By:  Oliverson, et al. (Senate Sponsor - Middleton) H.B. No. 1588

(In the Senate - Received from the House May 3, 2023; May 4, 2023, read first time and referred to Committee on Business & Commerce; May 18, 2023, reported adversely, with favorable Committee Substitute by the following vote: Yeas 9, Nays 0; May 18, 2023, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Schwertner           X

King                 X

Birdwell                       X

Campbell             X

Creighton            X

Johnson              X

Kolkhorst                      X

Menéndez             X

Middleton            X

Nichols              X

Zaffirini            X

COMMITTEE SUBSTITUTE FOR H.B. No. 1588 By:  Middleton

A BILL TO BE ENTITLED

AN ACT

relating to funding of excess losses and operating expenses of the Texas Windstorm Insurance Association; authorizing an assessment; authorizing a surcharge.

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

ARTICLE 1. FUNDING OF INSURED LOSSES AND OPERATING EXPENSES OF TEXAS WINDSTORM INSURANCE ASSOCIATION

SECTION 1.01.  Section 404.0241, Government Code, is amended by amending Subsections (b-2), (b-4), and (b-5) and adding Subsections (f), (g), and (h) to read as follows:

(b-2)  A person may not bring a civil action against this state, the Texas Treasury Safekeeping Trust Company, or an employee, independent contractor, or official of this state, including the comptroller, for any claim, including breach of fiduciary duty or violation of any constitutional, statutory, or regulatory requirement, in connection with any action, inaction, decision, divestment, investment, report, or other determination made or taken in connection with this section [~~Subsections (b-1), (b-4), and (b-5)~~].

(b-4)  The comptroller shall manage the investments described [~~required~~] by Subsections [~~Subsection~~] (b-1) and (g) as [~~a~~] separate investment portfolios [~~portfolio~~]. The comptroller shall provide separate accounting and reporting for the investments in each of those portfolios [~~that portfolio~~]. The comptroller shall credit to each [~~that~~] portfolio all payments, distributions, interest, and other earnings on the investments in that portfolio.

(b-5)  The comptroller has any power necessary to accomplish the purposes of managing and investing the assets of a [~~the~~] portfolio described by Subsection (b-4). In managing the assets of that portfolio, through procedures and subject to restrictions the comptroller considers appropriate, the comptroller may acquire, sell, transfer, or otherwise assign the investments as appropriate, taking into consideration the purposes, terms, distribution requirements, and other circumstances of that portfolio then prevailing.

(f)  Notwithstanding any other law, directly or indirectly through a separately managed account or other investment vehicle, the comptroller may invest an amount not to exceed $1 billion of the economic stabilization fund balance in accordance with this section and Chapter 2210, Insurance Code.

(g)  For purposes of Subsection (f), the comptroller may enter into an investment arrangement with the Texas Windstorm Insurance Association to provide the association an amount not to exceed $1 billion in funding for each catastrophe year in accordance with Subchapter M-1, Chapter 2210, Insurance Code, after a catastrophic event to fund the association's losses and operational expenses arising from the catastrophic event in excess of the association's premium and other revenue, available reserves, the catastrophe reserve trust fund, and member assessments authorized under Section 2210.083.

(h)  An investment arrangement entered into under Subsection (g):

(1)  must be secured and repaid by catastrophe surcharges under Subchapter M-2, Chapter 2210, Insurance Code;

(2)  must include interest at a rate equal to the three-year United States treasury note rate plus at least four percent; and

(3)  may not exceed 36 months to maturity.

SECTION 1.02.  Section 2210.0081, Insurance Code, is amended to read as follows:

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

(1)  the association's inability to satisfy obligations under Subchapter M or M-1 related to the issuance of public securities under this chapter or an investment arrangement with this state, as applicable, constitutes a condition that makes the association's continuation in business hazardous to the public or to the association's policyholders for the purposes of Section 441.052;

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

(3)  unless the commissioner takes further action against the association under Chapter 441, as a condition of release from supervision, the association must demonstrate to the satisfaction of the commissioner that the association is able to satisfy obligations under Subchapter M or M-1 related to the issuance of public securities under this chapter or an investment arrangement with this state, as applicable.

SECTION 1.03.  The heading to Subchapter B-1, Chapter 2210, Insurance Code, is amended to read as follows:

SUBCHAPTER B-1. PAYMENT OF LOSSES INCURRED BEFORE JANUARY 1, 2024

SECTION 1.04.  Subchapter B-1, Chapter 2210, Insurance Code, is amended by adding Section 2210.070 to read as follows:

Sec. 2210.070.  APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies only to the payment of losses and operating expenses of the association for a catastrophe year that occurs before January 1, 2024, and results in excess losses and operating expenses incurred by the association before January 1, 2024.

(b)  Payment of excess losses and operating expenses of the association incurred after December 31, 2023, shall be paid as provided by Subchapter B-2.

SECTION 1.05.  Section 2210.071(a), Insurance Code, is amended to read as follows:

(a)  If, in a catastrophe year before January 1, 2024, an occurrence or series of occurrences in a catastrophe area results in insured losses and operating expenses of the association in excess of premium and other revenue of the association, the excess losses and operating expenses shall be paid as provided by this subchapter.

SECTION 1.06.  Section 2210.0715(b), Insurance Code, is amended to read as follows:

(b)  Proceeds of public securities issued, an investment arrangement entered into, or assessments made before January 1, 2024, or as a result of any occurrence or series of occurrences in a catastrophe year that occurs before January 1, 2024, and results in insured losses before that date may not be included in reserves available for a subsequent catastrophe year for purposes of this section or Section 2210.082 unless approved by the commissioner.

SECTION 1.07.  The heading to Section 2210.075, Insurance Code, is amended to read as follows:

Sec. 2210.075.  REINSURANCE BY MEMBERS.

SECTION 1.08.  Subchapter B-1, Chapter 2210, Insurance Code, is amended by adding Section 2210.076 to read as follows:

Sec. 2210.076.  PAYMENT FROM STATE INVESTMENT ARRANGEMENTS. (a) Notwithstanding the provisions of this subchapter to the contrary, the association may pay losses the association would otherwise pay as provided by Section 2210.072, 2210.073, or 2210.0741 by entering into one or more investment arrangements with this state as provided by Subchapter M-1 of this chapter and Section 404.0241, Government Code.

(b)  Subchapter M-2 applies to the financing of losses under this section to the extent necessary to secure and repay a debt obligation to the state under an investment arrangement entered into with this state under this section.

(c)  An investment arrangement described by Subsection (a) may also be used for a purpose described by Section 2210.072(d) in the same manner as a financing arrangement with a market source.

SECTION 1.09.  Chapter 2210, Insurance Code, is amended by adding Subchapter B-2 to read as follows:

SUBCHAPTER B-2. PAYMENT OF EXCESS LOSSES AND OPERATING EXPENSES

Sec. 2210.080.  APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies only to the payment of losses and operating expenses of the association for a catastrophe year that occurs after December 31, 2023, and results in excess losses and operating expenses incurred by the association after December 31, 2023.

(b)  This section expires September 1, 2025.

Sec. 2210.081.  PAYMENT OF EXCESS LOSSES. (a) If, in a catastrophe year, an occurrence or series of occurrences in a catastrophe area results in insured losses and operating expenses of the association in excess of premium and other revenue of the association, the excess losses and operating expenses shall be paid as provided by this subchapter.

(b)  The association may not pay insured losses and operating expenses resulting from an occurrence or series of occurrences in a catastrophe year with premium and other revenue earned in a subsequent year.

Sec. 2210.082.  PAYMENT FROM RESERVES AND TRUST FUND. (a) The association shall pay insured losses and operating expenses resulting from an occurrence or series of occurrences in a catastrophe year in excess of premium and other revenue of the association for that catastrophe year from reserves of the association available before or accrued during that catastrophe year and amounts in the catastrophe reserve trust fund available before or accrued during that catastrophe year.

(b)  Proceeds of public securities issued or assessments made before or as a result of any occurrence or series of occurrences in a catastrophe year that results in insured losses may not be included in reserves available for a subsequent catastrophe year for purposes of this section.

Sec. 2210.083.  PAYMENT FROM MEMBER ASSESSMENTS. (a) Insured losses and operating expenses for a catastrophe year not paid under Section 2210.082 shall be paid as provided by this section from member assessments not to exceed $1 billion for that catastrophe year.

(b)  The board of directors shall notify each association member of the amount of the member's assessment under this section. The proportion of the insured losses and operating expenses allocable to each insurer under this section shall be determined in the manner used to determine each insurer's participation in the association for the year under Section 2210.052.

(c)  An association member may not recoup an assessment paid under this section through a premium surcharge or tax credit.

Sec. 2210.084.  PAYMENT FROM STATE INVESTMENT ARRANGEMENTS. For insured losses and operating expenses for a catastrophe year not paid under Section 2210.082 or 2210.083, the association shall enter into one or more investment arrangements totaling not more than $1 billion with the state as provided by Subchapter M-1 of this chapter and Section 404.0241, Government Code.

Sec. 2210.085.  PAYMENT FROM PUBLIC SECURITIES. (a) Insured losses and operating expenses for a catastrophe year not paid under Section 2210.082, 2210.083, or 2210.084 shall be paid from the proceeds from public securities issued in accordance with Subchapter M before, on, or after the date of any occurrence or series of occurrences that results in insured losses. Public securities described by this section must be paid within a period not to exceed 14 years and may be paid sooner if the board of directors elects to do so and the commissioner approves.

(b)  Public securities described by Subsection (a) that are issued before an occurrence or series of occurrences that results in incurred losses:

(1)  may be issued on the request of the board of directors with the approval of the commissioner; and

(2)  may not, in the aggregate, exceed $1 billion at any one time, regardless of the calendar year or years in which the outstanding public securities were issued.

(c)  Public securities described by Subsection (a):

(1)  shall be issued as necessary in a principal amount not to exceed $1 billion per catastrophe year, in the aggregate, for securities issued during that catastrophe year before the occurrence or series of occurrences that results in incurred losses in that year and securities issued on or after the date of that occurrence or series of occurrences, and regardless of whether for a single occurrence or a series of occurrences; and

(2)  subject to the maximum described by Subdivision (1), may be issued, in one or more issuances or tranches, during the calendar year in which the occurrence or series of occurrences occurs or, if the public securities cannot reasonably be issued in that year, during the following calendar year.

(d)  If public securities are issued as described by this section, the public securities shall be repaid in the manner prescribed by Subchapter M.

(e)  The association may borrow from, or enter into other financing arrangements with, any market source, under which the market source makes interest-bearing loans or other financial instruments to the association to enable the association to pay losses under this section or to obtain public securities under this section. For purposes of this subsection, financial instruments includes commercial paper.

(f)  The proceeds of any outstanding public securities described by Subsection (a) that are issued before an occurrence or series of occurrences, together with the proceeds of any outstanding public securities issued on or before December 31, 2023, shall be depleted before the proceeds of any securities issued after an occurrence or series of occurrences may be used. This subsection does not prohibit the association from issuing securities after an occurrence or series of occurrences before the proceeds of outstanding public securities issued during a previous catastrophe year have been depleted.

(g)  If, under Subsection (f), the proceeds of any outstanding public securities issued during a previous catastrophe year, together with the proceeds of any outstanding public securities issued on or before December 31, 2023, must be depleted, those proceeds shall count against the limit on public securities described by this section in the catastrophe year in which the proceeds must be depleted.

Sec. 2210.086.  REINSURANCE BY MEMBERS FOR MEMBER ASSESSMENTS. (a) Before any occurrence or series of occurrences, an association member may purchase reinsurance to cover an assessment for which the member would otherwise be liable under this subchapter.

(b)  An association member must notify the board of directors, in the manner prescribed by the association, whether the member will be purchasing reinsurance. If the member does not purchase reinsurance under this section, the member remains liable for any assessment imposed under this subchapter.

SECTION 1.10.  Section 2210.355(b), Insurance Code, is amended to read as follows:

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

(1)  the past and prospective loss experience within and outside this state of hazards for which insurance is made available through the plan of operation, if any;

(2)  expenses of operation, including acquisition costs;

(3)  a reasonable margin for profit and contingencies;

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

(5)  payment of obligations related to an investment arrangement with this state under Subchapter M-1 of this chapter and Section 404.0241, Government Code, including the additional amount of any related debt service determined by the association to be required for the investment arrangement; and

(6)  all other relevant factors, within and outside this state.

SECTION 1.11.  Section 2210.452(b), Insurance Code, is amended to read as follows:

(b)  All money, including investment income, deposited in the trust fund constitutes state funds until disbursed as provided by this chapter and commissioner rules. The comptroller shall hold the money outside the state treasury on behalf of, and with legal title in, the department on behalf of the association. The department shall keep and maintain the trust fund in accordance with this chapter and commissioner rules. The comptroller, as custodian of the trust fund, shall administer the trust fund strictly and solely as provided by this chapter and commissioner rules. The association may include the amounts held in the catastrophe reserve trust fund as an admitted asset in the financial statements of the association.

SECTION 1.12.  Section 2210.4521(a), Insurance Code, is amended to read as follows:

(a)  The comptroller shall invest in accordance with the investment standard described by Section 404.024(j), Government Code, the portion of the trust fund balance that exceeds the amount of the sufficient balance determined under Subsection (b). The comptroller's investment of that portion of the balance is not subject to any other limitation or other requirement provided by Section 404.024, Government Code. The Texas Treasury Safekeeping Trust Company and board of directors may recommend investments to protect the trust fund and create investment income.

SECTION 1.13.  Section 2210.453, Insurance Code, is amended by adding Subsection (a-1) to read as follows:

(a-1)  The association may obtain reinsurance at any level including excess of loss, quota share, and other forms of reinsurance to protect the solvency and viability of the association. The commissioner may consult with the board of directors regarding methods to protect the solvency and continued viability of the association, including by protecting the minimum balance, acquiring reinsurance, or by other means.

SECTION 1.14.  Subchapter J, Chapter 2210, Insurance Code, is amended by adding Section 2210.4531 to read as follows:

Sec. 2210.4531.  DETERMINATION OF PROBABLE MAXIMUM LOSS. (a) The association shall file with the department a proposed probable maximum loss, subject to Section 2210.453.

(b)  In determining the probable maximum loss, the association:

(1)  shall, to the extent possible, contract with any disinterested third parties necessary to execute any catastrophe models that were executed in the preceding storm season;

(2)  shall, if the association is unable to contract for the execution of a catastrophe model described by Subdivision (1), contract with any disinterested third party necessary to execute a catastrophe model that is substantially similar to the model for which the association is unable to contract under Subdivision (1);

(3)  may contract with any disinterested third parties to execute catastrophe models in addition to the models required under Subdivisions (1) and (2);

(4)  shall provide to a disinterested third party executing a catastrophe model any information necessary to comply with this subsection;

(5)  may not use a combination of catastrophe models to determine the probable maximum loss; and

(6)  may use only the catastrophe model that produces the lowest probable maximum loss.

(c)  The association shall make any information produced in compliance with Subsection (b) publicly available on the association's Internet website.

(d)  The association may only use a probable maximum loss that is approved by the commissioner. The commissioner may reject a probable maximum loss filed with the department by the association and set a probable maximum loss at any amount determined by the commissioner.

SECTION 1.15.  Effective January 1, 2024, Section 2210.602, Insurance Code, is amended by amending Subdivision (7) and adding Subdivision (12) to read as follows:

(7)  "Public security" means a debt instrument or other public security authorized to be issued under Section 2210.085 and issued by the Texas Public Finance Authority, including a commercial paper program authorized before the occurrence of a catastrophic event.

(12)  "Public security trust fund" means the dedicated trust fund established by the board and held by the Texas Treasury Safekeeping Trust Company into which premium surcharges collected under Section 2210.612 for the purpose of paying public securities are deposited.

SECTION 1.16.  Effective January 1, 2024, Section 2210.604(a), Insurance Code, is amended to read as follows:

(a)  In accordance with and subject to the limitations provided by Section 2210.085, at [~~At~~] the request of the association and with the approval of the commissioner, the Texas Public Finance Authority shall issue [~~Class 1, Class 2, or Class 3~~] public securities. The association shall submit to the commissioner a cost-benefit analysis of various financing methods and funding structures when requesting the issuance of public securities under this subsection.

SECTION 1.17.  Effective January 1, 2024, Sections 2210.608(a) and (c), Insurance Code, are amended to read as follows:

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

(1)  pay incurred claims and operating expenses of the association in accordance with Section 2210.085;

(2)  purchase reinsurance for the association;

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

(4)  provide a public security reserve;

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

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

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

(c)  Notwithstanding Subsection (a)(2), the proceeds from public securities issued under Section 2210.085 [~~2210.072~~] before an occurrence or series of occurrences that results in incurred losses, including investment income, may not be used to purchase reinsurance for the association.

SECTION 1.18.  Effective January 1, 2024, Sections 2210.609(a), (c), (d), and (e), Insurance Code, are amended to read as follows:

(a)  The board and the association shall enter into an agreement under which the association shall provide for the payment of all public security obligations from available funds collected by the association and deposited as required by this subchapter. If the association determines that it is unable to pay the public security obligations and public security administrative expenses, if any, with available funds, the association shall pay those obligations and expenses in accordance with Section [~~Sections~~] 2210.612[~~, 2210.613, and 2210.6131 as applicable~~]. Public [~~Class 1, Class 2, or Class 3 public~~] securities may be issued on a parity or subordinate lien basis with other [~~Class 1, Class 2, or Class 3~~] public securities[~~, respectively~~].

(c)  The association shall deposit all revenue collected under Section 2210.612 in the [~~Class 1~~] public security trust fund [~~, all revenue collected under Section 2210.613 in the Class 2 public security trust fund, and all revenue collected under Section 2210.6131 in the Class 3 public security trust fund~~]. Money deposited in the [~~a~~] fund may be invested as permitted by general law. Money in the [~~a~~] fund required to be used to pay public security obligations and public security administrative expenses, if any, shall be transferred to the appropriate funds in the manner and at the time specified in the proceedings authorizing the public securities to ensure timely payment of obligations and expenses. This may include the board establishing funds and accounts with the comptroller that the board determines are necessary to administer and repay the public security obligations. If the association has not transferred amounts sufficient to pay the public security obligations to the board's designated interest and sinking fund in a timely manner, the board may direct the Texas Treasury Safekeeping Trust Company to transfer from the [~~Class 1~~] public security trust fund [~~, the Class 2 public security trust fund, or the Class 3 public security trust fund~~] to the appropriate account the amount necessary to pay the public security obligation.

(d)  The association shall provide for the payment of the public security obligations and the public security administrative expenses by irrevocably pledging revenues received from premiums, premium surcharges, and amounts on deposit in the [~~Class 1~~] public security trust fund, [~~the Class 2 public security trust fund, and the Class 3 public security trust fund,~~] together with any public security reserve fund, as provided in the proceedings authorizing the public securities and related credit agreements.

(e)  An amount owed by the board under a credit agreement shall be payable from and secured by a pledge of revenues received by the association from the [~~Class 1~~] public security trust fund [~~, the Class 2 public security trust fund, and the Class 3 public security trust fund~~] to the extent provided in the proceedings authorizing the credit agreement.

SECTION 1.19.  Effective January 1, 2024, Section 2210.610(a), Insurance Code, is amended to read as follows:

(a)  Revenues received from the premium surcharges under Section [~~Sections~~] 2210.612[~~, 2210.613, and 2210.6131~~] may be applied only as provided by this subchapter.

SECTION 1.20.  Effective January 1, 2024, Section 2210.611, Insurance Code, is amended to read as follows:

Sec. 2210.611.  EXCESS REVENUE COLLECTIONS AND INVESTMENT EARNINGS.  Revenue collected in any calendar year from a premium surcharge under Section [~~Sections~~] 2210.612 [~~, 2210.613, and 2210.6131~~] that exceeds the amount of the public security obligations and public security administrative expenses payable in that calendar year and interest earned on the funds may, in the discretion of the association, be:

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

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

(3)  deposited in the catastrophe reserve trust fund.

SECTION 1.21.  Effective January 1, 2024, the heading to Section 2210.612, Insurance Code, is amended to read as follows:

Sec. 2210.612.  PAYMENT OF [~~CLASS 1~~] PUBLIC SECURITIES.

SECTION 1.22.  Effective January 1, 2024, Sections 2210.612(a) and (e), Insurance Code, are amended to read as follows:

(a)  The association shall pay [~~Class 1~~] public securities issued under Section 2210.085 [~~2210.072~~] from:

(1)  net premium and other revenue; and

(2)  if net premium and other revenue are not sufficient to pay the securities, a catastrophe area premium surcharge collected in accordance with this section.

(e)  The association may enter financing arrangements as described by Section 2210.085(e) [~~2210.072(d)~~] as necessary to obtain public securities issued under Section 2210.085 [~~2210.072~~]. Nothing in this subsection shall prevent the authorization and creation of one or more programs for the issuance of commercial paper before the date of an occurrence or series of occurrences that results in insured losses under Section 2210.085(a) [~~2210.072(a)~~].

SECTION 1.23.  Effective January 1, 2024, the heading to Section 2210.6132, Insurance Code, is amended to read as follows:

Sec. 2210.6132.  CONTINGENT SOURCE OF PAYMENT FOR [~~CLASS 2 AND CLASS 3~~] PUBLIC SECURITIES.

SECTION 1.24.  Effective January 1, 2024, Sections 2210.6132(a) and (b), Insurance Code, are amended to read as follows:

(a)  The commissioner may determine, in consultation with the board and the authority, that:

(1)  the authority is unable to issue [~~Class 2 or Class 3~~] public securities to be payable under Section 2210.612 [~~2210.613 or 2210.6131, as applicable~~]; or

(2)  the issuance of [~~Class 2 or Class 3~~] public securities to be payable under Section 2210.612 [~~2210.613 or 2210.6131, as applicable,~~] is financially unreasonable for the association.

(b)  If the commissioner makes a determination under Subsection (a), the commissioner shall order the [~~Class 2 or Class 3~~] public securities[~~, as applicable,~~] to be paid by a premium surcharge assessed by each insurer, the association, and the Texas FAIR Plan Association on all policyholders of policies that are in effect on or after the 180th day after the date the commissioner issues the order.  The premium surcharge must be set in an amount sufficient to pay all debt service not already covered by available funds and all related expenses on the public securities.

SECTION 1.25.  Effective January 1, 2024, Section 2210.614, Insurance Code, is amended to read as follows:

Sec. 2210.614.  REFINANCING PUBLIC SECURITIES. The association may request the board to refinance any public securities issued in accordance with Section 2210.085 [~~Subchapter B-1, whether Class 1, Class 2, or Class 3 public securities,~~] with public securities payable from the same sources as the original public securities.

SECTION 1.26.  Chapter 2210, Insurance Code, is amended by adding Subchapters M-1 and M-2 to read as follows:

SUBCHAPTER M-1. STATE CATASTROPHE INVESTMENT ARRANGEMENTS

Sec. 2210.631.  STATE CATASTROPHE INVESTMENT ARRANGEMENTS. The legislature has determined that providing catastrophe investment arrangements to the association by permitting the association to enter into those arrangements with this state is an acceptable use of state money and provides an efficient method for the association to pay losses following a catastrophic event.

Sec. 2210.632.  CATASTROPHE INVESTMENT ARRANGEMENT AUTHORIZED; LIMITS. The association may enter into an investment arrangement with this state as provided by Section 404.0241, Government Code, for not more than $1 billion after a catastrophic event that depletes the catastrophe reserve fund and member assessments imposed under Section 2210.083.

SUBCHAPTER M-2. CATASTROPHE SURCHARGE

Sec. 2210.641.  DEFINITION. In this subchapter, "catastrophic event" means an occurrence or a series of occurrences that:

(1)  occurs in a catastrophe area during a calendar year; and

(2)  results in insured losses and operating expenses of the association in excess of premium and other revenue of the association.

Sec. 2210.642.  APPLICABILITY OF SUBCHAPTER. (a) Notwithstanding Section 2210.006, this subchapter applies to an insurer that is:

(1)  an insurer authorized to engage in the business of insurance in this state that is required to be a member of the association, including a farm mutual insurance company that is a fronting insurer as defined by Section 221.001(c);

(2)  a farm mutual insurance company that is not a fronting insurer as defined by Section 221.001(c) only for purposes of the collection of surcharges authorized by this subchapter;

(3)  an unaffiliated eligible surplus lines insurer writing the lines of business subject to a premium surcharge under this subchapter;

(4)  the association; and

(5)  the FAIR Plan Association.

(b)  A premium surcharge under this subchapter applies to:

(1)  a policy written under the following lines of insurance:

(A)  fire and allied lines;

(B)  farm and ranch owners; and

(C)  residential property insurance; and

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

Sec. 2210.6425.  CONSTRUCTION OF SUBCHAPTER. (a) This subchapter may not be construed to require an insurer to be an association member if the insurer is not otherwise required to be a member under Section 2210.052.

(b)  A farm mutual insurance company that is not a fronting insurer as defined by Section 221.001(c) is not a member of the association as a result of the company's collection of surcharges authorized by this subchapter or for any other reason.

Sec. 2210.643.  ANNUAL FINANCIAL REPORT BY COMMISSIONER. The commissioner shall determine the amount available in the catastrophe reserve trust fund as of December 31 of each year and provide a written report to the governor, lieutenant governor, and speaker of the house of representatives that includes:

(1)  the amount available in the catastrophe reserve trust fund; and

(2)  information regarding the current financial condition of the association.

Sec. 2210.6435.  CATASTROPHE SURCHARGES. (a) The commissioner, in consultation with the board of directors, may order a catastrophe surcharge effective on the closing date of an investment arrangement with this state and as provided by this subchapter only if, after a catastrophic event:

(1)  the commissioner determines that the association has depleted its reserves, other money, the catastrophe reserve trust fund, and member assessments in the amount of $1 billion imposed under Section 2210.083; and

(2)  the association intends to enter into an investment arrangement with this state under Subchapter M-1 that is the basis for the surcharge.

(b)  The commissioner, in consultation with the board of directors, shall set the catastrophe surcharge as a percentage of premium to be collected by each insurer to which this subchapter applies.

(c)  The total amount authorized to be collected under this section for any catastrophe surcharge may not exceed the amount needed to satisfy the terms of the investment arrangement entered into with this state under Subchapter M-1 that is the basis for the surcharge.

(d)  The catastrophe surcharge percentage must be set in an amount sufficient, including a reserve amount, to satisfy the terms of the investment arrangement entered into with this state under Subchapter M-1 that is the basis for the surcharge. The commissioner shall review the catastrophe surcharge percentage semiannually and adjust the percentage as necessary to ensure amounts collected will be sufficient to satisfy the terms of the investment arrangement. The association will provide a semiannual report to the commissioner and comptroller in the form and manner prescribed by the commissioner of the premium assessed and collected and its sufficiency to satisfy the terms of the investment arrangement. The commissioner may set the surcharge as a percentage of premium to collect the needed aggregate amount over a period of time not to exceed three years.

(e)  A catastrophe surcharge authorized under this section shall be assessed by insurers on all policyholders of policies that are subject to this subchapter.

(f)  A catastrophe surcharge under this subchapter is a separate charge in addition to the premiums collected and is not subject to premium tax or commissions.

(g)  Failure by a policyholder to pay a catastrophe surcharge constitutes failure to pay premium for purposes of policy cancellation.

(h)  A catastrophe surcharge is not refundable if the policy is canceled or terminated.

Sec. 2210.644.  CATASTROPHE SURCHARGE PROCEEDS. The proceeds of a catastrophe surcharge authorized under this subchapter shall be deposited into the catastrophe reserve trust fund or an account designated by the comptroller for purposes of satisfying the terms of the investment arrangement that is the basis for the surcharge, and the proceeds shall be paid to this state under the terms of the investment arrangement until the terms are fully satisfied.

Sec. 2210.6445.  DISCLOSURE OF SURCHARGE. Each policy that is assessed a surcharge under this subchapter shall contain the following prominent disclosure in the documents attached to the policy:

"A CATASTROPHE SURCHARGE HAS BEEN INCLUDED ON YOUR POLICY. THIS SURCHARGE WILL BE USED TO REPAY STATE MONEY USED BY THE TEXAS WINDSTORM INSURANCE ASSOCIATION TO PAY FOR LOSSES AFTER A CATASTROPHIC EVENT, INCLUDING A HURRICANE. THE SURCHARGE IS NOT REFUNDABLE IF YOU CANCEL OR TERMINATE THIS POLICY."

Sec. 2210.645.  EXEMPTION FROM TAXATION. A surcharge collected under this subchapter is exempt from taxation by this state or a municipality or other political subdivision of this state.

Sec. 2210.6455.  LIMITATION OF PERSONAL LIABILITY. The association members, the insurers required to collect a surcharge under this subchapter, members of the board of directors, association employees, the commissioner, and department employees are not personally liable as a result of exercising the rights and responsibilities granted under this subchapter.

Sec. 2210.646.  EXEMPTION FROM SURCHARGE. An insurer may not collect a surcharge authorized under this subchapter on any policy issued to this state, an agency of this state, or a political subdivision of this state.

SECTION 1.27.  (a) Effective January 1, 2024, the following provisions of the Insurance Code are repealed:

(1)  Sections 2210.602(2), (2-a), (3), (3-a), (4), and (4-a);

(2)  Section 2210.613; and

(3)  Section 2210.6131.

(b)  Effective September 1, 2025, Subchapter B-1, Chapter 2210, Insurance Code, is repealed.

SECTION 1.28.  As soon as practicable after the effective date of this Act and not later than December 1, 2023, the commissioner of insurance shall adopt rules necessary to implement Subchapter M, Insurance Code, as amended by this Act, and Subchapters B-2 and M-2, Insurance Code, as added by this Act.

ARTICLE 2. CONFORMING AMENDMENTS

SECTION 2.01.  (a) Section 2210.056(b), Insurance Code, is amended to read as follows:

(b)  The association's assets 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 made on policies written by the association;

(2)  make investments authorized under applicable law;

(3)  pay reasonable and necessary administrative expenses incurred in connection with the operation of the association and the processing of claims against the association;

(4)  satisfy, in whole or in part, the obligations of the association incurred in connection with Subchapters B-1, B-2, J, [~~and~~] M, and M-2, including reinsurance, public securities, and financial instruments; or

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

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

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

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

(b)  Effective September 1, 2025, Section 2210.056(b), Insurance Code, is amended to read as follows:

(b)  The association's assets 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 made on policies written by the association;

(2)  make investments authorized under applicable law;

(3)  pay reasonable and necessary administrative expenses incurred in connection with the operation of the association and the processing of claims against the association;

(4)  satisfy, in whole or in part, the obligations of the association incurred in connection with Subchapters B-2 [~~B-1~~], J, [~~and~~] M, and M-2, including reinsurance, public securities, and financial instruments; or

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

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

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

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

SECTION 2.02.  (a) Section 2210.1052, Insurance Code, is amended to read as follows:

Sec. 2210.1052.  EMERGENCY MEETING. If the ultimate loss estimate for an occurrence or series of occurrences made by the chief financial officer or chief actuary of the association indicates member insurers may be subject to an assessment under Subchapter B-1 or B-2, the board of directors shall call an emergency meeting to notify the member insurers about the assessment.

(b)  Effective September 1, 2025, Section 2210.1052, Insurance Code, is amended to read as follows:

Sec. 2210.1052.  EMERGENCY MEETING. If the ultimate loss estimate for an occurrence or series of occurrences made by the chief financial officer or chief actuary of the association indicates member insurers may be subject to an assessment under Subchapter B-2 [~~B-1~~], the board of directors shall call an emergency meeting to notify the member insurers about the assessment.

SECTION 2.03.  Section 2210.363(a), Insurance Code, is amended to read as follows:

(a)  The association may offer a person insured under this chapter an actuarially justified premium discount on a policy issued by the association, or an actuarially justified credit against a surcharge assessed against the person, other than a surcharge assessed under Subchapter M or M-2, if:

(1)  the construction, alteration, remodeling, enlargement, or repair of, or an addition to, insurable property exceeds applicable building code standards set forth in the plan of operation; or

(2)  the person elects to purchase a binding arbitration endorsement under Section 2210.554.

SECTION 2.04.  (a) Sections 2210.452(a) and (d), Insurance Code, are amended to read as follows:

(a)  The commissioner shall adopt rules under which the association makes payments to the catastrophe reserve trust fund. Except as otherwise specifically provided by this section, the trust fund may be used only for purposes directly related to funding the payment of insured losses, including:

(1)  funding the obligations of the trust fund under Subchapters [~~Subchapter~~] B-1 and B-2; and

(2)  purchasing reinsurance or using alternative risk financing mechanisms under Section 2210.453.

(d)  The commissioner by rule shall establish the procedure relating to the disbursement of money from the trust fund to policyholders and for association administrative expenses directly related to funding the payment of insured losses in the event of an occurrence or series of occurrences within a catastrophe area that results in a disbursement under Subchapter B-1 or B-2.

(b)  Effective September 1, 2025, Sections 2210.452(a) and (d), Insurance Code, are amended to read as follows:

(a)  The commissioner shall adopt rules under which the association makes payments to the catastrophe reserve trust fund. Except as otherwise specifically provided by this section, the trust fund may be used only for purposes directly related to funding the payment of insured losses, including:

(1)  funding the obligations of the trust fund under Subchapter B-2 [~~B-1~~]; and

(2)  purchasing reinsurance or using alternative risk financing mechanisms under Section 2210.453.

(d)  The commissioner by rule shall establish the procedure relating to the disbursement of money from the trust fund to policyholders and for association administrative expenses directly related to funding the payment of insured losses in the event of an occurrence or series of occurrences within a catastrophe area that results in a disbursement under Subchapter B-2 [~~B-1~~].

SECTION 2.05.  (a) Sections 2210.453(b) and (c), Insurance Code, are amended to read as follows:

(b)  The association shall maintain total available loss funding in an amount not less than the probable maximum loss for the association for a catastrophe year with a probability of one in 100. If necessary, the required funding level shall be achieved through the purchase of reinsurance or the use of alternative financing mechanisms, or both, to operate in addition to or in concert with the trust fund, public securities, financial instruments, investment arrangements, and assessments authorized by this chapter.

(c)  The attachment point for reinsurance purchased under this section may not be less than the aggregate amount of all funding available to the association under Subchapters [~~Subchapter~~] B-1 and B-2.

(b)  Effective September 1, 2025, Section 2210.453(c), Insurance Code, is amended to read as follows:

(c)  The attachment point for reinsurance purchased under this section may not be less than the aggregate amount of all funding available to the association under Subchapter B-2 [~~B-1~~].

ARTICLE 3. TRANSITION AND SAVINGS PROVISIONS

SECTION 3.01.  Notwithstanding the amendment by this Act of Subchapter M, Chapter 2210, Insurance Code, the repeal by this Act of Subchapter B-1, Chapter 2210, Insurance Code, and other changes in law made by this Act effective September 1, 2025:

(1)  the payment of excess losses and operating expenses of the Texas Windstorm Insurance Association incurred before January 1, 2024, is governed by the law as it existed on the effective date of this Act, and that law is continued in effect for that purpose;

(2)  the issuance of public securities to pay excess losses and operating expenses of the Texas Windstorm Insurance Association incurred before January 1, 2024, the use of the proceeds of those securities, the repayment or refinancing of those securities, and any other rights, obligations, or limitations with respect to those securities and proceeds of those securities are governed by the law as it existed on the effective date of this Act, and that law is continued in effect for that purpose; and

(3)  proceeds of any assessments made under Subchapter B-1, Chapter 2210, Insurance Code, may not be included in reserves available for a catastrophe year for purposes of Section 2210.082, Insurance Code, as added by this Act, unless approved by the commissioner of insurance.

ARTICLE 4. EFFECTIVE DATE

SECTION 4.01.  Except as otherwise provided by this Act, this Act takes effect September 1, 2023.

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