

By: Bonnen of Brazoria

H.B. No. 3496

A BILL TO BE ENTITLED

AN ACT

relating to the use of assets of the Texas Windstorm Insurance Association.

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

SECTION 1. Sec. 2210.008. DEPARTMENT ORDERS; GENERAL RULEMAKING AUTHORITY. (a) The commissioner may issue any orders that the commissioner considers necessary to implement this chapter including:

(1) an order enforcing the requirement for the Association to limit the use of each calendar year's premium and other revenue to losses, including loss adjustment expenses, and operating expenses incurred during that calendar year; or

(2) an order requiring the Association to transfer that calendar year's premium and other revenue in excess of the calendar year's losses, including loss adjustment expenses, and operating expenses to the fund established under Sec. 2210.452.

SECTION 2. Sec. 2210.056. USE OF ASSOCIATION ASSETS. (a) The association's net earnings may not inure, in whole or in part, to the benefit of a private shareholder or individual.

(b) The increase in the association's assets in any calendar year may not be used for or diverted to any purpose other than to:

(1) satisfy, in whole or in part, the liability of the association on claims incurred in that calendar year made on policies written by the association;

1 (2) make investments authorized under applicable law;

2 (3) pay reasonable and necessary administrative
3 expenses incurred in connection with the operation of the
4 association and the processing of claims incurred in that calendar
5 year against the association;

6 (4) satisfy, in whole or in part, the obligations of
7 the association incurred in connection with Subchapters B-1, J, and
8 M, including reinsurance, public securities, and financial
9 instruments; or

10 (5) make required remittance under the laws of this
11 state to be used by this state to:

12 (A) pay claims made on policies written by the
13 association;

14 (B) purchase reinsurance covering losses under
15 those policies; or

16 (C) prepare for or mitigate the effects of
17 catastrophic natural events.

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

21 SECTION 3. Sec. 2210.071. PAYMENT OF EXCESS LOSSES; PAYMENT
22 FROM RESERVES AND TRUST FUND. (a) If, in a calendar [~~calastrophe~~]
23 year, an occurrence or series of occurrences in a catastrophe area
24 results in insured losses, including loss adjustment expenses, and
25 operating expenses of the association in excess of premium and
26 other revenue of the association, the excess losses, including loss
27 adjustment expenses, and operating expenses shall be paid as

1 provided by this subchapter.

2 (b) The association shall pay losses in excess of that
3 calendar year's premium and other revenue of the association from
4 available reserves of the association and available amounts in the
5 catastrophe reserve trust fund.

6 (c) Losses not paid under Subsection (b) shall be paid from
7 the proceeds from public securities issued in accordance with this
8 subchapter and Subchapter M and, notwithstanding Subsection (a),
9 may be paid from the proceeds of public securities issued under
10 Section 2210.072(a) before an occurrence or series of occurrences
11 that results in insured losses.

12 (d) If additional losses, including loss adjustment
13 expenses, related to prior calendar years are recognized, the
14 current year's premium and other revenue must not be used to satisfy
15 the additional losses, including loss adjustment expenses.

16 SECTION 4. Sec. 2210.152. CONTENTS OF PLAN OF OPERATION.

17 (a) The plan of operation must:

18 (1) provide for the efficient, economical, fair, and
19 nondiscriminatory administration of the association, including
20 that current calendar year revenue must not be used to pay losses,
21 including loss adjustment expenses, that were incurred in prior
22 years; and

23 (2) include:

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

26 (B) underwriting standards;

27 (C) procedures for accepting and ceding

1 reinsurance;

2 (D) procedures for obtaining and repaying
3 amounts under any financial instruments authorized under this
4 chapter;

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

7 (F) time limits and procedures for processing
8 applications for insurance; and

9 (G) other provisions as considered necessary by
10 the department to implement the purposes of this chapter.

11 (b) The plan of operation may provide for liability limits
12 for an insured structure and for the corporeal movable property
13 located in the structure.

14 (c) The plan of operation shall require the association to
15 use the claim settlement guidelines published by the commissioner
16 under Section 2210.578(f) in evaluating the extent to which a loss
17 to insured property is incurred as a result of wind, waves, tidal
18 surges, or rising waters not caused by waves or surges.

19 SECTION 5. Sec. 2210.452. ESTABLISHMENT AND USE OF TRUST
20 FUND. (a) The commissioner shall adopt rules under which the
21 association makes payments to the catastrophe reserve trust fund.
22 The trust fund may be used only to fund the obligations of the trust
23 fund under Subchapter B-1.

24 (b) All money, including investment income, deposited in
25 the trust fund constitutes state funds until disbursed as provided
26 by this chapter and commissioner rules. The comptroller shall hold
27 the money outside the state treasury on behalf of, and with legal

1 title in, the department. The department shall keep and maintain
2 the trust fund in accordance with this chapter and commissioner
3 rules. The comptroller, as custodian of the trust fund, shall
4 administer the trust fund strictly and solely as provided by this
5 chapter and commissioner rules.

6 (c) At the end of each calendar year [~~or policy year,~~] the
7 association shall use the calendar year net gain from operations of
8 the association, including all premium and other revenue of the
9 association in excess of [~~incurred~~] losses, including loss
10 adjustment expenses, operating expenses, public security
11 obligations, and public security administrative expenses incurred
12 in that calendar year, to make payments to the trust fund, to
13 procure reinsurance, or to make payments to the trust fund and to
14 procure reinsurance.

15 (d) The commissioner by rule shall establish the procedure
16 relating to the disbursement of money from the trust fund to
17 policyholders in the event of an occurrence or series of
18 occurrences within a catastrophe area that results in a
19 disbursement under Subchapter B-1.

20 (e) The trust fund may be terminated only by law. On
21 termination of the trust fund, all assets of the trust fund revert
22 to the state to provide funding for the mitigation and preparedness
23 plan established under Section 2210.454.

24 SECTION 6. This Act takes effect immediately if it receives
25 a vote of two-thirds of all the members elected to each house, as
26 provided by Section 39, Article III, Texas Constitution. If this
27 Act does not receive the vote necessary for immediate effect, this

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1 Act takes effect September 1, 2013.