

1-1 By: Oliverson, et al. (Senate Sponsor - Middleton) H.B. No. 1588
 1-2 (In the Senate - Received from the House May 3, 2023;
 1-3 May 4, 2023, read first time and referred to Committee on Business
 1-4 & Commerce; May 18, 2023, reported adversely, with favorable
 1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
 1-6 May 18, 2023, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11			X	
1-12	X			
1-13	X			
1-14	X			
1-15			X	
1-16	X			
1-17	X			
1-18	X			
1-19	X			

1-20 COMMITTEE SUBSTITUTE FOR H.B. No. 1588 By: Middleton

1-21 A BILL TO BE ENTITLED
 1-22 AN ACT

1-23 relating to funding of excess losses and operating expenses of the
 1-24 Texas Windstorm Insurance Association; authorizing an assessment;
 1-25 authorizing a surcharge.

1-26 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-27 ARTICLE 1. FUNDING OF INSURED LOSSES AND OPERATING EXPENSES OF
 1-28 TEXAS WINDSTORM INSURANCE ASSOCIATION

1-29 SECTION 1.01. Section 404.0241, Government Code, is amended
 1-30 by amending Subsections (b-2), (b-4), and (b-5) and adding
 1-31 Subsections (f), (g), and (h) to read as follows:

1-32 (b-2) A person may not bring a civil action against this
 1-33 state, the Texas Treasury Safekeeping Trust Company, or an
 1-34 employee, independent contractor, or official of this state,
 1-35 including the comptroller, for any claim, including breach of
 1-36 fiduciary duty or violation of any constitutional, statutory, or
 1-37 regulatory requirement, in connection with any action, inaction,
 1-38 decision, divestment, investment, report, or other determination
 1-39 made or taken in connection with this section [~~Subsections (b-1),~~
 1-40 ~~(b-4), and (b-5)~~].

1-41 (b-4) The comptroller shall manage the investments
 1-42 described [~~required~~] by Subsections [~~Subsection~~] (b-1) and (g) as
 1-43 [a] separate investment portfolios [~~portfolio~~]. The comptroller
 1-44 shall provide separate accounting and reporting for the investments
 1-45 in each of those portfolios [~~that portfolio~~]. The comptroller
 1-46 shall credit to each [~~that~~] portfolio all payments, distributions,
 1-47 interest, and other earnings on the investments in that portfolio.

1-48 (b-5) The comptroller has any power necessary to accomplish
 1-49 the purposes of managing and investing the assets of a [~~the~~]
 1-50 portfolio described by Subsection (b-4). In managing the assets of
 1-51 that portfolio, through procedures and subject to restrictions the
 1-52 comptroller considers appropriate, the comptroller may acquire,
 1-53 sell, transfer, or otherwise assign the investments as appropriate,
 1-54 taking into consideration the purposes, terms, distribution
 1-55 requirements, and other circumstances of that portfolio then
 1-56 prevailing.

1-57 (f) Notwithstanding any other law, directly or indirectly
 1-58 through a separately managed account or other investment vehicle,
 1-59 the comptroller may invest an amount not to exceed \$1 billion of the
 1-60 economic stabilization fund balance in accordance with this section

2-1 and Chapter 2210, Insurance Code.
2-2 (g) For purposes of Subsection (f), the comptroller may
2-3 enter into an investment arrangement with the Texas Windstorm
2-4 Insurance Association to provide the association an amount not to
2-5 exceed \$1 billion in funding for each catastrophe year in
2-6 accordance with Subchapter M-1, Chapter 2210, Insurance Code, after
2-7 a catastrophic event to fund the association's losses and
2-8 operational expenses arising from the catastrophic event in excess
2-9 of the association's premium and other revenue, available reserves,
2-10 the catastrophe reserve trust fund, and member assessments
2-11 authorized under Section 2210.083.

2-12 (h) An investment arrangement entered into under Subsection
2-13 (g):
2-14 (1) must be secured and repaid by catastrophe
2-15 surcharges under Subchapter M-2, Chapter 2210, Insurance Code;
2-16 (2) must include interest at a rate equal to the
2-17 three-year United States treasury note rate plus at least four
2-18 percent; and
2-19 (3) may not exceed 36 months to maturity.

2-20 SECTION 1.02. Section 2210.0081, Insurance Code, is amended
2-21 to read as follows:

2-22 Sec. 2210.0081. CERTAIN ACTIONS BROUGHT AGAINST
2-23 ASSOCIATION BY COMMISSIONER. In an action brought by the
2-24 commissioner against the association under Chapter 441:

2-25 (1) the association's inability to satisfy obligations
2-26 under Subchapter M or M-1 related to the issuance of public
2-27 securities under this chapter or an investment arrangement with
2-28 this state, as applicable, constitutes a condition that makes the
2-29 association's continuation in business hazardous to the public or
2-30 to the association's policyholders for the purposes of Section
2-31 441.052;

2-32 (2) the time for the association to comply with the
2-33 requirements of supervision or for the conservator to complete the
2-34 conservator's duties, as applicable, is limited to three years from
2-35 the date the commissioner commences the action against the
2-36 association; and

2-37 (3) unless the commissioner takes further action
2-38 against the association under Chapter 441, as a condition of
2-39 release from supervision, the association must demonstrate to the
2-40 satisfaction of the commissioner that the association is able to
2-41 satisfy obligations under Subchapter M or M-1 related to the
2-42 issuance of public securities under this chapter or an investment
2-43 arrangement with this state, as applicable.

2-44 SECTION 1.03. The heading to Subchapter B-1, Chapter 2210,
2-45 Insurance Code, is amended to read as follows:

2-46 SUBCHAPTER B-1. PAYMENT OF LOSSES INCURRED BEFORE JANUARY 1, 2024

2-47 SECTION 1.04. Subchapter B-1, Chapter 2210, Insurance Code,
2-48 is amended by adding Section 2210.070 to read as follows:

2-49 Sec. 2210.070. APPLICABILITY OF SUBCHAPTER. (a) This
2-50 subchapter applies only to the payment of losses and operating
2-51 expenses of the association for a catastrophe year that occurs
2-52 before January 1, 2024, and results in excess losses and operating
2-53 expenses incurred by the association before January 1, 2024.

2-54 (b) Payment of excess losses and operating expenses of the
2-55 association incurred after December 31, 2023, shall be paid as
2-56 provided by Subchapter B-2.

2-57 SECTION 1.05. Section 2210.071(a), Insurance Code, is
2-58 amended to read as follows:

2-59 (a) If, in a catastrophe year before January 1, 2024, an
2-60 occurrence or series of occurrences in a catastrophe area results
2-61 in insured losses and operating expenses of the association in
2-62 excess of premium and other revenue of the association, the excess
2-63 losses and operating expenses shall be paid as provided by this
2-64 subchapter.

2-65 SECTION 1.06. Section 2210.0715(b), Insurance Code, is
2-66 amended to read as follows:

2-67 (b) Proceeds of public securities issued, an investment
2-68 arrangement entered into, or assessments made before January 1,
2-69 2024, or as a result of any occurrence or series of occurrences in a

3-1 catastrophe year that occurs before January 1, 2024, and results in
3-2 insured losses before that date may not be included in reserves
3-3 available for a subsequent catastrophe year for purposes of this
3-4 section or Section 2210.082 unless approved by the commissioner.

3-5 SECTION 1.07. The heading to Section 2210.075, Insurance
3-6 Code, is amended to read as follows:

3-7 Sec. 2210.075. REINSURANCE BY MEMBERS.

3-8 SECTION 1.08. Subchapter B-1, Chapter 2210, Insurance Code,
3-9 is amended by adding Section 2210.076 to read as follows:

3-10 Sec. 2210.076. PAYMENT FROM STATE INVESTMENT ARRANGEMENTS.

3-11 (a) Notwithstanding the provisions of this subchapter to the
3-12 contrary, the association may pay losses the association would
3-13 otherwise pay as provided by Section 2210.072, 2210.073, or
3-14 2210.0741 by entering into one or more investment arrangements with
3-15 this state as provided by Subchapter M-1 of this chapter and Section
3-16 404.0241, Government Code.

3-17 (b) Subchapter M-2 applies to the financing of losses under
3-18 this section to the extent necessary to secure and repay a debt
3-19 obligation to the state under an investment arrangement entered
3-20 into with this state under this section.

3-21 (c) An investment arrangement described by Subsection (a)
3-22 may also be used for a purpose described by Section 2210.072(d) in
3-23 the same manner as a financing arrangement with a market source.

3-24 SECTION 1.09. Chapter 2210, Insurance Code, is amended by
3-25 adding Subchapter B-2 to read as follows:

3-26 SUBCHAPTER B-2. PAYMENT OF EXCESS LOSSES AND OPERATING EXPENSES

3-27 Sec. 2210.080. APPLICABILITY OF SUBCHAPTER. (a) This
3-28 subchapter applies only to the payment of losses and operating
3-29 expenses of the association for a catastrophe year that occurs
3-30 after December 31, 2023, and results in excess losses and operating
3-31 expenses incurred by the association after December 31, 2023.

3-32 (b) This section expires September 1, 2025.

3-33 Sec. 2210.081. PAYMENT OF EXCESS LOSSES. (a) If, in a
3-34 catastrophe year, an occurrence or series of occurrences in a
3-35 catastrophe area results in insured losses and operating expenses
3-36 of the association in excess of premium and other revenue of the
3-37 association, the excess losses and operating expenses shall be paid
3-38 as provided by this subchapter.

3-39 (b) The association may not pay insured losses and operating
3-40 expenses resulting from an occurrence or series of occurrences in a
3-41 catastrophe year with premium and other revenue earned in a
3-42 subsequent year.

3-43 Sec. 2210.082. PAYMENT FROM RESERVES AND TRUST FUND. (a)
3-44 The association shall pay insured losses and operating expenses
3-45 resulting from an occurrence or series of occurrences in a
3-46 catastrophe year in excess of premium and other revenue of the
3-47 association for that catastrophe year from reserves of the
3-48 association available before or accrued during that catastrophe
3-49 year and amounts in the catastrophe reserve trust fund available
3-50 before or accrued during that catastrophe year.

3-51 (b) Proceeds of public securities issued or assessments
3-52 made before or as a result of any occurrence or series of
3-53 occurrences in a catastrophe year that results in insured losses
3-54 may not be included in reserves available for a subsequent
3-55 catastrophe year for purposes of this section.

3-56 Sec. 2210.083. PAYMENT FROM MEMBER ASSESSMENTS. (a)
3-57 Insured losses and operating expenses for a catastrophe year not
3-58 paid under Section 2210.082 shall be paid as provided by this
3-59 section from member assessments not to exceed \$1 billion for that
3-60 catastrophe year.

3-61 (b) The board of directors shall notify each association
3-62 member of the amount of the member's assessment under this section.
3-63 The proportion of the insured losses and operating expenses
3-64 allocable to each insurer under this section shall be determined in
3-65 the manner used to determine each insurer's participation in the
3-66 association for the year under Section 2210.052.

3-67 (c) An association member may not recoup an assessment paid
3-68 under this section through a premium surcharge or tax credit.

3-69 Sec. 2210.084. PAYMENT FROM STATE INVESTMENT ARRANGEMENTS.

4-1 For insured losses and operating expenses for a catastrophe year
 4-2 not paid under Section 2210.082 or 2210.083, the association shall
 4-3 enter into one or more investment arrangements totaling not more
 4-4 than \$1 billion with the state as provided by Subchapter M-1 of this
 4-5 chapter and Section 404.0241, Government Code.

4-6 Sec. 2210.085. PAYMENT FROM PUBLIC SECURITIES. (a)
 4-7 Insured losses and operating expenses for a catastrophe year not
 4-8 paid under Section 2210.082, 2210.083, or 2210.084 shall be paid
 4-9 from the proceeds from public securities issued in accordance with
 4-10 Subchapter M before, on, or after the date of any occurrence or
 4-11 series of occurrences that results in insured losses. Public
 4-12 securities described by this section must be paid within a period
 4-13 not to exceed 14 years and may be paid sooner if the board of
 4-14 directors elects to do so and the commissioner approves.

4-15 (b) Public securities described by Subsection (a) that are
 4-16 issued before an occurrence or series of occurrences that results
 4-17 in incurred losses:

4-18 (1) may be issued on the request of the board of
 4-19 directors with the approval of the commissioner; and

4-20 (2) may not, in the aggregate, exceed \$1 billion at any
 4-21 one time, regardless of the calendar year or years in which the
 4-22 outstanding public securities were issued.

4-23 (c) Public securities described by Subsection (a):

4-24 (1) shall be issued as necessary in a principal amount
 4-25 not to exceed \$1 billion per catastrophe year, in the aggregate, for
 4-26 securities issued during that catastrophe year before the
 4-27 occurrence or series of occurrences that results in incurred losses
 4-28 in that year and securities issued on or after the date of that
 4-29 occurrence or series of occurrences, and regardless of whether for
 4-30 a single occurrence or a series of occurrences; and

4-31 (2) subject to the maximum described by Subdivision
 4-32 (1), may be issued, in one or more issuances or tranches, during the
 4-33 calendar year in which the occurrence or series of occurrences
 4-34 occurs or, if the public securities cannot reasonably be issued in
 4-35 that year, during the following calendar year.

4-36 (d) If public securities are issued as described by this
 4-37 section, the public securities shall be repaid in the manner
 4-38 prescribed by Subchapter M.

4-39 (e) The association may borrow from, or enter into other
 4-40 financing arrangements with, any market source, under which the
 4-41 market source makes interest-bearing loans or other financial
 4-42 instruments to the association to enable the association to pay
 4-43 losses under this section or to obtain public securities under this
 4-44 section. For purposes of this subsection, financial instruments
 4-45 includes commercial paper.

4-46 (f) The proceeds of any outstanding public securities
 4-47 described by Subsection (a) that are issued before an occurrence or
 4-48 series of occurrences, together with the proceeds of any
 4-49 outstanding public securities issued on or before December 31,
 4-50 2023, shall be depleted before the proceeds of any securities
 4-51 issued after an occurrence or series of occurrences may be used.
 4-52 This subsection does not prohibit the association from issuing
 4-53 securities after an occurrence or series of occurrences before the
 4-54 proceeds of outstanding public securities issued during a previous
 4-55 catastrophe year have been depleted.

4-56 (g) If, under Subsection (f), the proceeds of any
 4-57 outstanding public securities issued during a previous catastrophe
 4-58 year, together with the proceeds of any outstanding public
 4-59 securities issued on or before December 31, 2023, must be depleted,
 4-60 those proceeds shall count against the limit on public securities
 4-61 described by this section in the catastrophe year in which the
 4-62 proceeds must be depleted.

4-63 Sec. 2210.086. REINSURANCE BY MEMBERS FOR MEMBER
 4-64 ASSESSMENTS. (a) Before any occurrence or series of occurrences,
 4-65 an association member may purchase reinsurance to cover an
 4-66 assessment for which the member would otherwise be liable under
 4-67 this subchapter.

4-68 (b) An association member must notify the board of
 4-69 directors, in the manner prescribed by the association, whether the

5-1 member will be purchasing reinsurance. If the member does not
5-2 purchase reinsurance under this section, the member remains liable
5-3 for any assessment imposed under this subchapter.

5-4 SECTION 1.10. Section 2210.355(b), Insurance Code, is
5-5 amended to read as follows:

5-6 (b) In adopting rates under this chapter, the following must
5-7 be considered:

5-8 (1) the past and prospective loss experience within
5-9 and outside this state of hazards for which insurance is made
5-10 available through the plan of operation, if any;

5-11 (2) expenses of operation, including acquisition
5-12 costs;

5-13 (3) a reasonable margin for profit and contingencies;

5-14 (4) payment of public security obligations issued
5-15 under this chapter, including the additional amount of any debt
5-16 service coverage determined by the association to be required for
5-17 the issuance of marketable public securities; ~~and~~

5-18 (5) payment of obligations related to an investment
5-19 arrangement with this state under Subchapter M-1 of this chapter
5-20 and Section 404.0241, Government Code, including the additional
5-21 amount of any related debt service determined by the association to
5-22 be required for the investment arrangement; and

5-23 (6) all other relevant factors, within and outside
5-24 this state.

5-25 SECTION 1.11. Section 2210.452(b), Insurance Code, is
5-26 amended to read as follows:

5-27 (b) All money, including investment income, deposited in
5-28 the trust fund constitutes state funds until disbursed as provided
5-29 by this chapter and commissioner rules. The comptroller shall hold
5-30 the money outside the state treasury on behalf of, and with legal
5-31 title in, the department on behalf of the association. The
5-32 department shall keep and maintain the trust fund in accordance
5-33 with this chapter and commissioner rules. The comptroller, as
5-34 custodian of the trust fund, shall administer the trust fund
5-35 strictly and solely as provided by this chapter and commissioner
5-36 rules. The association may include the amounts held in the
5-37 catastrophe reserve trust fund as an admitted asset in the
5-38 financial statements of the association.

5-39 SECTION 1.12. Section 2210.4521(a), Insurance Code, is
5-40 amended to read as follows:

5-41 (a) The comptroller shall invest in accordance with the
5-42 investment standard described by Section 404.024(j), Government
5-43 Code, the portion of the trust fund balance that exceeds the amount
5-44 of the sufficient balance determined under Subsection (b). The
5-45 comptroller's investment of that portion of the balance is not
5-46 subject to any other limitation or other requirement provided by
5-47 Section 404.024, Government Code. The Texas Treasury Safekeeping
5-48 Trust Company and board of directors may recommend investments to
5-49 protect the trust fund and create investment income.

5-50 SECTION 1.13. Section 2210.453, Insurance Code, is amended
5-51 by adding Subsection (a-1) to read as follows:

5-52 (a-1) The association may obtain reinsurance at any level
5-53 including excess of loss, quota share, and other forms of
5-54 reinsurance to protect the solvency and viability of the
5-55 association. The commissioner may consult with the board of
5-56 directors regarding methods to protect the solvency and continued
5-57 viability of the association, including by protecting the minimum
5-58 balance, acquiring reinsurance, or by other means.

5-59 SECTION 1.14. Subchapter J, Chapter 2210, Insurance Code,
5-60 is amended by adding Section 2210.4531 to read as follows:

5-61 Sec. 2210.4531. DETERMINATION OF PROBABLE MAXIMUM LOSS.

5-62 (a) The association shall file with the department a proposed
5-63 probable maximum loss, subject to Section 2210.453.

5-64 (b) In determining the probable maximum loss, the
5-65 association:

5-66 (1) shall, to the extent possible, contract with any
5-67 disinterested third parties necessary to execute any catastrophe
5-68 models that were executed in the preceding storm season;

5-69 (2) shall, if the association is unable to contract

6-1 for the execution of a catastrophe model described by Subdivision
6-2 (1), contract with any disinterested third party necessary to
6-3 execute a catastrophe model that is substantially similar to the
6-4 model for which the association is unable to contract under
6-5 Subdivision (1);

6-6 (3) may contract with any disinterested third parties
6-7 to execute catastrophe models in addition to the models required
6-8 under Subdivisions (1) and (2);

6-9 (4) shall provide to a disinterested third party
6-10 executing a catastrophe model any information necessary to comply
6-11 with this subsection;

6-12 (5) may not use a combination of catastrophe models to
6-13 determine the probable maximum loss; and

6-14 (6) may use only the catastrophe model that produces
6-15 the lowest probable maximum loss.

6-16 (c) The association shall make any information produced in
6-17 compliance with Subsection (b) publicly available on the
6-18 association's Internet website.

6-19 (d) The association may only use a probable maximum loss
6-20 that is approved by the commissioner. The commissioner may reject a
6-21 probable maximum loss filed with the department by the association
6-22 and set a probable maximum loss at any amount determined by the
6-23 commissioner.

6-24 SECTION 1.15. Effective January 1, 2024, Section 2210.602,
6-25 Insurance Code, is amended by amending Subdivision (7) and adding
6-26 Subdivision (12) to read as follows:

6-27 (7) "Public security" means a debt instrument or other
6-28 public security authorized to be issued under Section 2210.085 and
6-29 issued by the Texas Public Finance Authority, including a
6-30 commercial paper program authorized before the occurrence of a
6-31 catastrophic event.

6-32 (12) "Public security trust fund" means the dedicated
6-33 trust fund established by the board and held by the Texas Treasury
6-34 Safekeeping Trust Company into which premium surcharges collected
6-35 under Section 2210.612 for the purpose of paying public securities
6-36 are deposited.

6-37 SECTION 1.16. Effective January 1, 2024, Section
6-38 2210.604(a), Insurance Code, is amended to read as follows:

6-39 (a) In accordance with and subject to the limitations
6-40 provided by Section 2210.085, at ~~At~~ the request of the
6-41 association and with the approval of the commissioner, the Texas
6-42 Public Finance Authority shall issue ~~[Class 1, Class 2, or Class 3]~~
6-43 public securities. The association shall submit to the
6-44 commissioner a cost-benefit analysis of various financing methods
6-45 and funding structures when requesting the issuance of public
6-46 securities under this subsection.

6-47 SECTION 1.17. Effective January 1, 2024, Sections
6-48 2210.608(a) and (c), Insurance Code, are amended to read as
6-49 follows:

6-50 (a) Public security proceeds, including investment income,
6-51 shall be held in trust for the exclusive use and benefit of the
6-52 association. The association may use the proceeds to:

6-53 (1) pay incurred claims and operating expenses of the
6-54 association in accordance with Section 2210.085;

6-55 (2) purchase reinsurance for the association;

6-56 (3) pay the costs of issuing the public securities,
6-57 and public security administrative expenses, if any;

6-58 (4) provide a public security reserve;

6-59 (5) pay capitalized interest and principal on the
6-60 public securities for the period determined necessary by the
6-61 association;

6-62 (6) pay private financial agreements entered into by
6-63 the association as temporary sources of payment of losses and
6-64 operating expenses of the association; and

6-65 (7) reimburse the association for any cost described
6-66 by Subdivisions (1)-(6) paid by the association before issuance of
6-67 the public securities.

6-68 (c) Notwithstanding Subsection (a)(2), the proceeds from
6-69 public securities issued under Section 2210.085 ~~[2210.072]~~ before

7-1 an occurrence or series of occurrences that results in incurred
 7-2 losses, including investment income, may not be used to purchase
 7-3 reinsurance for the association.

7-4 SECTION 1.18. Effective January 1, 2024, Sections
 7-5 2210.609(a), (c), (d), and (e), Insurance Code, are amended to read
 7-6 as follows:

7-7 (a) The board and the association shall enter into an
 7-8 agreement under which the association shall provide for the payment
 7-9 of all public security obligations from available funds collected
 7-10 by the association and deposited as required by this subchapter. If
 7-11 the association determines that it is unable to pay the public
 7-12 security obligations and public security administrative expenses,
 7-13 if any, with available funds, the association shall pay those
 7-14 obligations and expenses in accordance with Section [~~Sections~~]
 7-15 2210.612 [~~, 2210.613, and 2210.6131 as applicable~~]. Public [~~Class~~
 7-16 ~~1, Class 2, or Class 3 public~~] securities may be issued on a parity
 7-17 or subordinate lien basis with other [~~Class 1, Class 2, or Class 3~~]
 7-18 public securities [~~, respectively~~].

7-19 (c) The association shall deposit all revenue collected
 7-20 under Section 2210.612 in the [~~Class 1~~] public security trust fund
 7-21 [~~, all revenue collected under Section 2210.613 in the Class 2~~
 7-22 ~~public security trust fund, and all revenue collected under Section~~
 7-23 ~~2210.6131 in the Class 3 public security trust fund~~]. Money
 7-24 deposited in the [~~a~~] fund may be invested as permitted by general
 7-25 law. Money in the [~~a~~] fund required to be used to pay public
 7-26 security obligations and public security administrative expenses,
 7-27 if any, shall be transferred to the appropriate funds in the manner
 7-28 and at the time specified in the proceedings authorizing the public
 7-29 securities to ensure timely payment of obligations and expenses.
 7-30 This may include the board establishing funds and accounts with the
 7-31 comptroller that the board determines are necessary to administer
 7-32 and repay the public security obligations. If the association has
 7-33 not transferred amounts sufficient to pay the public security
 7-34 obligations to the board's designated interest and sinking fund in
 7-35 a timely manner, the board may direct the Texas Treasury
 7-36 Safekeeping Trust Company to transfer from the [~~Class 1~~] public
 7-37 security trust fund [~~, the Class 2 public security trust fund, or~~
 7-38 ~~the Class 3 public security trust fund~~] to the appropriate account
 7-39 the amount necessary to pay the public security obligation.

7-40 (d) The association shall provide for the payment of the
 7-41 public security obligations and the public security administrative
 7-42 expenses by irrevocably pledging revenues received from premiums,
 7-43 premium surcharges, and amounts on deposit in the [~~Class 1~~] public
 7-44 security trust fund, [~~the Class 2 public security trust fund, and~~
 7-45 ~~the Class 3 public security trust fund,~~] together with any public
 7-46 security reserve fund, as provided in the proceedings authorizing
 7-47 the public securities and related credit agreements.

7-48 (e) An amount owed by the board under a credit agreement
 7-49 shall be payable from and secured by a pledge of revenues received
 7-50 by the association from the [~~Class 1~~] public security trust fund [~~, the~~
 7-51 ~~Class 2 public security trust fund, and the Class 3 public~~
 7-52 ~~security trust fund~~] to the extent provided in the proceedings
 7-53 authorizing the credit agreement.

7-54 SECTION 1.19. Effective January 1, 2024, Section
 7-55 2210.610(a), Insurance Code, is amended to read as follows:

7-56 (a) Revenues received from the premium surcharges under
 7-57 Section [~~Sections~~] 2210.612 [~~, 2210.613, and 2210.6131~~] may be
 7-58 applied only as provided by this subchapter.

7-59 SECTION 1.20. Effective January 1, 2024, Section 2210.611,
 7-60 Insurance Code, is amended to read as follows:

7-61 Sec. 2210.611. EXCESS REVENUE COLLECTIONS AND INVESTMENT
 7-62 EARNINGS. Revenue collected in any calendar year from a premium
 7-63 surcharge under Section [~~Sections~~] 2210.612 [~~, 2210.613, and~~
 7-64 ~~2210.6131~~] that exceeds the amount of the public security
 7-65 obligations and public security administrative expenses payable in
 7-66 that calendar year and interest earned on the funds may, in the
 7-67 discretion of the association, be:

7-68 (1) used to pay public security obligations payable in
 7-69 the subsequent calendar year, offsetting the amount of the premium

8-1 surcharge that would otherwise be required to be levied for the year
8-2 under this subchapter;

8-3 (2) used to redeem or purchase outstanding public
8-4 securities; or

8-5 (3) deposited in the catastrophe reserve trust fund.

8-6 SECTION 1.21. Effective January 1, 2024, the heading to
8-7 Section 2210.612, Insurance Code, is amended to read as follows:

8-8 Sec. 2210.612. PAYMENT OF ~~[CLASS 1]~~ PUBLIC SECURITIES.

8-9 SECTION 1.22. Effective January 1, 2024, Sections
8-10 2210.612(a) and (e), Insurance Code, are amended to read as
8-11 follows:

8-12 (a) The association shall pay ~~[Class 1]~~ public securities
8-13 issued under Section 2210.085 [~~2210.072~~] from:

8-14 (1) net premium and other revenue; and

8-15 (2) if net premium and other revenue are not
8-16 sufficient to pay the securities, a catastrophe area premium
8-17 surcharge collected in accordance with this section.

8-18 (e) The association may enter financing arrangements as
8-19 described by Section 2210.085(e) [~~2210.072(d)~~] as necessary to
8-20 obtain public securities issued under Section 2210.085 [~~2210.072~~].
8-21 Nothing in this subsection shall prevent the authorization and
8-22 creation of one or more programs for the issuance of commercial
8-23 paper before the date of an occurrence or series of occurrences that
8-24 results in insured losses under Section 2210.085(a) [~~2210.072(a)~~].

8-25 SECTION 1.23. Effective January 1, 2024, the heading to
8-26 Section 2210.6132, Insurance Code, is amended to read as follows:

8-27 Sec. 2210.6132. CONTINGENT SOURCE OF PAYMENT FOR ~~[CLASS 2~~
8-28 ~~AND CLASS 3]~~ PUBLIC SECURITIES.

8-29 SECTION 1.24. Effective January 1, 2024, Sections
8-30 2210.6132(a) and (b), Insurance Code, are amended to read as
8-31 follows:

8-32 (a) The commissioner may determine, in consultation with
8-33 the board and the authority, that:

8-34 (1) the authority is unable to issue ~~[Class 2 or Class~~
8-35 ~~3]~~ public securities to be payable under Section 2210.612 [~~2210.613~~
8-36 ~~or 2210.6131, as applicable~~]; or

8-37 (2) the issuance of ~~[Class 2 or Class 3]~~ public
8-38 securities to be payable under Section 2210.612 [~~2210.613 or~~
8-39 ~~2210.6131, as applicable,~~] is financially unreasonable for the
8-40 association.

8-41 (b) If the commissioner makes a determination under
8-42 Subsection (a), the commissioner shall order the ~~[Class 2 or Class~~
8-43 ~~3]~~ public securities~~[, as applicable,~~] to be paid by a premium
8-44 surcharge assessed by each insurer, the association, and the Texas
8-45 FAIR Plan Association on all policyholders of policies that are in
8-46 effect on or after the 180th day after the date the commissioner
8-47 issues the order. The premium surcharge must be set in an amount
8-48 sufficient to pay all debt service not already covered by available
8-49 funds and all related expenses on the public securities.

8-50 SECTION 1.25. Effective January 1, 2024, Section 2210.614,
8-51 Insurance Code, is amended to read as follows:

8-52 Sec. 2210.614. REFINANCING PUBLIC SECURITIES. The
8-53 association may request the board to refinance any public
8-54 securities issued in accordance with Section 2210.085 [~~Subchapter~~
8-55 ~~B-1, whether Class 1, Class 2, or Class 3 public securities,~~] with
8-56 public securities payable from the same sources as the original
8-57 public securities.

8-58 SECTION 1.26. Chapter 2210, Insurance Code, is amended by
8-59 adding Subchapters M-1 and M-2 to read as follows:

8-60 SUBCHAPTER M-1. STATE CATASTROPHE INVESTMENT ARRANGEMENTS

8-61 Sec. 2210.631. STATE CATASTROPHE INVESTMENT ARRANGEMENTS.
8-62 The legislature has determined that providing catastrophe
8-63 investment arrangements to the association by permitting the
8-64 association to enter into those arrangements with this state is an
8-65 acceptable use of state money and provides an efficient method for
8-66 the association to pay losses following a catastrophic event.

8-67 Sec. 2210.632. CATASTROPHE INVESTMENT ARRANGEMENT
8-68 AUTHORIZED; LIMITS. The association may enter into an investment
8-69 arrangement with this state as provided by Section 404.0241,

9-1 Government Code, for not more than \$1 billion after a catastrophic
9-2 event that depletes the catastrophe reserve fund and member
9-3 assessments imposed under Section 2210.083.

9-4 SUBCHAPTER M-2. CATASTROPHE SURCHARGE

9-5 Sec. 2210.641. DEFINITION. In this subchapter,
9-6 "catastrophic event" means an occurrence or a series of occurrences
9-7 that:

- 9-8 (1) occurs in a catastrophe area during a calendar
- 9-9 year; and
- 9-10 (2) results in insured losses and operating expenses
- 9-11 of the association in excess of premium and other revenue of the
- 9-12 association.

9-13 Sec. 2210.642. APPLICABILITY OF SUBCHAPTER. (a)
9-14 Notwithstanding Section 2210.006, this subchapter applies to an
9-15 insurer that is:

- 9-16 (1) an insurer authorized to engage in the business of
- 9-17 insurance in this state that is required to be a member of the
- 9-18 association, including a farm mutual insurance company that is a
- 9-19 fronting insurer as defined by Section 221.001(c);
- 9-20 (2) a farm mutual insurance company that is not a
- 9-21 fronting insurer as defined by Section 221.001(c) only for purposes
- 9-22 of the collection of surcharges authorized by this subchapter;
- 9-23 (3) an unaffiliated eligible surplus lines insurer
- 9-24 writing the lines of business subject to a premium surcharge under
- 9-25 this subchapter;
- 9-26 (4) the association; and
- 9-27 (5) the FAIR Plan Association.

9-28 (b) A premium surcharge under this subchapter applies to:
9-29 (1) a policy written under the following lines of
9-30 insurance:

- 9-31 (A) fire and allied lines;
- 9-32 (B) farm and ranch owners; and
- 9-33 (C) residential property insurance; and
- 9-34 (2) the property insurance portion of a commercial
- 9-35 multiple peril insurance policy.

9-36 Sec. 2210.6425. CONSTRUCTION OF SUBCHAPTER. (a) This
9-37 subchapter may not be construed to require an insurer to be an
9-38 association member if the insurer is not otherwise required to be a
9-39 member under Section 2210.052.

9-40 (b) A farm mutual insurance company that is not a fronting
9-41 insurer as defined by Section 221.001(c) is not a member of the
9-42 association as a result of the company's collection of surcharges
9-43 authorized by this subchapter or for any other reason.

9-44 Sec. 2210.643. ANNUAL FINANCIAL REPORT BY COMMISSIONER.
9-45 The commissioner shall determine the amount available in the
9-46 catastrophe reserve trust fund as of December 31 of each year and
9-47 provide a written report to the governor, lieutenant governor, and
9-48 speaker of the house of representatives that includes:

- 9-49 (1) the amount available in the catastrophe reserve
- 9-50 trust fund; and
- 9-51 (2) information regarding the current financial
- 9-52 condition of the association.

9-53 Sec. 2210.6435. CATASTROPHE SURCHARGES. (a) The
9-54 commissioner, in consultation with the board of directors, may
9-55 order a catastrophe surcharge effective on the closing date of an
9-56 investment arrangement with this state and as provided by this
9-57 subchapter only if, after a catastrophic event:

- 9-58 (1) the commissioner determines that the association
- 9-59 has depleted its reserves, other money, the catastrophe reserve
- 9-60 trust fund, and member assessments in the amount of \$1 billion
- 9-61 imposed under Section 2210.083; and
- 9-62 (2) the association intends to enter into an
- 9-63 investment arrangement with this state under Subchapter M-1 that is
- 9-64 the basis for the surcharge.

9-65 (b) The commissioner, in consultation with the board of
9-66 directors, shall set the catastrophe surcharge as a percentage of
9-67 premium to be collected by each insurer to which this subchapter
9-68 applies.

9-69 (c) The total amount authorized to be collected under this

10-1 section for any catastrophe surcharge may not exceed the amount
 10-2 needed to satisfy the terms of the investment arrangement entered
 10-3 into with this state under Subchapter M-1 that is the basis for the
 10-4 surcharge.

10-5 (d) The catastrophe surcharge percentage must be set in an
 10-6 amount sufficient, including a reserve amount, to satisfy the terms
 10-7 of the investment arrangement entered into with this state under
 10-8 Subchapter M-1 that is the basis for the surcharge. The
 10-9 commissioner shall review the catastrophe surcharge percentage
 10-10 semiannually and adjust the percentage as necessary to ensure
 10-11 amounts collected will be sufficient to satisfy the terms of the
 10-12 investment arrangement. The association will provide a semiannual
 10-13 report to the commissioner and comptroller in the form and manner
 10-14 prescribed by the commissioner of the premium assessed and
 10-15 collected and its sufficiency to satisfy the terms of the
 10-16 investment arrangement. The commissioner may set the surcharge as
 10-17 a percentage of premium to collect the needed aggregate amount over
 10-18 a period of time not to exceed three years.

10-19 (e) A catastrophe surcharge authorized under this section
 10-20 shall be assessed by insurers on all policyholders of policies that
 10-21 are subject to this subchapter.

10-22 (f) A catastrophe surcharge under this subchapter is a
 10-23 separate charge in addition to the premiums collected and is not
 10-24 subject to premium tax or commissions.

10-25 (g) Failure by a policyholder to pay a catastrophe surcharge
 10-26 constitutes failure to pay premium for purposes of policy
 10-27 cancellation.

10-28 (h) A catastrophe surcharge is not refundable if the policy
 10-29 is canceled or terminated.

10-30 Sec. 2210.644. CATASTROPHE SURCHARGE PROCEEDS. The
 10-31 proceeds of a catastrophe surcharge authorized under this
 10-32 subchapter shall be deposited into the catastrophe reserve trust
 10-33 fund or an account designated by the comptroller for purposes of
 10-34 satisfying the terms of the investment arrangement that is the
 10-35 basis for the surcharge, and the proceeds shall be paid to this
 10-36 state under the terms of the investment arrangement until the terms
 10-37 are fully satisfied.

10-38 Sec. 2210.6445. DISCLOSURE OF SURCHARGE. Each policy that
 10-39 is assessed a surcharge under this subchapter shall contain the
 10-40 following prominent disclosure in the documents attached to the
 10-41 policy:

10-42 "A CATASTROPHE SURCHARGE HAS BEEN INCLUDED ON YOUR POLICY.
 10-43 THIS SURCHARGE WILL BE USED TO REPAY STATE MONEY USED BY THE TEXAS
 10-44 WINDSTORM INSURANCE ASSOCIATION TO PAY FOR LOSSES AFTER A
 10-45 CATASTROPHIC EVENT, INCLUDING A HURRICANE. THE SURCHARGE IS NOT
 10-46 REFUNDABLE IF YOU CANCEL OR TERMINATE THIS POLICY."

10-47 Sec. 2210.645. EXEMPTION FROM TAXATION. A surcharge
 10-48 collected under this subchapter is exempt from taxation by this
 10-49 state or a municipality or other political subdivision of this
 10-50 state.

10-51 Sec. 2210.6455. LIMITATION OF PERSONAL LIABILITY. The
 10-52 association members, the insurers required to collect a surcharge
 10-53 under this subchapter, members of the board of directors,
 10-54 association employees, the commissioner, and department employees
 10-55 are not personally liable as a result of exercising the rights and
 10-56 responsibilities granted under this subchapter.

10-57 Sec. 2210.646. EXEMPTION FROM SURCHARGE. An insurer may
 10-58 not collect a surcharge authorized under this subchapter on any
 10-59 policy issued to this state, an agency of this state, or a political
 10-60 subdivision of this state.

10-61 SECTION 1.27. (a) Effective January 1, 2024, the following
 10-62 provisions of the Insurance Code are repealed:

10-63 (1) Sections 2210.602(2), (2-a), (3), (3-a), (4), and
 10-64 (4-a);

10-65 (2) Section 2210.613; and

10-66 (3) Section 2210.6131.

10-67 (b) Effective September 1, 2025, Subchapter B-1, Chapter
 10-68 2210, Insurance Code, is repealed.

10-69 SECTION 1.28. As soon as practicable after the effective

11-1 date of this Act and not later than December 1, 2023, the
11-2 commissioner of insurance shall adopt rules necessary to implement
11-3 Subchapter M, Insurance Code, as amended by this Act, and
11-4 Subchapters B-2 and M-2, Insurance Code, as added by this Act.

11-5 ARTICLE 2. CONFORMING AMENDMENTS

11-6 SECTION 2.01. (a) Section 2210.056(b), Insurance Code, is
11-7 amended to read as follows:

11-8 (b) The association's assets may not be used for or diverted
11-9 to any purpose other than to:

11-10 (1) satisfy, in whole or in part, the liability of the
11-11 association on claims made on policies written by the association;

11-12 (2) make investments authorized under applicable law;

11-13 (3) pay reasonable and necessary administrative
11-14 expenses incurred in connection with the operation of the
11-15 association and the processing of claims against the association;

11-16 (4) satisfy, in whole or in part, the obligations of
11-17 the association incurred in connection with Subchapters B-1, B-2,
11-18 J, ~~and~~ M, and M-2, including reinsurance, public securities, and
11-19 financial instruments; or

11-20 (5) make remittance under the laws of this state to be
11-21 used by this state to:

11-22 (A) pay claims made on policies written by the
11-23 association;

11-24 (B) purchase reinsurance covering losses under
11-25 those policies; or

11-26 (C) prepare for or mitigate the effects of
11-27 catastrophic natural events.

11-28 (b) Effective September 1, 2025, Section 2210.056(b),
11-29 Insurance Code, is amended to read as follows:

11-30 (b) The association's assets may not be used for or diverted
11-31 to any purpose other than to:

11-32 (1) satisfy, in whole or in part, the liability of the
11-33 association on claims made on policies written by the association;

11-34 (2) make investments authorized under applicable law;

11-35 (3) pay reasonable and necessary administrative
11-36 expenses incurred in connection with the operation of the
11-37 association and the processing of claims against the association;

11-38 (4) satisfy, in whole or in part, the obligations of
11-39 the association incurred in connection with Subchapters B-2 [~~B-1~~],
11-40 J, ~~and~~ M, and M-2, including reinsurance, public securities, and
11-41 financial instruments; or

11-42 (5) make remittance under the laws of this state to be
11-43 used by this state to:

11-44 (A) pay claims made on policies written by the
11-45 association;

11-46 (B) purchase reinsurance covering losses under
11-47 those policies; or

11-48 (C) prepare for or mitigate the effects of
11-49 catastrophic natural events.

11-50 SECTION 2.02. (a) Section 2210.1052, Insurance Code, is
11-51 amended to read as follows:

11-52 Sec. 2210.1052. EMERGENCY MEETING. If the ultimate loss
11-53 estimate for an occurrence or series of occurrences made by the
11-54 chief financial officer or chief actuary of the association
11-55 indicates member insurers may be subject to an assessment under
11-56 Subchapter B-1 or B-2, the board of directors shall call an
11-57 emergency meeting to notify the member insurers about the
11-58 assessment.

11-59 (b) Effective September 1, 2025, Section 2210.1052,
11-60 Insurance Code, is amended to read as follows:

11-61 Sec. 2210.1052. EMERGENCY MEETING. If the ultimate loss
11-62 estimate for an occurrence or series of occurrences made by the
11-63 chief financial officer or chief actuary of the association
11-64 indicates member insurers may be subject to an assessment under
11-65 Subchapter B-2 [~~B-1~~], the board of directors shall call an
11-66 emergency meeting to notify the member insurers about the
11-67 assessment.

11-68 SECTION 2.03. Section 2210.363(a), Insurance Code, is
11-69 amended to read as follows:

12-1 (a) The association may offer a person insured under this
12-2 chapter an actuarially justified premium discount on a policy
12-3 issued by the association, or an actuarially justified credit
12-4 against a surcharge assessed against the person, other than a
12-5 surcharge assessed under Subchapter M or M-2, if:

12-6 (1) the construction, alteration, remodeling,
12-7 enlargement, or repair of, or an addition to, insurable property
12-8 exceeds applicable building code standards set forth in the plan of
12-9 operation; or

12-10 (2) the person elects to purchase a binding
12-11 arbitration endorsement under Section 2210.554.

12-12 SECTION 2.04. (a) Sections 2210.452(a) and (d), Insurance
12-13 Code, are amended to read as follows:

12-14 (a) The commissioner shall adopt rules under which the
12-15 association makes payments to the catastrophe reserve trust fund.
12-16 Except as otherwise specifically provided by this section, the
12-17 trust fund may be used only for purposes directly related to funding
12-18 the payment of insured losses, including:

12-19 (1) funding the obligations of the trust fund under
12-20 Subchapters [~~Subchapter~~] B-1 and B-2; and

12-21 (2) purchasing reinsurance or using alternative risk
12-22 financing mechanisms under Section 2210.453.

12-23 (d) The commissioner by rule shall establish the procedure
12-24 relating to the disbursement of money from the trust fund to
12-25 policyholders and for association administrative expenses directly
12-26 related to funding the payment of insured losses in the event of an
12-27 occurrence or series of occurrences within a catastrophe area that
12-28 results in a disbursement under Subchapter B-1 or B-2.

12-29 (b) Effective September 1, 2025, Sections 2210.452(a) and
12-30 (d), Insurance Code, are amended to read as follows:

12-31 (a) The commissioner shall adopt rules under which the
12-32 association makes payments to the catastrophe reserve trust fund.
12-33 Except as otherwise specifically provided by this section, the
12-34 trust fund may be used only for purposes directly related to funding
12-35 the payment of insured losses, including:

12-36 (1) funding the obligations of the trust fund under
12-37 Subchapter B-2 [~~B-1~~]; and

12-38 (2) purchasing reinsurance or using alternative risk
12-39 financing mechanisms under Section 2210.453.

12-40 (d) The commissioner by rule shall establish the procedure
12-41 relating to the disbursement of money from the trust fund to
12-42 policyholders and for association administrative expenses directly
12-43 related to funding the payment of insured losses in the event of an
12-44 occurrence or series of occurrences within a catastrophe area that
12-45 results in a disbursement under Subchapter B-2 [~~B-1~~].

12-46 SECTION 2.05. (a) Sections 2210.453(b) and (c), Insurance
12-47 Code, are amended to read as follows:

12-48 (b) The association shall maintain total available loss
12-49 funding in an amount not less than the probable maximum loss for the
12-50 association for a catastrophe year with a probability of one in 100.
12-51 If necessary, the required funding level shall be achieved through
12-52 the purchase of reinsurance or the use of alternative financing
12-53 mechanisms, or both, to operate in addition to or in concert with
12-54 the trust fund, public securities, financial instruments,
12-55 investment arrangements, and assessments authorized by this
12-56 chapter.

12-57 (c) The attachment point for reinsurance purchased under
12-58 this section may not be less than the aggregate amount of all
12-59 funding available to the association under Subchapters
12-60 [~~Subchapter~~] B-1 and B-2.

12-61 (b) Effective September 1, 2025, Section 2210.453(c),
12-62 Insurance Code, is amended to read as follows:

12-63 (c) The attachment point for reinsurance purchased under
12-64 this section may not be less than the aggregate amount of all
12-65 funding available to the association under Subchapter B-2 [~~B-1~~].

12-66 ARTICLE 3. TRANSITION AND SAVINGS PROVISIONS

12-67 SECTION 3.01. Notwithstanding the amendment by this Act of
12-68 Subchapter M, Chapter 2210, Insurance Code, the repeal by this Act
12-69 of Subchapter B-1, Chapter 2210, Insurance Code, and other changes

13-1 in law made by this Act effective September 1, 2025:

13-2 (1) the payment of excess losses and operating
13-3 expenses of the Texas Windstorm Insurance Association incurred
13-4 before January 1, 2024, is governed by the law as it existed on the
13-5 effective date of this Act, and that law is continued in effect for
13-6 that purpose;

13-7 (2) the issuance of public securities to pay excess
13-8 losses and operating expenses of the Texas Windstorm Insurance
13-9 Association incurred before January 1, 2024, the use of the
13-10 proceeds of those securities, the repayment or refinancing of those
13-11 securities, and any other rights, obligations, or limitations with
13-12 respect to those securities and proceeds of those securities are
13-13 governed by the law as it existed on the effective date of this Act,
13-14 and that law is continued in effect for that purpose; and

13-15 (3) proceeds of any assessments made under Subchapter
13-16 B-1, Chapter 2210, Insurance Code, may not be included in reserves
13-17 available for a catastrophe year for purposes of Section 2210.082,
13-18 Insurance Code, as added by this Act, unless approved by the
13-19 commissioner of insurance.

13-20 ARTICLE 4. EFFECTIVE DATE

13-21 SECTION 4.01. Except as otherwise provided by this Act,
13-22 this Act takes effect September 1, 2023.

13-23 * * * * *