claims made to that association; providing penalties.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB272, Committee Report 2nd House, Substituted: an impact of \$0 through the biennium ending August 31, 2013.

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

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2012	\$0
2013	\$0
2014	\$0
2015	\$0
2016	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain from <i>Insurance Maint Tax Fees 8042</i>	Probable (Cost) from <i>Insurance Maint Tax Fees 8042</i>	Probable Revenue Gain from <i>Appropriated Receipts 666</i>	Probable (Cost) from <i>Appropriated Receipts 666</i>
2012	\$164,563	(\$164,563)	\$750,000	(\$750,000)
2013	\$154,960	(\$154,960)	\$0	\$0
2014	\$154,960	(\$154,960)	\$0	\$0
2015	\$154,960	(\$154,960)	\$0	\$0
2016	\$154,960	(\$154,960)	\$0	\$0

Fiscal Year	Change in Number of State Employees from FY 2011
2012	2.0
2013	2.0
2014	2.0
2015	2.0
2016	2.0

Fiscal Analysis

The bill would amend the Insurance Code relating to the operation of the Texas Windstorm Insurance Association (TWIA) and to the resolution of certain disputes concerning claims made to that association; providing penalties.

The bill would impose certain limitations on certain claims and actions brought against TWIA; require TWIA to make random audits of claims practices following certain storms; and describe the process and requirements for the filing of claims against TWIA, for the processing of those claims, and for the resolution of disputes concerning those claims.

The bill would grant the Texas Department of Insurance (TDI) exclusive authority over the appointment and oversight of qualified inspectors and allow TDI to issue emergency cease and desist orders to inspectors and persons acting as inspectors.

The bill would allow the issuance of public securities to cover TWIA's excess losses on a per occurrence or series of occurrences basis instead of the current yearly basis; allow TWIA to issue prevent public securities to cover anticipated losses; detail the policies subject to a premium surcharge imposed to pay for Class II securities issued by TWIA; make the inability of TWIA to meet obligations related to the issuance of certain securities a condition that constitutes a hazard to the public for the purposes of Section 441.052 of the Insurance Code; and establish the new Premium Surcharge Trust Fund and the Member Assessment Trust Fund as dedicated funds held by the Texas Safekeeping Trust Company to receive any premium surcharges and member assessments levied to repay certain public securities.

The bill would require TWIA to annually determine the association's maximum probable loss; to develop a plan to obtain reinsurance; and, if TWIA does not purchase reinsurance, to submit an actuarial plan for paying losses in the event of a catastrophe with estimated damage of \$2.5 billion or more.

The bill would require studies by TDI and TWIA to determine whether using a single adjuster program would improve effectiveness and efficiency; and by the Commissioner of Insurance to examine the feasibility of TWIA writing policies directly. In addition, the bill would require that a legislative interim committee conduct a study of alternative ways to provide insurance in coastal areas.

The bill would make TWIA subject to audit by the State Auditor; restrict coverage for property not covered by flood insurance located in certain areas; prohibit TWIA from issuing coverage for wind turbines; provide for alternative eligibility for coverage for structures for which the insured does not have a certificate of compliance; allow premium discounts for certain property exceeding building code standards and for certain insureds who chose binding arbitration in disputes with TWIA; and require the Commissioner of Insurance to appoint an expert panel to advise the association concerning the extent to which insured storm damage was incurred as a result of wind and tidal surges.

Additionally, the bill would make various administrative changes involving dispute resolution; reports; compensation of employees and contractors; appointment of persons to the TWIA board of directors; meetings of the board of directors; open records; applications for and renewals of coverage; agent commissions; rate setting; liability limits; and issuance and repayment of public securities.

The bill would repeal Sections 2210.502(c) and 2210.551(e), regarding the increases in maximum liability limits and certain claims hearings, respectively, and would make conforming changes elsewhere in the code.

The bill would take effect immediately upon receiving a two-thirds majority vote in each house. If the bill does not receive a two-thirds vote in each house, the bill would take effect September 1, 2011.

Methodology

Based on the analysis provided by TDI, the bill would create new procedures and processes for TWIA

policyholders to obtain a review of a loss claim, request appraisal and the review by an independent review panel and judicial review. The bill requires the Commissioner of Insurance to appoint the independent review panel, review the panel's recommendations, and publish the panel's recommendations. Additionally, the bill requires the Commissioner to review the qualifications of presiding officers upon objection and to replace those who are determined to have a direct financial or personal interest in the case. The bill further provides that the Commissioner may initiate cease and desist actions against appointed qualified inspectors who perform building code inspections on structures in the catastrophe area. Based on the analysis provided by TDI, the agency will require 2.0 FTEs, an Attorney III and a Program Specialist II, for the processes for finalizing the reviews and gathering of information for executions of the reviews during a year without significant storms. The 2.0 FTEs would cost \$119,142 in salaries and wages with benefits cost of \$33,193, other operating expenses of \$225, and telephone costs of \$2,400 each fiscal year of 2012 through 2016. Additional one-time equipment costs would be \$9,603 in fiscal year 2012. These costs would be funded by General Revenue – Insurance Maintenance Tax. Since insurance maintenance tax is self-leveling, this analysis assumes that the costs to implement this bill would come from fund balances or the maintenance tax would be set to recover a higher level of revenue.

Based on the analysis provided by the Sunset Advisory Commission, it is assumed that all duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing agency resources. TWIA is scheduled in statute for Sunset review in the 2014-15 biennium, depending on the Legislature's determination of agencies scheduled for Sunset review for that biennium and subsequent biennia. According to current statute, the Association would be responsible for paying the costs incurred by the Sunset Commission in performing the review, meaning the review would not have a fiscal impact to the State.

The changes to the Insurance Code regarding the issuance of public securities will require the Texas Public Finance Authority (TPFA) to revise the commercial paper program documents prepared for the sale of Class I public securities. Additionally, revisions to the source of revenue for repayments of all classes of public securities will require TPFA to obtain a new opinion from bond counsel on whether debt can be issued as taxable or tax exempt. Based on the analysis provided by TPFA, implementation of the bill will cost \$750,000 in fiscal year 2012 for professional services to revise the commercial paper program documents and to obtain a new opinion from bond counsel on all classes of public securities. If debt is issued, the cost would be reimbursed by proceeds for costs of the issuance. Since the timing of a natural disaster that would require the issuance cannot be predicted, it is assumed that TWIA will fund this cost in fiscal year 2012 and recoup the expense from a future debt issuance.

Based on the analysis by the Bond Review Board, the public securities are obligations solely of TWIA and do not create a pledge, gift, or loan of the faith, credit, or taxing authority of this state. Since the issuance of TWIA debt is not and may not constitute a legal or moral obligation of the state, it should have no direct impact on the fiscal health of the state.

Based on the analysis provided by the State Auditor's Office (SAO), the bill would require TWIA to be subject to an audit by the SAO and pay for the costs incurred by the SAO in performing the audit. According to the bill, TWIA would be responsible for paying the costs incurred by the SAO in performing the audit, meaning the review would not have a fiscal impact to the State. Based on the analysis provided by the SAO, any audit of TWIA would be subject to the SAO's risk assessment process for inclusion in the SAO's annual audit plan. In accordance with Section 321.013, Government Code, all additional duties and responsibilities prescribed by the bill would be evaluated for inclusion in the SAO's annual audit plan for Legislative Audit Committee approval.

The bill creates new funds, the Premium Surcharge Trust Fund and the Member Assessment Trust Fund, to be held outside the Treasury. This analysis does not consider fiscal impacts for these funds since they are held outside the treasury. Based on the analysis by the Comptroller of Public Accounts, this legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. Legislative policy, implemented as Government Code 403.094, consolidated special funds (except those affected by constitutional, federal, or other restrictions) into the General Revenue Fund as of August 31, 1993 and eliminated all applicable statutory revenue dedications as of August 31, 1995. Each subsequent Legislature has reviewed bills that affect funds

consolidation. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

Technology

The technology impact to TDI would be \$2,450 in fiscal year 2012.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 304 Comptroller of Public Accounts, 308 State Auditor's Office, 347 Public Finance Authority, 352 Bond Review Board, 454 Department of Insurance

LBB Staff: JOB, AG, MW, CH, KJG, JJO

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 16, 2011

TO: Honorable John Carona, Chair, Senate Committee on Business & Commerce

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

IN RE: HB272 by Smithee (Relating to the operation and name of the Texas Windstorm Insurance Association and to the resolution of certain disputes concerning claims made to that association; providing penalties.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for HB272, As Engrossed: an impact of \$0 through the biennium ending August 31, 2013.

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

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2012	\$0
2013	\$0
2014	\$0
2015	\$0
2016	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain from <i>Insurance Maint Tax Fees 8042</i>	Probable (Cost) from <i>Insurance Maint Tax Fees 8042</i>	Probable Revenue Gain from <i>Appropriated Receipts 666</i>	Probable (Cost) from <i>Appropriated Receipts 666</i>
2012	\$230,584	(\$230,584)	\$942,709	(\$942,709)
2013	\$314,280	(\$314,280)	\$74,316	(\$74,316)
2014	\$258,200	(\$258,200)	\$0	\$0
2015	\$258,200	(\$258,200)	\$0	\$0
2016	\$258,200	(\$258,200)	\$0	\$0

Fiscal Year	Change in Number of State Employees from FY 2011
2012	5.0
2013	4.0
2014	3.0
2015	3.0
2016	3.0

Fiscal Analysis

The bill would amend the Insurance Code relating to the operation of the Texas Windstorm Insurance Association (TWIA) and to the resolution of certain disputes concerning claims made to that association.

This bill would amend Chapter 2210 of the Insurance Code, regarding the continuation of the Texas Windstorm Insurance Association (TWIA), and the changing of TWIA's name to the Texas Coastal Insurance Plan Association (TCIPA).

The bill would change the sunset review year for TCIPA from 2015 to 2013; make TCIPA subject to Chapters 551 and 552 of the Government Code, regarding open meetings and public information, respectively; and make settlement agreements to which TCIPA is party, including the name of any attorney or adjuster involved with the claim that is the basis of the settlement, public information.

The bill would allow the issuance of public securities to cover TCIPA's excess losses on a per occurrence basis instead of the current yearly basis; allow TCIPA to issue pre-event public securities to cover anticipated losses; detail the policies subject to a premium surcharge imposed to pay for class II securities issued by TCIPA; make the inability of TCIPA to meet obligations related to the issuance of certain securities a condition that constitutes a hazard to the public for the purposes of Section 441.052 of this code; mandate certain standards of conduct for TCIPA employees and board members; prohibit certain employment arrangements and contracts; require TCIPA to post the salaries of and bonuses paid to managers, and advance notice of meetings of the board of directors on TCIPA's website; mandate that TCIPA broadcast live, and maintain an archive of, meetings of the board of directors, other than closed meetings; allow the Commissioner of Insurance to attend closed meetings of the TCIPA board of directors; add establishment of a code of conduct, performance standards, and of an annual evaluation of management to the primary objectives of TCIPA; require TCIPA to submit an annual report evaluating the extent to which TCIPA had met those objectives in the preceding 12-month period; require TCIPA to make random audits of claims practices following certain storms; impose certain restrictions on policies issued by TCIPA; prohibit TCIPA from issuing coverage for casinos or certain other gambling establishments, sexually oriented businesses, and wind turbines; provide for alternative eligibility for coverage for structures for which the insured does not have a certificate of compliance; allow the Commissioner to establish an annual renewal period for qualified inspectors; grant the Texas Department of Insurance (TDI) exclusive authority over the appointment and oversight of qualified inspectors; and amend Chapter 83 of this code to allow TDI to issue emergency cease and desist orders to inspectors and persons acting as inspectors.

The bill would impose certain limitations on certain claims and actions brought against TCIPA; describe the process and requirements for filing of claims, and for the processing of those claims by TCIPA; provide for a process for the review of TCIPA claims determinations; provide that Chapters 541 and 542 of this code, regarding deceptive practices and processing and settlement of claims apply to TCIPA; and prohibit TCIPA from filing a petition or seeking relief in bankruptcy under Title 11 of the U.S. Code.

The bill would require the Commissioner to appoint an expert panel to advise the Commissioner on and recommend methods of determining the extent to which insured storm damage was incurred as a result of wind, waves, tidal surges, rising waters, and wind-driven rain; and, after considering the recommendations of the panel, to publish guidelines that TCIPA would use to settle claims; and require that a legislative interim study committee conduct a study of alternative ways to provide insurance in coastal areas.

Additionally, the bill would require, if TCIPA does not purchase reinsurance, that TCIPA, not later than June 1 of each year, submit an actuarial plan for paying losses in the event of a catastrophe with estimated damage of \$2.5 billion or more; and require that TCIPA, not later than June 1 of each year, submit a catastrophe plan describing how TCIPA would evaluate losses and process claims following certain categories of windstorms.

The bill would repeal Section 2210.551(e), and make conforming changes to Sections 83.002 and 541.152, of the Insurance Code.

The bill would take effect immediately upon receiving a two-thirds majority vote in each house. If the bill does not receive a two-thirds vote in each house, the bill would take effect September 1, 2011.

Methodology

Based on the analysis provided by TDI, the expert panel would cost \$50,000 to compensate members for the initial work performed in fiscal year 2012 and an additional \$50,000 to compensate members for work performed following a storm. Since the timing, magnitude, location, and number of storms that might occur cannot be estimate, this analysis assumes one storm during the next five years, occurring in fiscal year 2013. These costs would be funded by General Revenue – Insurance Maintenance Tax.

Additionally, the bill would create new procedures and processes for TCIPA policyholders to obtain a review of a loss claim, request appraisal and the review by an independent review panel and judicial review. The bill requires the Commissioner of Insurance to appoint the independent review panel from a list of panel members created and published by TDI. The bill also provides for judicial review of the reviews by the appraisal, independent review panel and Association determinations. The bill would require the Commissioner to act and to assess the requests of any Association's insureds to obtain relief regarding a claim or decision of the appraisal or panel. Based on the analysis provided by TDI, the agency will require 2.0 FTEs, an Attorney IV and a Program Specialist II, for the processes for finalizing the reviews and gathering of information for executions of the reviews during a year without significant storms. The 2.0 FTEs would cost \$129,220 in salaries and wages with benefits cost of \$36,001, other operating expenses of \$225, and telephone costs of \$2,400 each fiscal year of 2012 through 2016. Additional one-time equipment costs would be \$12,738 in fiscal year 2012. Based on the information provided by TDI, an additional FTE, an Attorney III, would be required during a year with a significant storm. Since the timing, magnitude, location, and number of storms that might occur cannot be estimated, this analysis assumes one storm during the next five years, occurring in fiscal year 2013. The additional 1.0 FTE would cost \$69,552 in salaries and wages with associated benefits cost of \$19,377, other operating expenses of \$225, and telephone costs of \$1,200 each fiscal year of 2013-2016. Additional one-time equipment cost would be \$6,080 in fiscal year 2013. The total cost of the 2.0 FTEs in fiscal year 2012 would be \$180,584 and the 3.0 FTEs in fiscal year 2013 would be \$264,280. These costs would be funded by General Revenue – Insurance Maintenance Tax. Since insurance maintenance tax is self-leveling, this analysis assumes that the costs to implement this bill would come from fund balances or the maintenance tax would be set to recover a higher level of revenue.

Based on the analysis provided by the Sunset Advisory Commission, the change could provide a basis for spending in the 2012-2013 biennium to cover the cost of the Sunset review, depending on the Legislature's determination of agencies scheduled for Sunset review for that biennium and subsequent biennia. According to current statute, the Association would be responsible for paying the costs incurred by the Sunset Commission in performing the review, meaning the review would not have a fiscal impact to the State whether it occurred in 2013 or 2015.

The changes to the Insurance Code regarding the issuance of public securities will require the Texas Public Finance Authority (TPFA) to revise the commercial paper program documents prepared for the sale of Class 1 public securities. Additionally, revisions to the source of revenue for repayments of all classes of public securities will require TPFA to obtain a new opinion from bond counsel on whether debt can be issued as taxable or tax exempt. Based on the analysis provided by TPFA, implementation of the bill will cost \$750,000 in fiscal year 2012 for professional services to revise the commercial paper program documents and to obtain a new opinion from bond counsel on all classes of public securities. If debt is issued, the cost would be reimbursed by proceeds for costs of the issuance. Since the timing of a natural disaster that would require the issuance cannot be predicted, it is assumed that TCIPA will fund this cost in fiscal year 2012 and recoup the expense from a future debt issuance.

Based on the analysis by the Bond Review Board, the public securities are obligations solely of TCIPA and do not create a pledge, gift, or loan of the faith, credit, or taxing authority of this state. Since the issuance of TCIPA debt is not and may not constitute a legal or moral obligation of the state, it should have no direct impact on the fiscal health of the state.

Technology

The technology impact to TDI would be \$2,450 in fiscal year 2012 and \$1,225 in fiscal year 2013.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 304 Comptroller of Public Accounts, 347 Public Finance Authority, 352 Bond Review Board, 454 Department of Insurance

LBB Staff: JOB, AG, MW, CH, KJG, JJO

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION
Revision 1

April 27, 2011

TO: Honorable John T. Smithee, Chair, House Committee on Insurance

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

IN RE: HB272 by Smithee (Relating to the operation of the Texas Windstorm Insurance Association and to the resolution of certain disputes concerning claims made to that association; providing penalties.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB272, Committee Report 1st House, Substituted: an impact of \$0 through the biennium ending August 31, 2013.

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

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2012	\$0
2013	\$0
2014	\$0
2015	\$0
2016	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain from <i>Insurance Maint Tax Fees 8042</i>	Probable (Cost) from <i>Insurance Maint Tax Fees 8042</i>	Probable Revenue Gain from <i>Appropriated Receipts 666</i>	Probable (Cost) from <i>Appropriated Receipts 666</i>
2012	\$230,584	(\$230,584)	\$750,000	(\$750,000)
2013	\$314,280	(\$314,280)	\$0	\$0
2014	\$258,200	(\$258,200)	\$0	\$0
2015	\$258,200	(\$258,200)	\$0	\$0
2016	\$258,200	(\$258,200)	\$0	\$0

Fiscal Year	Change in Number of State Employees from FY 2011
2012	2.0
2013	3.0
2014	3.0
2015	3.0
2016	3.0

Fiscal Analysis

The bill would amend the Insurance Code relating to the operation of the Texas Windstorm Insurance Association (TWIA) and to the resolution of certain disputes concerning claims made to that association.

The bill would change the Sunset review period for TWIA from 2015 to 2013; make TWIA subject to Chapters 551 and 552 of the Government Code, regarding open meetings and public information, respectively; and make settlement agreements to which TWIA is party, including the name of any attorney or adjustor involved with the claim that is the basis of the settlement, public information.

The bill would allow the issuance of public securities to cover TWIA's excess losses on a per occurrence basis instead of the current yearly basis; mandate certain standards of conduct for TWIA employees and board members; prohibit certain employment arrangements and contracts; require TWIA to post the salaries of and bonuses paid to managers, and advance notice of meetings of the board of directors on TWIA's website; mandate that TWIA broadcast live, and maintain an archive of, meetings of the board of directors, other than closed meetings; allow the Commissioner of Insurance to attend closed meetings of the TWIA board of directors; add establishment of a code of conduct, performance standards, and of an annual evaluation of management to the primary objectives of TWIA; require TWIA to submit an annual report evaluating the extent to which TWIA had met those objectives in the preceding 12-month period; direct the commissioner to adopt rules to simplify the application and renewal process for TWIA coverage; impose certain restriction on policies issued by TWIA; prohibit TWIA from issuing coverage for casinos, sexually oriented businesses, and wind turbines; allow the commissioner to establish an annual renewal period for qualified inspectors; grant the Texas Department of Insurance (TDI) exclusive authority over the appointment and oversight of qualified inspectors; and amend Insurance Code Chapter 83 to allow TDI to issue emergency cease and desist orders to inspectors and persons acting as inspectors.

The bill would impose certain limitations on certain actions brought against TWIA; describe the process and requirements for filing of claims, and for the processing of those claims by TWIA; provide for a process for the review of TWIA claims determinations; provide that Insurance Code Chapters 541 and 542, regarding deceptive practices and processing and settlement of claims, respectively, apply to TWIA; and prohibit TWIA insureds from presiding over a matter to which TWIA is a party.

The bill would require the Commissioner of Insurance to appoint an expert panel to advise the commissioner on and recommend methods of determining the extent to which insured storm damage was incurred as a result of wind, waves, tidal surges, rising waters, and wind-driven rain; and, after considering the recommendations of the panel, to publish guidelines that TWIA would use to settle claims.

Additionally, the bill would change the annual surcharge applied to noncompliant residential structures from 15 percent of annual premium to an actuarially sound amount, not less than 15 percent of annual premium, to be established by the commissioner; require TWIA to establish rating territories and to vary rates among those territories in accordance with certain rules; require, if TWIA does not purchase reinsurance, that TWIA, not later than June 1 of each year, submit an actuarial plan for paying losses in the event of a catastrophe with estimated damage of \$2.5 billion or more; and require that TWIA, not later than June 1 of each year, submit a catastrophe plan describing how TWIA would evaluate losses and process claims following certain categories of windstorms.

The bill would repeal Insurance Code Section 2210.551(e) and make conforming changes to Insurance Code Sections 83.002 and 541.152.

The bill would take effect immediately upon receiving a two-thirds majority vote in each house. If the bill does not receive a two-thirds vote in each house, the bill would take effect September 1, 2011.

Methodology

Based on the analysis provided by TDI, the expert panel would cost \$50,000 to compensate members for the initial work performed in fiscal year 2012 and an additional \$50,000 to compensate members for work performed following a storm. Since the timing, magnitude, location, and number of storms that might occur cannot be estimate, this analysis assumes one storm during the next five years, occurring in fiscal year 2013. These costs would be funded by General Revenue – Insurance Maintenance Tax.

Additionally, the bill would create new procedures and processes for TWIA policyholders to obtain a review of a loss claim, request appraisal and the review by an independent review panel and judicial review. The bill requires the Commissioner of Insurance to appoint the independent review panel from a list of panel members created and published by TDI. The bill also provides for judicial review of the reviews by the appraisal,

independent review panel and Association determinations. The bill would require the Commissioner to act and to assess the requests of any Association's insureds to obtain relief regarding a claim or decision of the appraisal or panel. Based on the analysis provided by TDI, the agency will require 2.0 FTEs, an Attorney IV and a Program Specialist II, for the processes for finalizing the reviews and gathering of information for executions of the reviews during a year without significant storms. The 2.0 FTEs would cost \$129,220 in salaries and wages with benefits cost of \$36,001, other operating expenses of \$225, and telephone costs of \$2,400 each fiscal year of 2012 through 2016. Additional one-time equipment costs would be \$12,738 in fiscal year 2012. Based on the information provided by TDI, an additional FTE, an Attorney III, would be required during a year with a significant storm. Since the timing, magnitude, location, and number of storms that might occur cannot be estimate, this analysis assumes one storm during the next five years, occurring in fiscal year 2013. The additional 1.0 FTE would cost \$69,552 in salaries and wages with associated benefits cost of \$19,377, other operating expenses of \$225, and telephone costs of \$1,200 each fiscal year of 2013-2016. Additional one-time equipment cost would be \$6,080 in fiscal year 2013. The total cost of the 2.0 FTEs in fiscal year 2012 would be \$180,584 and the 3.0 FTEs in fiscal year 2013 would be \$264,280. These costs would be funded by General Revenue – Insurance Maintenance Tax. Since insurance maintenance tax is self-leveling, this analysis assumes that the costs to implement this bill would come from fund balances or the maintenance tax would be set to recover a higher level of revenue.

Based on the analysis provided by the Sunset Advisory Commission, the change could provide a basis for spending in the 2012-2013 biennium to cover the cost of the Sunset review, depending on the Legislature's determination of agencies scheduled for Sunset review for that biennium and subsequent biennia. According to current statute, the Association would be responsible for paying the costs incurred by the Sunset Commission in performing the review, meaning the review would not have a fiscal impact to the State whether it occurred in 2013 or 2015.

The changes to the Insurance Code regarding the issuance of public securities will require the Texas Public Finance Authority (TPFA) to revise the commercial paper program documents prepared for the sale of Class 1 public securities. Additionally, revisions to the source of revenue for repayments of all classes of public securities will require TPFA to obtain a new opinion from bond counsel on whether debt can be issued as taxable or tax exempt. Based on the analysis provided by TPFA, implementation of the bill will cost \$750,000 in fiscal year 2012 for professional services to revise the commercial paper program documents and to obtain a new opinion from bond counsel on all classes of public securities. If debt is issued, the cost would be reimbursed by proceeds for costs of the issuance. Since the timing of a natural disaster that would require the issuance cannot be predicted, it is assumed that TWIA will fund this cost in fiscal year 2012 and recoup the expense from a future debt issuance.

Based on the analysis by the Bond Review Board, the public securities are obligations solely of TWIA and do not create a pledge, gift, or loan of the faith, credit, or taxing authority of this state. Since the issuance of TWIA debt is not and may not constitute a legal or moral obligation of the state, it should have no direct impact on the fiscal health of the state.

Technology

The technology impact to TDI would be \$2,450 in fiscal year 2012 and \$1,225 in fiscal year 2013.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 304 Comptroller of Public Accounts, 347 Public Finance Authority, 352 Bond Review Board, 454 Department of Insurance

LBB Staff: JOB, KJG, MW, CH, JJO

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 18, 2011

TO: Honorable John T. Smithee, Chair, House Committee on Insurance

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

IN RE: HB272 by Smithee (Relating to the operation of the Texas Windstorm Insurance Association and to the resolution of certain disputes concerning claims made to that association.),
Committee Report 1st House, Substituted

Estimated Two-year Net Impact to General Revenue Related Funds for HB272, Committee Report 1st House, Substituted: an impact of \$0 through the biennium ending August 31, 2013.

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

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2012	\$0
2013	\$0
2014	\$0
2015	\$0
2016	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain from <i>Insurance Maint Tax Fees 8042</i>	Probable (Cost) from <i>Insurance Maint Tax Fees 8042</i>	Probable Revenue Gain from <i>Appropriated Receipts 666</i>	Probable (Cost) from <i>Appropriated Receipts 666</i>
2012	\$230,584	(\$230,584)	\$750,000	(\$750,000)
2013	\$314,280	(\$314,280)	\$0	\$0
2014	\$258,200	(\$258,200)	\$0	\$0
2015	\$258,200	(\$258,200)	\$0	\$0
2016	\$258,200	(\$258,200)	\$0	\$0

Fiscal Year	Change in Number of State Employees from FY 2011
2012	2.0
2013	3.0
2014	3.0
2015	3.0
2016	3.0

Fiscal Analysis

The bill would amend the Insurance Code relating to the operation of the Texas Windstorm Insurance Association (TWIA) and to the resolution of certain disputes concerning claims made to that association.

The bill would change the Sunset review period for TWIA from 2015 to 2013; make TWIA subject to Chapters 551 and 552 of the Government Code, regarding open meetings and public information, respectively; and make settlement agreements to which TWIA is party, including the name of any attorney or adjustor involved with the claim that is the basis of the settlement, public information.

The bill would allow the issuance of public securities to cover TWIA's excess losses on a per occurrence basis instead of the current yearly basis; mandate certain standards of conduct for TWIA employees and board members; prohibit certain employment arrangements and contracts; require TWIA to post the salaries of and bonuses paid to managers, and advance notice of meetings of the board of directors on TWIA's website; mandate that TWIA broadcast live, and maintain an archive of, meetings of the board of directors, other than closed meetings; allow the Commissioner of Insurance to attend closed meetings of the TWIA board of directors; add establishment of a code of conduct, performance standards, and of an annual evaluation of management to the primary objectives of TWIA; require TWIA to submit an annual report evaluating the extent to which TWIA had met those objectives in the preceding 12-month period; direct the commissioner to adopt rules to simplify the application and renewal process for TWIA coverage; impose certain restriction on policies issued by TWIA; prohibit TWIA from issuing coverage for casinos, sexually oriented businesses, and wind turbines; allow the commissioner to establish an annual renewal period for qualified inspectors; grant the Texas Department of Insurance (TDI) exclusive authority over the appointment and oversight of qualified inspectors; and amend Insurance Code Chapter 83 to allow TDI to issue emergency cease and desist orders to inspectors and persons acting as inspectors.

The bill would impose certain limitations on certain actions brought against TWIA; describe the process and requirements for filing of claims, and for the processing of those claims by TWIA; provide for a process for the review of TWIA claims determinations; provide that Insurance Code Chapters 541 and 542, regarding deceptive practices and processing and settlement of claims, respectively, apply to TWIA; and prohibit TWIA insureds from presiding over a matter to which TWIA is a party.

The bill would require the Commissioner of Insurance to appoint an expert panel to advise the commissioner on and recommend methods of determining the extent to which insured storm damage was incurred as a result of wind, waves, tidal surges, rising waters, and wind-driven rain; and, after considering the recommendations of the panel, to publish guidelines that TWIA would use to settle claims.

Additionally, the bill would change the annual surcharge applied to noncompliant residential structures from 15 percent of annual premium to an actuarially sound amount, not less than 15 percent of annual premium, to be established by the commissioner; require TWIA to establish rating territories and to vary rates among those territories in accordance with certain rules; require, if TWIA does not purchase reinsurance, that TWIA, not later than June 1 of each year, submit an actuarial plan for paying losses in the event of a catastrophe with estimated damage of \$2.5 billion or more; and require that TWIA, not later than June 1 of each year, submit a catastrophe plan describing how TWIA would evaluate losses and process claims following certain categories of windstorms.

The bill would repeal Insurance Code Section 2210.551(e) and make conforming changes to Insurance Code Sections 83.002 and 541.152.

The bill would take effect immediately upon receiving a two-thirds majority vote in each house. If the bill does not receive a two-thirds vote in each house, the bill would take effect September 1, 2011.

Methodology

Based on the analysis provided by TDI, the expert panel would cost \$50,000 to compensate members for the initial work performed in fiscal year 2012 and an additional \$50,000 to compensate members for work performed following a storm. Since the timing, magnitude, location, and number of storms that might occur cannot be estimate, this analysis assumes one storm during the next five years, occurring in fiscal year 2013. These costs would be funded by General Revenue – Insurance Maintenance Tax.

Additionally, the bill would create new procedures and processes for TWIA policyholders to obtain a review of a loss claim, request appraisal and the review by an independent review panel and judicial review. The bill requires the Commissioner of Insurance to appoint the independent review panel from a list of panel members created and published by TDI. The bill also provides for judicial review of the reviews by the appraisal,

independent review panel and Association determinations. The bill would require the Commissioner to act and to assess the requests of any Association's insureds to obtain relief regarding a claim or decision of the appraisal or panel. Based on the analysis provided by TDI, the agency will require 2.0 FTEs, an Attorney IV and a Program Specialist II, for the processes for finalizing the reviews and gathering of information for executions of the reviews during a year without significant storms. The 2.0 FTEs would cost \$129,220 in salaries and wages with benefits cost of \$36,001, other operating expenses of \$225, and telephone costs of \$2,400 each fiscal year of 2012 through 2016. Additional one-time equipment costs would be \$12,738 in fiscal year 2012. Based on the information provided by TDI, an additional FTE, an Attorney III, would be required during a year with a significant storm. Since the timing, magnitude, location, and number of storms that might occur cannot be estimate, this analysis assumes one storm during the next five years, occurring in fiscal year 2013. The additional 1.0 FTE would cost \$69,552 in salaries and wages with associated benefits cost of \$19,377, other operating expenses of \$225, and telephone costs of \$1,200 each fiscal year of 2013-2016. Additional one-time equipment cost would be \$6,080 in fiscal year 2013. The total cost of the 2.0 FTEs in fiscal year 2012 would be \$180,584 and the 3.0 FTEs in fiscal year 2013 would be \$264,280. These costs would be funded by General Revenue – Insurance Maintenance Tax. Since insurance maintenance tax is self-leveling, this analysis assumes that the costs to implement this bill would come from fund balances or the maintenance tax would be set to recover a higher level of revenue.

Based on the analysis provided by the Sunset Advisory Commission, the change could provide a basis for spending in the 2012-2013 biennium to cover the cost of the Sunset review, depending on the Legislature's determination of agencies scheduled for Sunset review for that biennium and subsequent biennia. According to current statute, the Association would be responsible for paying the costs incurred by the Sunset Commission in performing the review, meaning the review would not have a fiscal impact to the State whether it occurred in 2013 or 2015.

The changes to the Insurance Code regarding the issuance of public securities will require the Texas Public Finance Authority (TPFA) to revise the commercial paper program documents prepared for the sale of Class 1 public securities. Additionally, revisions to the source of revenue for repayments of all classes of public securities will require TPFA to obtain a new opinion from bond counsel on whether debt can be issued as taxable or tax exempt. Based on the analysis provided by TPFA, implementation of the bill will cost \$750,000 in fiscal year 2012 for professional services to revise the commercial paper program documents and to obtain a new opinion from bond counsel on all classes of public securities. If debt is issued, the cost would be reimbursed by proceeds for costs of the issuance. Since the timing of a natural disaster that would require the issuance cannot be predicted, it is assumed that TWIA will fund this cost in fiscal year 2012 and recoup the expense from a future debt issuance.

Based on the analysis by the Bond Review Board, the public securities are obligations solely of TWIA and do not create a pledge, gift, or loan of the faith, credit, or taxing authority of this state. Since the issuance of TWIA debt is not and may not constitute a legal or moral obligation of the state, it should have no direct impact on the fiscal health of the state.

Technology

The technology impact to TDI would be \$2,450 in fiscal year 2012 and \$1,225 in fiscal year 2013.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 304 Comptroller of Public Accounts, 347 Public Finance Authority, 352 Bond Review Board, 454 Department of Insurance

LBB Staff: JOB, KJG, MW, CH, JJO

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

March 14, 2011

TO: Honorable John T. Smithee, Chair, House Committee on Insurance

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

IN RE: HB272 by Smithee (Relating to the operation of the Texas Windstorm Insurance Association and to the resolution of certain disputes concerning claims made to that association.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Insurance Code relating to the operation of the Texas Windstorm Insurance Association and to the resolution of certain disputes concerning claims made to that association. The bill would require the Texas Department of Insurance (TDI) to certify arbitrators, maintain and make publicly available a list of arbitrators certified to conduct arbitrations, and assign arbitrators to claim disputes.

Based on the analysis by TDI, it is assumed that all duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 454 Department of Insurance

LBB Staff: JOB, KJG, MW, CH