By:  Taylor S.B. No. 2443

A BILL TO BE ENTITLED

AN ACT

relating to the abolition of the Fair Access to Insurance Requirements Plan and transfer of the plan's assets, financial obligations, duties, and powers to the Texas Windstorm Insurance Association.

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

ARTICLE 1. RESIDENTIAL PROPERTY INSURANCE

SECTION 1.01.  Section 2210.001, Insurance Code, is amended to read as follows:

Sec. 2210.001. PURPOSE. The primary purpose of the Texas Windstorm Insurance Association is the provision of an adequate market for windstorm and hail insurance in the seacoast territory of this state and residential property insurance in this state. The legislature finds that the provision of adequate windstorm and hail insurance and residential property insurance is necessary to the economic welfare of this state, and without that insurance, the orderly growth and development of this state would be severely impeded. This chapter provides a method by which adequate windstorm and hail insurance may be obtained in certain designated portions of the seacoast territory of this state and residential property insurance may be obtained throughout this state. The association is intended to serve as a residual insurer of last resort for windstorm and hail insurance in the seacoast territory and residential property insurance in this state. The association shall:

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

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

SECTION 1.02.  Section 2210.003, Insurance Code, is amended by amending Subdivision (6) and adding Subdivision (9-a) to read as follows:

(6)  "Insurance" means:

(A)  Texas windstorm and hail insurance; and

(B)  residential property insurance.

(9-a)  "Residential property insurance" means the coverage provided by a homeowners insurance policy, residential fire and allied lines insurance policy, or farm and ranch owners insurance policy against loss incurred to real or tangible personal property.

SECTION 1.03  Sections 2210.004(a) and (g), Insurance Code, are amended to read as follows:

(a)  Except as provided by Subsection (h), for purposes of this chapter and subject to this section, "insurable property" for purposes of windstorm and hail insurance means immovable property at a fixed location in a catastrophe area or corporeal movable property located in that immovable property, as designated in the plan of operation, that is determined by the association according to the criteria specified in the plan of operation to be in an insurable condition against windstorm and hail, as determined by normal underwriting standards. The term includes property described by Section 2210.209.

(g)  For purposes of windstorm and hail insurance issued under this chapter, a residential structure is insurable property if:

(1)  the residential structure is not:

(A)  a condominium, apartment, duplex, or other multifamily residence; or

(B)  a hotel or resort facility;

(2)  the residential structure is located within an area designated as a unit under the Coastal Barrier Resources Act (Pub. L. No. 97-348); and

(3)  a building permit or plat for the residential structure was filed with the municipality, the county, or the United States Army Corps of Engineers before June 11, 2003.

SECTION 1.04.  Section 2210.053(b), Insurance Code, is amended to read as follows:

(b)  The department may develop programs to improve the efficient operation of the association, including a program for approving policy forms under Section 2301.010 and a program designed to create incentives for insurers to write:

(1)  windstorm and hail insurance voluntarily to cover property located in a catastrophe area, especially property located on the barrier islands of this state; and

(2)  residential property insurance in this state.

SECTION 1.05.  Section 2210.151, Insurance Code, is amended to read as follows:

Sec. 2210.151.  ADOPTION OF PLAN OF OPERATION. With the advice of the board of directors, the commissioner by rule shall adopt the plan of operation to provide Texas windstorm and hail insurance in a catastrophe area. The plan must include provisions to implement Subchapter E-1 in accordance with Section 2210.2253.

SECTION 1.06.  Chapter 2210, Insurance Code, is amended by adding Subchapter E-1 to read as follows:

SUBCHAPTER E-1. RESIDENTIAL PROPERTY INSURANCE COVERAGE

Sec. 2210.2251.  APPLICABILITY OF SUBCHAPTER. (a)  This subchapter applies only to residential property insurance in this state.

(b)  To the extent of any conflict with another provision of this chapter in relation to residential property insurance, this subchapter controls.

Sec. 2210.2252.  ESTABLISHMENT OF RESIDENTIAL PROPERTY INSURANCE PLAN. The commissioner may establish a residential property insurance plan operated by the association to issue and deliver residential property insurance to residents of this state in underserved areas if the commissioner determines, after a public hearing, that in all or any part of the state, residential property insurance is not reasonably available in the voluntary market to a substantial number of insurable risks.

Sec. 2210.2253.  PROVISIONS OF PLAN OF OPERATION RELATED TO RESIDENTIAL PROPERTY INSURANCE POLICIES. The plan of operation with respect to this subchapter must:

(1)  provide for the issuance of residential property insurance under this Chapter and distribute the losses and expenses in writing that insurance in this state;

(2)  provide that all insurers that write residential property insurance shall participate in the association in the accordance with Section 2210.2256(b);

(3)  provide that a participating insurer is entitled to receive credit in accordance with Section 2210.2256(c);

(4)  provide for the immediate binding of eligible risks;

(5)  provide for the use of premium installment payment plans, adequate marketing, and service facilities;

(6)  provide for the establishment of reasonable service standards;

(7)  provide procedures for efficient, economical, fair, and nondiscriminatory administration of the association;

(8)  provide procedures for determining the net level of participation required for each insurer in the association;

(9)  provide for the use of deductibles and other underwriting devices;and

(10)  provide any other procedure or operational matter the governing committee or the commissioner considers necessary.

Sec. 2210.2254.  ASSOCIATION DUTIES WITH RESPECT TO RESIDENTIAL PROPERTY INSURANCE POLICIES. (a)  The association may, for residential property insurance policies only:

(1)  issue insurance policies and endorsements to those policies in the association's own name or a trade name adopted for that purpose.

Sec. 2210.2255.  FILING AND APPROVAL OF RATES. (a)  The association shall file with the commissioner for approval the proposed rates and supplemental rate information to be used in connection with the issuance of insurance policies or endorsements under this Chapter.

Sec. 2210.2256.  COVERAGE PROVIDED TO INSUREDS IN UNDERSERVED AREA. (a)  In accordance with the plan of operation and Sections 2210.051 and 2210.052, the association shall develop and administer a program under this Chapter for membership in the association of and participation by each insurer that writes residential property insurance in this state.

(b)  An insurer's participation in the association's assessments under this Chapter must be determined in accordance with the residential property statistical plan adopted by the commissioner.

(c)  A participating insurer is entitled to receive credit for similar insurance voluntarily written in an underserved area. The participation of an insurer entitled to receive credit under this subsection must be reduced in accordance with the plan of operation.

Sec. 2210.2257.  MANDATORY COVERAGE PROVIDED TO CERTAIN INSUREDS. The association shall make residential property insurance available to each applicant in an underserved area whose property is insurable in accordance with reasonable underwriting standards but who, after diligent efforts, is unable to obtain residential property insurance through the voluntary market, as evidenced by two declinations from insurers authorized to engage in the business of, and writing, residential property insurance in this state.

SECTION 1.07.  Section 2210.571(1), Insurance Code, is amended to read as follows:

(1)  "Association policy" means a windstorm and hail insurance policy or a residential property insurance policy issued by the association.

Sec. 2210.2258.  DESIGNATION OF AREA AS UNDERSERVED. The commissioner by rule shall designate the areas determined to be underserved. In determining which areas to designate as underserved, the commissioner shall consider the factors specified in Section 2004.002.

Sec. 2210.2259.  PROPERTY INSPECTION. (a)  A person who has an insurable interest in real or tangible personal property at a fixed location in an underserved area and who, after diligent effort, is unable to obtain residential property insurance, as evidenced by two current declinations from insurers authorized to engage in the business of residential property insurance in this state and actually writing residential property insurance in this state, is entitled on application to the association to an inspection and evaluation of the property by representatives of the association.

(b)  A general property and casualty agent or personal lines property and casualty agent may make an application on behalf of the applicant. The applicant or agent must submit the application on a form prescribed by the association.

(1)  (c)  Promptly after the application is received, the association shall make an inspection and prepare an inspection report. The inspection report must be made available to the applicant on request. The association shall prescribe the manner and scope of the inspection and inspection report for residential property in accordance with the plan of operation.

SECTION 1.08.  Section 2210.601, Insurance Code, is amended to read as follows:

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

ARTICLE 2.  CONFORMING AMENDMENTS

SECTION 2.01.  Section 38.002(a)(1), Insurance Code, is amended to read as follows:

(1)  "Insurer" means an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, Lloyd's plan, or other legal entity engaged in the business of personal automobile insurance or residential property insurance in this state. The term includes:

(A)  an affiliate as described by Section 823.003(a) if that affiliate is authorized to write and is writing personal automobile insurance or residential property insurance in this state;

(B)  the Texas Windstorm Insurance Association created and operated under Chapter 2210; and

(C)  [~~the FAIR Plan Association under Chapter 2211; and~~]

[~~(D)~~]  the Texas Automobile Insurance Plan Association under Chapter 2151.

SECTION 2.02.  Section 542A.001(4), Insurance Code, is amended to read as follows:

(4)  "Insurer" means a corporation, association, partnership, or individual, other than the Texas Windstorm Insurance Association, engaged as a principal in the business of insurance and authorized or eligible to write property insurance in this state, including:

(A)  an insurance company;

(B)  a reciprocal or interinsurance exchange;

(C)  a mutual insurance company;

(D)  a capital stock insurance company;

(E)  a county mutual insurance company;

(F)  a farm mutual insurance company;

(G)  a Lloyd's plan; or

(H)  an eligible surplus lines insurer[~~; or~~

[~~(I)  the FAIR Plan Association, unless a claim related dispute resolution procedure is available to policyholders under Chapter 2211~~].

SECTION 2.03.  Section 544.301(1), Insurance Code, is amended to read as follows:

(1)  "Insurer" means an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, farm mutual insurance company, Lloyd's plan, or other legal entity authorized to write residential property insurance in this state. The term includes an affiliate, as described by Section 823.003(a), if that affiliate is authorized to write and is writing residential property insurance in this state. The term does not include:

(A)  an eligible surplus lines insurer regulated under Chapter 981; or

(B)  the Texas Windstorm Insurance Association under Chapter 2210[~~; or~~

[~~(C)  the FAIR Plan Association under Chapter 2211~~].

SECTION 2.04.  Section 544.352(2), Insurance Code, is amended to read as follows:

(2)  "Insurer" means an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, farm mutual insurance company, association, Lloyd's plan, or other entity authorized to write residential property insurance in this state. The term includes an affiliate, as described by Section 823.003(a), if that affiliate is authorized to write and is writing residential property insurance in this state. The term does not include[~~:~~]

[~~(A)~~]  the Texas Windstorm Insurance Association created and operated under Chapter 2210[~~; or~~

[~~(B)  the FAIR Plan created and operated under Chapter 2211~~].

SECTION 2.05.  Section 560.001, Insurance Code, is amended to read as follows:

Sec. 560.001. DEFINITION OF INSURER. In this chapter, "insurer" means an insurance company, reciprocal or interinsurance exchange, mutual insurance company, farm mutual insurance company, capital stock insurance company, county mutual insurance company, Lloyd's plan, surplus lines insurer, or other legal entity engaged in the business of insurance in this state. The term includes:

(1)  an affiliate described by Section 823.003(a);

(2)  the Texas Windstorm Insurance Association established under Chapter 2210; and

(3)  [~~the FAIR Plan Association established under Chapter 2211; and~~

[~~(4)~~]  the Texas Automobile Insurance Plan Association established under Chapter 2151.

SECTION 2.06.  Section 1811.001(6), Insurance Code, is amended to read as follows:

(6)  "Insurer" means a company or insurance carrier that is engaged in the business of making property or casualty insurance contracts. The term includes:

(A)  a stock fire or casualty insurance company;

(B)  a mutual fire or casualty insurance company;

(C)  a Mexican casualty insurance company;

(D)  a Lloyd's plan;

(E)  a reciprocal or interinsurance exchange;

(F)  a county mutual insurance company;

(G)  a farm mutual insurance company;

(H)  a risk retention group;

(I)  the Medical Liability Insurance Joint Underwriting Association under Chapter 2203;

(J)  the Texas Windstorm Insurance Association under Chapter 2210;

(K)  [~~the FAIR Plan Association under Chapter 2211;~~]

[~~(L)~~]  an eligible surplus lines insurer; and

(L) [~~(M)~~]  any other insurer authorized to write property or casualty insurance in this state.

SECTION 2.07.  Section 2254.001(1), Insurance Code, is amended to read as follows:

(1)  "Insurer" means an insurance company, reciprocal or inter insurance exchange, mutual insurance company, capital stock company, county mutual insurance company, Lloyd's plan, or other legal entity authorized to write residential property insurance or personal automobile insurance in this state. The term includes an affiliate, as described by this code, that is authorized to write residential property insurance. The terms does not include[~~:~~]

[~~(A)~~]  the Texas Windstorm Insurance Association under Chapter 2210[~~; or~~]

[~~(B)  the FAIR Plan Association under Chapter 2211~~].

ARTICLE 3.  REPEALER

SECTION 3.01.  Effective January 1, 2020, Chapter 2211, Insurance Code, is repealed.

ARTICLE 4.  TRANSITIONS

SECTION 4.01.  On January 1, 2020, the operations and administration of business of the Fair Access to Insurance Requirements Plan, including claims handling, are transferred to the Texas Windstorm Insurance Association. A policy delivered, issued for delivery, or renewed by the plan before January 1, 2020, remains in force until the expiration of the policy period or until the policy is otherwise terminated and all premium and other amounts due under the policy are payable to the association instead of the plan but are otherwise payable under the terms of the policies. Money collected by the association under this section must be used for the payment of claims and other expenses and the satisfaction of bond obligations to the same extent as if it had been collected by the Fair Access to Insurance Requirements Plan under Chapter 2211, Insurance Code, as it existed before repeal by this Act. In operating and administering the business of the plan, the association shall, to the greatest extent possible, preserve the rights of policyholders under policies in effect before January 1, 2020, under:

(1)  the terms of the policies; and

(2)  Chapter 2211, Insurance Code, and the plan of operation of the plan as they existed before the effective date of this Act.

SECTION 4.02.  All money, property, contracts, leases, rights, accounts payable and receivable, debts, and obligations of the Fair Access to Insurance Requirements Plan are transferred to the Texas Windstorm Insurance Association.

SECTION 4.03.  (a)  All money collected or held for the satisfaction of bond obligations, if any, incurred under Chapter 2211, Insurance Code, as that chapter existed immediately before the effective date of this Act, including money held in the Texas Treasury Safekeeping Trust Company, shall be used to satisfy the bond obligations for which the money is held or collected and related expenses.

(b)  Subchapter E, Chapter 2211, Insurance Code, as it existed before the effective date of this Act, is applicable to bond obligations incurred under Chapter 2211, Insurance Code, before the effective date of this Act, except that the Texas Windstorm Insurance Association shall act in lieu of the Fair Access to Insurance Requirements Plan under that subchapter and any amount required to be collected under that subchapter from a policyholder of the Fair Access to Insurance Requirements Plan shall be collected from a residential property insurance policyholder of the Texas Windstorm Insurance Association. Subchapter E, Chapter 2211, Insurance Code, as it existed before the effective date of this Act, is continued in effect for that purpose.

SECTION 4.04.  The transfer of the assets and obligations of the Fair Access to Insurance Requirements Plan may not diminish or impair the rights of a holder of an outstanding bond or other obligation of the plan.

SECTION 4.05.  All complaint, investigation, legal, or other proceedings involving the Fair Access to Insurance Requirements Plan pending on January 1, 2020, are transferred to the Texas Windstorm Insurance Association, and, as necessary, the association shall be substituted for the plan as a party to a proceeding.

SECTION 4.06.  (a)  The governing committee of the Fair Access to Insurance Requirements Plan established under Section 2211.052, Insurance Code, as that section existed before repeal by this Act, is abolished effective January 1, 2020.

(b)  The term of a person who is serving as a member of the governing committee of the Fair Access to Insurance Requirements Plan immediately before the abolition of that committee under Subsection (a) of this section expires on January 1, 2020.

(c)  The provisions of the plan of operation adopted under Subchapter E-1, Chapter 2210, Insurance Code, as added by this Act, must provide that the Texas Windstorm Insurance Association issue residential property insurance policies under that chapter not later than January 1, 2020.

(d)  The commissioner of insurance shall adopt rules necessary to ensure that the Texas Windstorm Insurance Association issue residential property insurance policies under Subchapter E-1, Chapter 2210, Insurance Code, as added by this Act, not later than January 1, 2020.

SECTION 4.07.  A reference in law to the Texas FAIR plan association or the Fair Access to Insurance Requirements Plan means the Texas Windstorm Insurance Association.

SECTION 4.08.  This Act takes effect September 1, 2019.