

By: Fraser

S.B. No. 14

A BILL TO BE ENTITLED

AN ACT

relating to the operation of the Texas Windstorm Insurance Association and the Texas FAIR Plan Association; making an appropriation.

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

SECTION 1. Section 2210.001, Insurance Code, is amended to read as follows:

Sec. 2210.001. PURPOSE. The primary purpose of the Texas Windstorm Insurance Association is the provision of an [An] adequate market for windstorm and[7] hail[7and fire] insurance in the seacoast territory of this state. The legislature finds that the provision of adequate windstorm and hail insurance is necessary to the economic welfare of this state, and without that insurance, the orderly growth and development of this state would be severely impeded. This chapter provides a method by which adequate windstorm and[7] hail[7and fire] insurance may be obtained in certain designated portions of the seacoast territory of this state. The association is intended to serve as a residual insurer of last resort for windstorm and hail insurance in the seacoast territory. The association shall:

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

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

SECTION 2. Section 2210.002, Insurance Code, is amended to read as follows:

Sec. 2210.002. SHORT TITLE; SUNSET PROVISION. (a) This chapter may be cited as the Texas Windstorm Insurance Association Act.

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

SECTION 3. Subchapter A, Chapter 2210, Insurance Code, is amended by adding Section 2210.0025 to read as follows:

Sec. 2210.0025. BIENNIAL REPORT TO LEGISLATURE. On or before December 31 of each even-numbered year, the board of directors shall submit to the commissioner, the appropriate committees of each house of the legislature, and the Sunset Advisory Commission a written report relating to the operations of the association during the preceding biennium. The report must include:

(1) any proposed changes in the laws relating to regulation of the association and a statement of the reasons for the changes; and

(2) any information regarding association operations or procedures that is requested by the department to be addressed in the report.

SECTION 4. Section 2210.003, Insurance Code, is amended by adding Subdivision (3-a) and amending Subdivision (6) to read as follows:

(3-a) "Catastrophe reserve trust fund" means the trust fund established under Subchapter J.

(6) "Insurance" means Texas [~~fire and explosion insurance and Texas~~] windstorm and hail insurance.

SECTION 5. Subsection (a), Section 2210.004, Insurance Code, is amended to read as follows:

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

SECTION 6. Section 2210.005, Insurance Code, is amended to

read as follows:

Sec. 2210.005. DESIGNATION AS CATASTROPHE AREA [~~OR INADEQUATE FIRE INSURANCE AREA~~]; REVOCATION OF DESIGNATION. (a) After at least 10 days' notice and a hearing, the commissioner may designate an area of the seacoast territory of this state as a catastrophe area if the commissioner determines, unless such a determination results in an adverse impact to the exposure of the association, that windstorm and hail insurance is not reasonably available to a substantial number of the owners of insurable property located in that territory because the territory is subject to unusually frequent and severe damage resulting from windstorms or hailstorms.

(b) [~~After at least 10 days' notice and a hearing, the commissioner may designate an area of this state as an inadequate fire insurance area if the commissioner determines that fire and explosion insurance is not reasonably available to a substantial number of owners of insurable property located in that area.~~

[~~(c)~~] The commissioner shall revoke a designation made under Subsection (a) [~~or (b)~~] if the commissioner determines, after at least 10 days' notice and a hearing, that the applicable insurance coverage is no longer reasonably unavailable to a substantial number of owners of insurable property within the designated territory.

(c) [~~(d)~~] If the association determines that windstorm and hail insurance [~~or fire and explosion insurance~~] is no longer reasonably unavailable to a substantial number of owners of insurable property in a territory designated as a catastrophe area

~~[or inadequate fire insurance area, as applicable]~~, the association may request in writing that the commissioner revoke the designation. After at least 10 days' notice and a hearing, but not later than the 30th day after the date of the hearing, the commissioner shall:

- (1) approve the request and revoke the designation; or
- (2) reject the request.

SECTION 7. Section 2210.008, Insurance Code, is amended to read as follows:

Sec. 2210.008. DEPARTMENT ORDERS; GENERAL RULEMAKING AUTHORITY. (a) The ~~[After notice and hearing as provided by Subsection (b), the]~~ commissioner may issue any orders that the commissioner considers necessary to implement this chapter~~[, including orders regarding maximum rates, competitive rates, and policy forms]~~.

(b) The commissioner may adopt rules in the manner prescribed by Subchapter A, Chapter 36, as reasonable and necessary to implement this chapter ~~[Before the commissioner adopts an order, the department shall post notice of the hearing on the order at the secretary of state's office in Austin and shall hold a hearing to consider the proposed order. Any person may appear at the hearing and testify for or against the adoption of the order]~~.

SECTION 8. Subchapter A, Chapter 2210, Insurance Code, is amended by adding Section 2210.009 to read as follows:

Sec. 2210.009. LIST OF PRIVATE INSURERS; INCENTIVE PLAN.  
(a) The department shall maintain a list of all insurers that

engage in the business of property and casualty insurance in the voluntary market in the seacoast territory.

(b) The department shall develop incentive programs in the manner described by Section 2210.053(b) to encourage authorized insurers to write insurance on a voluntary basis and to minimize the use of the association as a means to obtain insurance.

SECTION 9. Section 2210.052, Insurance Code, is amended by amending Subsections (a) and (d) and adding Subsection (e) to read as follows:

(a) Each member of the association shall participate in insured losses and operating expenses of the association, in excess of premium and other revenue [~~the writings, expenses, profits, and losses~~] of the association, in the proportion that the net direct premiums of that member during the preceding calendar year bears to the aggregate net direct premiums by all members of the association, as determined using the information provided under Subsection (b).

(d) Notwithstanding Subsection (a), a member, in accordance with the plan of operation, is entitled to receive credit for similar insurance voluntarily written in areas [~~an area~~] designated by the commissioner. The member's participation in the insured losses and operating expenses of the association in excess of premium and other revenue [~~writings~~] of the association shall be reduced in accordance with the plan of operation.

(e) Notwithstanding Subsections (a)-(d), an insurer that becomes a member of the association and that has not previously

been a member of the association is not subject to participation in any insured losses and operating expenses of the association in excess of premium and other revenue of the association until the second anniversary of the date on which the insurer first becomes a member of the association.

SECTION 10. Subsection (b), Section 2210.056, 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; ~~[or]~~

(4) satisfy, in whole or in part, the obligations of the association incurred in connection with Subchapters B-1, J, and M, 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 11. Subsection (c), Section 2210.060, Insurance Code, is amended to read as follows:

(c) Subsection (a) does not authorize the association to indemnify a member of the association for participating in the assessments made by [~~writings, expenses, profits, and losses of~~] the association in the manner provided by this chapter.

SECTION 12. Chapter 2210, Insurance Code, is amended by adding Subchapter B-1 to read as follows:

SUBCHAPTER B-1. PAYMENT OF LOSSES

Sec. 2210.071. PAYMENT OF EXCESS LOSSES; AUTHORIZATION TO REINSURE OR BORROW. (a) If 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 shall pay losses in excess of premium and other revenue of the association from available reserves of the association and available amounts in the catastrophe reserve trust fund.

(c) The association may borrow from, or enter into other financing arrangements with, any market sources at prevailing interest rates as authorized by this subchapter and as necessary to pay insured losses.

(d) The association may pay losses in excess of premium and other revenue of the association with:

(1) reinsurance proceeds, as provided by this subchapter, from reinsurance purchased by the association as authorized under Section 2210.453;

(2) the proceeds of Class 1 or Class 2 public securities authorized under Section 2210.073, 2210.074, 2210.076, or 2210.077;  
and

(3) proceeds from financial instruments, including loans or other financing arrangements described by Subsection (c), as authorized under this subchapter.

(e) With respect to assessments to members of the association, the proportion of the losses allocable to each insurer under this subchapter shall be determined in the manner used to determine each insurer's participation in the association for the year under Section 2210.052.

Sec. 2210.072. PAYMENT FROM TRUST FUND; ASSESSMENT; REINSURANCE. (a) For each occurrence, losses shall be paid from the catastrophe reserve trust fund and any available reinsurance. Losses in excess of the catastrophe reserve trust fund and any available reinsurance shall be paid as provided by this section.

(b) For each occurrence, the association shall assess the members of the association an amount not greater than \$400 million. The proportion of the assessment allocable to each insurer shall be determined in the manner used to determine each member's participation in the association under Section 2210.052.

(c) Assessments against members of the association under this section may not exceed \$400 million during a calendar year.

(d) The amount of an assessment under this section must be:

(1) provided to each member of the association not later than the fifth day after the date the assessment is determined by the board of directors under Subsection (b); and

(2) paid by each member not later than the 30th day after the date on which the insurer receives notice of the amount of its assessment.

(e) A member may not recoup an assessment paid under this section through a premium surcharge.

(f) The association may purchase reinsurance in addition to using some or all of the trust fund if, after a cost-benefit analysis or other appropriate examination, the board of directors determines that the use of reinsurance is a fiscally appropriate alternative to other sources of funding or is economically beneficial to this state. If the association purchases reinsurance under this section, the cost of the reinsurance shall be paid from premium paid by policyholders, other revenue of the association, and the catastrophe reserve trust fund.

Sec. 2210.073. PAYMENT FROM CLASS 1 PUBLIC SECURITIES; REINSURANCE; FINANCIAL INSTRUMENTS. (a) Losses not paid under Section 2210.072 shall be paid as provided by this section.

(b) The losses may be paid with:

(1) proceeds from Class 1 public securities authorized to be issued in accordance with Subchapter M before or on or after the date of any occurrence that results in insured losses under Subsection (a);

(2) available reinsurance described by Subsection (f);

(3) proceeds from financial instruments described by Subsection (e); or

(4) a combination of reinsurance, public securities, and financial instruments described by Subdivisions (1)-(3).

(c) Public securities described by Subsection (b)(1) may be issued if the board of directors determines, before the date of any occurrence, that the amount available from premium and other revenue, in combination with the amounts available from the catastrophe reserve trust fund, any reinsurance, and any financial instruments may be insufficient to pay insured losses. The public securities shall be issued as necessary in a principal amount not to exceed \$600 million per occurrence.

(d) Any public securities proceeds received under this section from Class 1 public securities authorized in accordance with Subchapter M before the date of any occurrence that results in insured losses under Subsection (a):

(1) must be used before the proceeds of any public securities that the association authorizes to be issued under Section 2210.074 on or after any catastrophic event; and

(2) may not be used to fund losses of any catastrophic event occurring before the date on which public securities described by this section are authorized to be issued.

(e) Under the authority of Section 2210.071(c), the association may borrow from, or enter into other financing arrangements with, any market source, under which the market source

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makes interest-bearing loans to the association to enable the association to pay losses under this section in lieu of, or in addition to, the issuance of public securities.

(f) The association may purchase reinsurance in lieu of, or in addition to, using Class 1 public securities or proceeds of financial instruments authorized under this section if, after a cost-benefit analysis or other appropriate examination, the board of directors determines that the use of reinsurance is a fiscally appropriate alternative to other sources of funding or is economically beneficial to this state. If the association purchases reinsurance under this section, the cost of the reinsurance shall be paid from premium paid by policyholders of the association, other revenue of the association, and the catastrophe reserve trust fund.

(g) If the losses are paid with public securities or proceeds from financial instruments described by this section, the public securities or proceeds from financial instruments shall be repaid by premium surcharges in the manner prescribed by Section 2210.612.

Sec. 2210.074. PAYMENT FROM CLASS 2 PUBLIC SECURITIES; REINSURANCE; FINANCIAL INSTRUMENTS. (a) Losses not paid under Sections 2210.072 and 2210.073 shall be paid as provided by this section.

(b) The losses may be paid from:

(1) proceeds from Class 2 public securities authorized to be issued in accordance with Subchapter M on or after the date of any occurrence that results in insured losses under Subsection

(a);

(2) available reinsurance described by Subsection (e);

(3) proceeds from financial instruments described by Subsection (d); or

(4) a combination of the reinsurance, public securities, and financial instruments described by Subdivisions (1)-(3).

(c) Public securities described by Subsection (b)(1) may be issued as necessary in a principal amount not to exceed \$1 billion per occurrence.

(d) Under the authority of Section 2210.071(c), the association may borrow from, or enter into other financial arrangements with, any market source, under which the market source makes interest-bearing loans to the association to enable the association to pay losses under this section without the issuance of public securities.

(e) The association may purchase reinsurance in lieu of, or in addition to, using Class 2 public securities or proceeds of financial instruments authorized under this section if, after a cost-benefit analysis or other appropriate examination, the board of directors determines that the use of reinsurance is a fiscally appropriate alternative to other sources of funding or is economically beneficial to this state. If the association purchases reinsurance under this section, the cost of the reinsurance shall be paid from premium paid by the policyholders of the association, other revenue of the association, and the catastrophe reserve trust fund.

(f) If the losses are paid with public securities or proceeds from financial instruments described by this section, the public securities or proceeds from financial instruments shall be repaid by premium surcharges in the manner prescribed by Section 2210.613.

Sec. 2210.075. PAYMENT FROM ASSOCIATION ASSESSMENT.

(a) Losses not paid under Sections 2210.072-2210.074 shall be paid as provided by this section.

(b) The association shall assess the members of the association \$300 million per occurrence for the payment of losses described by this section. The association shall notify each member of the association of the amount of the member's assessment under this subsection. The proportion of the losses 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) The association may not assess members of the association under this section more than twice in any calendar year.

(d) A member of the association may recoup an assessment paid under this section through a premium surcharge collected for one year on each policy of property or casualty insurance written by the member. A premium surcharge under this section shall apply to all policies that provide coverage on any premises, locations, operations, or property located in this state for all property and casualty lines of insurance, other than federal flood insurance, workers' compensation insurance, accident and health insurance, and medical malpractice insurance.

(e) A premium surcharge under this section is a separate nonrefundable charge in addition to the premiums collected and is not subject to premium tax or commissions. Failure to pay the premium surcharge by a policyholder constitutes failure to pay premium for purposes of policy cancellation.

Sec. 2210.076. PAYMENT FROM CLASS 2 PUBLIC SECURITIES; REINSURANCE; FINANCIAL INSTRUMENTS. (a) Losses not paid under Sections 2210.072-2210.075 shall be paid as provided by this section.

(b) The losses may be paid from:

(1) proceeds from Class 2 public securities authorized to be issued in accordance with Subchapter M on or after the date of any occurrence that results in insured losses under Subsection (a);

(2) available reinsurance described by Subsection (e);

(3) proceeds from financial instruments described by Subsection (d); or

(4) a combination of the reinsurance, public securities, and financial instruments described by Subdivisions (1)-(3).

(c) Public securities described by Subsection (b)(1) may be issued as necessary in a principal amount not to exceed \$500 million per occurrence.

(d) Under the authority of Section 2210.071(c), the association may borrow from, or enter into other financing agreements with, any market source, under which the market source makes interest-bearing loans to the association to enable the

association to pay losses under this section in lieu of, or in addition to, the issuance of public securities.

(e) The association may purchase reinsurance in lieu of, or in addition to, using Class 2 public securities or proceeds from financial instruments authorized under this section if, after a cost-benefit analysis or other appropriate examination, the board of directors determines that the use of reinsurance is a fiscally appropriate alternative to other sources of funding or is economically beneficial to this state. If the association purchases reinsurance under this section, the cost of the reinsurance shall be paid from premium paid by the policyholders of the association, other revenue of the association, and the catastrophe reserve trust fund.

(f) If the losses are paid with public securities or proceeds from financial instruments described by this section, the public securities or proceeds from financial instruments shall be repaid by premium surcharges in the manner prescribed by Section 2210.613.

Sec. 2210.077. PAYMENT FROM CLASS 2 PUBLIC SECURITIES; REINSURANCE. (a) Losses not paid under Sections 2210.072-2210.076 shall be paid as provided by this section.

(b) The losses may be paid from:

(1) proceeds from Class 2 public securities authorized to be issued in accordance with Subchapter M on or after the date of any occurrence that results in insured losses under Subsection (a);

(2) available reinsurance described by Subsection (d);

or

(3) a combination of the reinsurance and public securities described by Subdivisions (1) and (2).

(c) Public securities described by Subsection (b)(1) may be issued as necessary in a principal amount not to exceed \$2.8 billion per occurrence.

(d) The association may purchase reinsurance in lieu of, or in addition to, using Class 2 public securities authorized under this section if, after a cost-benefit analysis or other appropriate examination, the board of directors determines that the use of reinsurance is a fiscally appropriate alternative to other sources of funding or is economically beneficial to this state. If the association purchases reinsurance under this section, the cost of the reinsurance shall be paid from premium paid by the policyholders of the association, other revenue of the association, and the catastrophe reserve trust fund.

(e) If the losses are paid with public securities described by this section, the public securities shall be repaid by premium surcharges in the manner prescribed by Section 2210.613.

Sec. 2210.078. PAYMENT FROM ADDITIONAL ASSOCIATION ASSESSMENTS. (a) Losses not paid under Sections 2210.072-2210.077 and any available reinsurance shall be paid as provided by this section.

(b) The board of directors shall assess the members of the association for the payment of losses described by this section. The association shall notify each member of the association of the

amount of the member's assessments under this subsection, with the proportion of the assessment allocable to each insurer determined in the manner used to determine each member's participation in the association under Section 2210.052.

(c) A member of the association may not recoup an assessment paid under this section through a premium surcharge.

(d) A member of the association may credit an amount paid in accordance with this section in a calendar year against the insurer's premium tax under Chapter 221. The tax credit authorized under this subsection shall be allowed at a rate not to exceed 20 percent per year for five or more successive years beginning the calendar year that the assessments under this section are paid. The balance of payments made by the insurer and not claimed as a premium tax credit may be reflected in the books and records of the insurer as an admitted asset of the insurer for all purposes, including exhibition in an annual statement under Section 862.001.

Sec. 2210.079. NOTIFICATION REGARDING TAX CREDITS. (a) The association shall immediately notify the department if an occurrence or series of occurrences in a catastrophe area results in insured losses that result in a tax credit under Section 2210.078(d) in a calendar year.

(b) On receipt of notice under Subsection (a), the department shall immediately notify the governor and the appropriate committees of each house of the legislature of the amount of insured losses eligible for tax credits under Section 2210.078(d).

SECTION 13. The heading to Subchapter C, Chapter 2210, Insurance Code, is amended to read as follows:

SUBCHAPTER C. ASSOCIATION BOARD OF DIRECTORS; GENERAL POWERS AND DUTIES OF BOARD OF DIRECTORS

SECTION 14. Section 2210.102, Insurance Code, is amended to read as follows:

Sec. 2210.102. COMPOSITION. (a) The board of directors is composed of ~~[the following]~~ nine members appointed by the commissioner in accordance with this section.

(b) Four members must be [+

~~[(1) five]~~ representatives of different insurers who are members of the association.

(c) Three members must be ~~[, elected by the members as provided by the plan of operation;~~

~~[(2) two]~~ public representatives:

(1) at least one of whom ~~[who are nominated by the office of public insurance counsel and who]~~, as of the date of the appointment, does not [+

~~[(A)]~~ reside in or own property in a first tier coastal county; and

(2) at least one of whom, as of the date of the appointment, resides in or owns property in a first tier coastal county and is a policyholder of the association.

(d) Two members must be ~~[a catastrophe area; and~~

~~[(B) are policyholders of the association; and~~

~~[(3) two]~~ property and casualty agents who are licensed

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under this code and are not captive agents. One of the agents, but not more than one, as of the date of the appointment, must maintain the agent's principal office in a first tier coastal county.

(e) All members must~~[, each of whom must:~~

~~[(A)]~~ have demonstrated experience in insurance, general business, or actuarial principles sufficient to make the success of the association probable~~[+~~

~~[(B)]~~ ~~maintain the agent's principal office, as of the date of the appointment, in a catastrophe area; and~~

~~[(C)]~~ ~~hold a license under Chapter 4051 as a general property and casualty agent or a personal lines property and easualty agent~~].

(f) Insurers who are members of the association shall nominate, from among those members, persons to fill any vacancy in the four board of director seats reserved for insurers. The board of directors shall solicit nominations from the members and submit the nominations to the commissioner. The nominee slate submitted to the commissioner under this subsection must include at least three more names than the number of vacancies. The commissioner shall appoint replacement insurer members from the nominee slate.

(g) The commissioner shall appoint one person to serve as a nonvoting member of the board to advise the board regarding issues relating to the inspection process. The commissioner may give preference in an appointment under this subsection to a person who is a qualified inspector under Section 2210.254. The nonvoting member appointed under this section must:

(1) be an engineer licensed by, and in good standing with, the Texas Board of Professional Engineers;

(2) reside in a first tier coastal county; and

(3) be knowledgeable of, and have professional expertise in, wind-related design and construction practices in coastal areas that are subject to high winds and hurricanes.

(h) [~~(b)~~] The persons appointed under Subsection (c) [~~Subsections (a)(2) and (3)~~] must be from different counties.

SECTION 15. Section 2210.103, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c) A member of the board of directors may be removed by the commissioner with cause stated in writing and posted on the association's website. The commissioner shall appoint a replacement in the manner provided by Section 2210.102 for a member who leaves or is removed from the board of directors.

SECTION 16. Section 2210.104, Insurance Code, is amended to read as follows:

Sec. 2210.104. OFFICERS. The board of directors shall elect from the board's membership an executive committee consisting of a presiding officer, assistant presiding officer, and secretary-treasurer. [~~At least one of the officers must be a member appointed under Section 2210.102(a)(2) or (3).~~]

SECTION 17. Section 2210.105, Insurance Code, is amended by adding Subsection (d) to read as follows:

(d) Except for an emergency meeting, a meeting of the board of directors shall be held at a location as determined by the board

of directors.

SECTION 18. Subchapter C, Chapter 2210, Insurance Code, is amended by adding Section 2210.1051 to read as follows:

Sec. 2210.1051. MEETINGS OF BOARD OF DIRECTORS.

(a) Notwithstanding Chapter 551, Government Code, or any other law, members of the board of directors may meet by telephone conference call, videoconference, or other similar telecommunication method. The board may use telephone conference call, videoconference, or other similar telecommunication method for purposes of establishing a quorum or voting or for any other meeting purpose in accordance with this subsection and Subsection

(b). This subsection applies without regard to the subject matter discussed or considered by the members of the board at the meeting.

(b) A meeting held by telephone conference call, videoconference, or other similar telecommunication method:

(1) is subject to the notice requirements applicable to other meetings of the board of directors;

(2) may not be held unless notice of the meeting specifies the location of the meeting, which shall be located in a tier one county; a recording of these meetings shall be posted on the association's website;

(3) must be audible to the public at the location specified in the notice under Subdivision (2); and

(4) must provide two-way audio communication between all members of the board attending the meeting during the entire meeting, and if the two-way audio communication link with members

attending the meeting is disrupted so that a quorum of the board is no longer participating in the meeting, the meeting may not continue until the two-way audio communication link is reestablished.

SECTION 19. Subchapter C, Chapter 2210, Insurance Code, is amended by adding Section 2210.107 to read as follows:

Sec. 2210.107. PRIMARY BOARD OBJECTIVES. The primary objectives of the board of directors are to ensure that the association:

- (1) operates in accordance with this chapter and commissioner rules;
- (2) complies with sound insurance principles; and
- (3) meets all standards imposed under this chapter.

SECTION 20. Section 2210.151, Insurance Code, is amended to read as follows:

Sec. 2210.151. ADOPTION OF PLAN OF OPERATION. With the advice of the board of directors, the commissioner by rule shall adopt the plan of operation to provide[+:

~~[(1)] Texas windstorm and hail insurance in a catastrophe area[+and~~

~~[(2)] Texas fire and explosion insurance in an inadequate fire insurance area].~~

SECTION 21. Subsection (a), Section 2210.152, Insurance Code, is amended to read as follows:

(a) The plan of operation must:

- (1) provide for the efficient, economical, fair, and

nondiscriminatory administration of the association; and

(2) include:

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

(B) underwriting standards;

(C) procedures for accepting and ceding reinsurance;

(D) procedures for obtaining and repaying amounts pursuant to financial instruments authorized under Subchapter B-1;

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

(F) [~~E~~] time limits and procedures for processing applications for insurance; and

(G) [~~F~~] other provisions as considered necessary by the department to implement the purposes of this chapter.

SECTION 22. Section 2210.202, Insurance Code, is amended to read as follows:

Sec. 2210.202. APPLICATION FOR COVERAGE. (a) A person who has an insurable interest in insurable property may apply to the association for insurance coverage provided under the plan of operation and an inspection of the property, subject to any rules [~~including any inspection fee,~~] established by the board of directors and approved by the commissioner. The association shall make insurance available to each applicant in the catastrophe area whose property is insurable property but who, after diligent efforts, is unable to obtain property insurance through the

voluntary market, as evidenced by one declination from an insurer authorized to engage in the business of, and writing, property insurance providing windstorm and hail coverage in the first tier coastal counties. For purposes of this section, "declination" has the meaning assigned by the plan of operation and shall include a refusal to offer coverage for the perils of windstorm and hail and the inability to obtain substantially equivalent insurance coverage for the perils of windstorm and hail. Notwithstanding Section 2210.203(c), evidence of one declination is also required with an application for renewal of an association policy.

(b) A [~~general~~] property and casualty agent [~~or a personal lines property and casualty agent~~] must submit an application for the insurance coverage on behalf of the applicant on forms prescribed by the association. The application must contain a statement as to whether the applicant has submitted or will submit the premium in full from personal funds or, if not, to whom a balance is or will be due. Each application for initial or renewal coverage must also contain a statement that the agent possesses proof of the declination described by Subsection (a) and proof of flood insurance coverage or unavailability of that coverage as described by Section 2210.203(a-1).

SECTION 23. Section 2210.203, Insurance Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) Notwithstanding Subsection (a), if all or any part of the property for which an application for new or renewal insurance coverage is made is located in Zone V or another similar zone with

an additional hazard associated with storm waves, as defined by the National Flood Insurance Program, and if flood insurance under that federal program is available, the association may not issue a new or renewal insurance policy unless evidence that the property is covered by a flood insurance policy is submitted to the association.

SECTION 24. Section 2210.204, Insurance Code, is amended by amending Subsection (d) and adding Subsection (e) to read as follows:

(d) If an insured requests cancellation of the insurance coverage, the association shall refund the unearned premium, less any minimum retained premium set forth in the plan of operation, payable to the insured and the holder of an unpaid balance. The property and casualty agent who submitted the application shall refund the agent's commission on any unearned premium in the same manner.

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

- (1) the purchase of similar coverage in the voluntary market;
- (2) sale of the property to an unrelated party;
- (3) death of the policyholder; or

(4) total loss of the property.

SECTION 25. Subchapter E, Chapter 2210, Insurance Code, is amended by adding Section 2210.2041 to read as follows:

Sec. 2210.2041. NONREFUNDABLE SURCHARGE. A nonrefundable surcharge established under this chapter is not refundable under this code for any reason or purpose.

SECTION 26. Section 2210.251, Insurance Code, is amended to read as follows:

Sec. 2210.251. INSPECTION REQUIREMENTS. (a) Except as provided by this section, to be considered insurable property eligible for windstorm and hail insurance coverage from the association, a structure that is constructed, altered, remodeled, enlarged, or repaired or to which additions are made on or after January 1, 1988, must be inspected [~~or approved~~] by the association [~~department~~] for compliance with the plan of operation.

(b) After January 1, 2004, for geographic areas specified by the commissioner, the commissioner by rule shall adopt the 2003 International Residential Code for one- and two-family dwellings published by the International Code Council. For those geographic areas, the commissioner by rule may adopt a subsequent edition of that code and may adopt any supplements published by the International Code Council and amendments to that code.

(c) After January 1, 2004, a person must submit a notice of a windstorm inspection to the association [~~unit responsible for certification of windstorm inspections at the department~~] before beginning to construct, alter, remodel, enlarge, or repair a

structure.

(d) A structure constructed, altered, remodeled, enlarged, or repaired or to which additions were made before January 1, 1988, that is located in an area that was governed at the time of the construction, alteration, remodeling, enlargement, repair, or addition by a building code recognized by the association is insurable property eligible for windstorm and hail insurance coverage from the association without compliance with the inspection [~~or approval~~] requirements of this section or the plan of operation.

(e) A structure constructed, altered, remodeled, enlarged, or repaired or to which additions were made before January 1, 1988, that is located in an area not governed by a building code recognized by the association is insurable property eligible for windstorm and hail insurance coverage from the association without compliance with the inspection [~~or approval~~] requirements of this section or the plan of operation if the structure was previously insured by an insurer authorized to engage in the business of insurance in this state and the structure is in essentially the same condition as when previously insured, except for normal wear and tear, and is without any structural change other than a change made according to code. For purposes of this subsection, evidence of previous insurance coverage must reflect coverage for the perils of windstorm and hail for the property within the 12-month period immediately preceding the date of the application for coverage through the association and includes:

- (1) a copy of a previous insurance policy;
- (2) copies of canceled checks or agent's records that show payments for previous policies; and
- (3) a copy of the title to the structure or mortgage company records that show previous policies.

(f) Notwithstanding any other provision of this section, a residential structure insured by the association as of June 1, 2009, may continue coverage through the association subject to the inspection requirements imposed under Section 2210.258.

(g) The association [~~department~~] shall issue a certificate of compliance for each structure that qualifies for coverage. The certificate is evidence of insurability of the structure by the association.

~~[(g) The department may enter into agreements and contracts as necessary to implement this section.]~~

(h) The association [~~department~~] may charge a reasonable fee to cover the cost of making building requirements and inspection standards available to the public.

(i) The association shall charge a reasonable fee for each inspection of each structure in an amount set by the board of directors. The association may use fees collected under this section for operating expenses or for the purchase of reinsurance.

(j) Without limitation of the department's authority to otherwise enforce this chapter, the department shall monitor the association's compliance with this subchapter.

(k) Except as otherwise provided by this subchapter, the association may not consider any request that a structure be certified as insurable property if, within six months after the final inspection of a structure, the association has not received:

(1) fully completed documentation verifying that the structure has been constructed, altered, remodeled, enlarged, or repaired, or any addition to the structure has been made, in compliance with the plan of operation; and

(2) full payment of all inspection fees owed to the association, including any fees related to prior association inspections.

(1) If a structure is rejected for coverage under Subsection (k), a person may make a new request for certification and the structure may be reinspected for compliance with the plan of operation. A request for certification brought under this subsection must meet the requirements of Subsection (k).

SECTION 27. Subsections (a), (c), and (d), Section 2210.254, Insurance Code, are amended to read as follows:

(a) For purposes of this chapter, a "qualified inspector" includes:

(1) a person determined by the association [~~department~~] to be qualified because of training or experience to perform building inspections;

(2) a licensed professional engineer who meets the requirements specified by the association [~~commissioner rule~~] for appointment to conduct windstorm inspections; and

(3) an inspector who:

(A) is certified by the International Code Council, the Building Officials and Code Administrators International, Inc., the International Conference of Building Officials, or the Southern Building Code Congress International, Inc.;

(B) has certifications as a buildings inspector and coastal construction inspector; and

(C) complies with other requirements specified by the association [~~commissioner rule~~].

(c) Before performing building inspections, a qualified inspector must be approved and appointed or employed by the association [~~department~~].

(d) The association [~~department~~] may charge a reasonable fee for the filing of applications by and determining the qualifications of persons for appointment as qualified inspectors.

SECTION 28. Section 2210.255, Insurance Code, is amended to read as follows:

Sec. 2210.255. APPOINTMENT OF LICENSED ENGINEER AS INSPECTOR.

(a) On request of an engineer licensed by the Texas Board of Professional Engineers, the association may [~~commissioner shall~~] appoint the engineer as an inspector under this subchapter on receipt of information satisfactory to the association [~~not later than the 10th day after the date the engineer delivers to the commissioner information demonstrating~~] that the engineer is qualified to perform windstorm inspections under this subchapter.

(b) The association shall consult with the commissioner

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regarding [~~shall adopt rules establishing~~] the information to be considered in appointing engineers under this section.

SECTION 29. Subchapter F, Chapter 2210, Insurance Code, is amended by adding Section 2210.2565 to read as follows:

Sec. 2210.2565. PROCEDURES REGARDING APPOINTMENT OF INSPECTORS. The association shall develop procedures for the appointment and oversight of qualified inspectors appointed under Sections 2210.254 and 2210.255, including procedures relating to the suspension or revocation of an appointment made by the association.

SECTION 30. Subchapter F, Chapter 2210, Insurance Code, is amended by adding Sections 2210.258 and 2210.259 to read as follows:

Sec. 2210.258. MANDATORY COMPLIANCE WITH BUILDING CODES; ELIGIBILITY. (a) Notwithstanding any other provision of this chapter, to be eligible for insurance through the association, all construction, alteration, remodeling, enlargement, and repair of, or addition to, any structure located in the catastrophe area that is begun on or after the effective date of S.B. No. 14, Acts of the 81st Legislature, Regular Session, 2009, must be performed in compliance with the applicable building code standards, as set forth in the plan of operation.

(b) The association may not insure a structure described by Subsection (a) until:

(1) the structure has been inspected for compliance with the plan of operation in accordance with Section 2210.251(a); and

(2) a certificate of compliance has been issued for the structure in accordance with Section 2210.251(g).

Sec. 2210.259. SURCHARGE FOR CERTAIN NONCOMPLIANT STRUCTURES.

(a) A noncompliant residential structure insured by the association as of June 1, 2009, under Section 2210.251(f) that had been approved for insurability under the approval process regulations in effect on June 1, 2009, is subject to an annual premium surcharge in an amount not less than 15 percent of the premium for insurance coverage obtained through the association. The surcharge under this subsection applies to each policy issued or renewed by the association on or after the effective date of S.B. No. 14, Acts of the 81st Legislature, Regular Session, 2009, and is due on the issuance or renewal of the policy.

(b) A premium surcharge collected under this section shall be deposited in the catastrophe reserve trust fund. A premium surcharge under this section is a separate nonrefundable charge in addition to the premiums collected and is not subject to premium tax or commissions. Failure to pay the surcharge by a policyholder constitutes failure to pay premium for purposes of policy cancellation.

SECTION 31. Subsections (c) and (d), Section 2210.351, Insurance Code, are amended to read as follows:

(c) Except as provided by Subsection (d), as [As] soon as reasonably possible after the filing has been made, the commissioner in writing shall approve[~~, modify,~~] or disapprove the filing. A filing is considered approved unless [modified or]

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disapproved on or before the 30th day after the date of the filing.

If the commissioner disapproves a filing, the commissioner shall state in writing the reasons for the disapproval and the criteria the association is required to meet to obtain approval.

(d) The association may use a rate filed by the association without prior commissioner approval if:

(1) the filing is made not later than the 30th day before the date of any use or delivery for use of the rate;

(2) the filed rate does not exceed 105 percent of the rate in effect on the date on which the filing is made;

(3) the filed rate does not reflect a rate change for an individual rating class that is 10 percent higher than the rate in effect for that rating class on the date on which the filing is made; and

(4) the commissioner has not disapproved the filing in writing, advising of the reasons for the disapproval and the criteria the association is required to meet to obtain approval [~~if at any time the commissioner determines that a filing approved under Subsection (c) no longer meets the requirements of this chapter, the commissioner may, after a hearing held on at least 20 days' notice to the association that specifies the matters to be considered at the hearing, issue an order withdrawing approval of the filing. The order must specify in what respects the commissioner determines that the filing no longer meets the requirements of this chapter. An order issued under this subsection may not take effect before the 30th day after the date~~

~~of issuance of the order].~~

SECTION 32. Section 2210.352, Insurance Code, is amended to read as follows:

Sec. 2210.352. MANUAL RATE FILINGS: ANNUAL FILING. (a) Not later than August 15 of each year, the association shall file with the department [~~for approval by the commissioner~~] a proposed manual rate for all types and classes of risks written by the association[~~. Chapter 40 does not apply to:~~

~~[(1) a filing made under this subsection; or~~

~~[(2) a department action with respect to the filing].~~

(a-1) The association may use a rate filed by the association under this section without prior commissioner approval if:

(1) the filing is made not later than the 30th day before the date of any use or delivery for use of the rate;

(2) the filed rate does not exceed 105 percent of the rate used by the association in effect on the date on which the filing is made; and

(3) the filed rate does not reflect a rate change for an individual rating class that is 10 percent higher than the rate in effect for that rating class on the date on which the filing is made.

(b) Except as provided by Subsection (a-1), before [~~Before~~] approving or[~~]~~ disapproving[~~, or modifying~~] a filing under this section, the commissioner shall provide all interested persons a reasonable opportunity to:

(1) review the filing;

(2) obtain copies of the filing on payment of any legally required copying cost; and

(3) submit to the commissioner written comments or information related to the filing.

(c) Except as provided by Subsection (a-1), ~~[The commissioner shall schedule an open meeting not later than the 45th day after the date the department receives a filing at which interested persons may present written or oral comments relating to the filing.~~

~~[(d) An open meeting under Subsection (c) is subject to Chapter 551, Government Code, but is not a contested case hearing under Chapter 2001, Government Code.~~

~~[(e) The department shall file with the secretary of state for publication in the Texas Register notice that a filing has been made under Subsection (a) not later than the seventh day after the date the department receives the filing. The notice must include information relating to:~~

~~[(1) the availability of the filing for public inspection at the department during regular business hours and the procedures for obtaining copies of the filing;~~

~~[(2) procedures for making written comments related to the filing; and~~

~~[(3) the time, place, and date of the open meeting scheduled under Subsection (c) at which interested persons may present written or oral comments relating to the filing.~~

~~[(f) After the conclusion of the open meeting,] the~~

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commissioner shall approve or[7] disapprove[7, ~~or modify~~] the filing in writing not later than October [~~November~~] 15 of the year in which the filing was made. If the filing is not approved or[7] disapproved[7, ~~or modified~~] on or before that date, the filing is considered approved.

(d) Except as provided by Subsection (a-1), if [~~(g) If~~] the commissioner disapproves a filing, the commissioner shall state in writing the reasons for the disapproval and the criteria the association is required to meet to obtain approval.

SECTION 33. Section 2210.353, Insurance Code, is amended to read as follows:

Sec. 2210.353. MANUAL RATE FILINGS: AMENDED ANNUAL FILING.

(a) Not later than the 30th day after the date the association receives the commissioner's written disapproval under Section 2210.352(c) [~~2210.352(f)~~], the association may file with the commissioner an amended annual filing that conforms to all criteria stated in that written disapproval.

(b) Not later than the 30th day after the date an amended filing made under Subsection (a) is received, the commissioner shall approve [~~the amended filing with or without modifications~~] or disapprove the amended filing. If the filing is not [~~modified or~~] disapproved on or before the 30th day after the date of receipt, the filing is considered approved [~~without modification~~]. If the commissioner disapproves a filing, the commissioner shall state in writing the reasons for the disapproval and the criteria the association is required to meet to obtain approval.

(c) Before approving or disapproving an amended annual filing under this section, the commissioner shall, in the manner provided by Section 2210.352(b), provide all interested persons a reasonable opportunity to:

- (1) review the amended annual filing;
- (2) obtain copies of the amended annual filing on payment of any legally required copying cost; and
- (3) submit to the commissioner written comments or information related to the amended annual filing.

~~[(d) The commissioner may, in the manner provided by Sections 2210.352(e) and (d), hold a hearing regarding an amended filing not later than the 20th day after the date the department receives the amended filing.]~~

~~[(e) Not later than the 10th day after the date the hearing is concluded, the commissioner shall approve or disapprove the amended filing.]~~

~~[(f) The requirements imposed under Subsection (a) and under Sections 2210.352(e), (f), and (g) apply to a hearing conducted under this section and the commissioner's decision resulting from that hearing.]~~

SECTION 34. Subsections (a), (c), and (d), Section 2210.354, Insurance Code, are amended to read as follows:

(a) In conjunction with the review of a filing under Section 2210.352, other than a filing made under Subsection (a-1) of that section, ~~[or 2210.353:~~

~~[(1)]~~ the commissioner may request the association to

provide additional supporting information relating to the filing[+  
and

~~[(2) any interested person may file a written request  
with the commissioner for additional supporting information  
relating to the filing].~~

(c) The commissioner shall submit to the association all requests for additional supporting information made under this section for the commissioner's use not later than the 21st day after the date of receipt of the filing ~~[and the use of any interested person]~~.

(d) Unless a different period is requested by the association and approved by the commissioner, the association shall provide the information to the commissioner not later than the fifth day after the date the written request for additional supporting information is delivered to the association. ~~[The department shall notify an interested person who has requested additional information of the availability of the information not later than one business day after the date the commissioner receives the information from the association.]~~

SECTION 35. Section 2210.355, Insurance Code, is amended by amending Subsection (b) and adding Subsection (h) 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) recognized catastrophe models;

(3) expenses of operation, including acquisition costs;

(4) [~~3~~] a reasonable margin for profit and contingencies; and

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

(h) The association may establish rating territories and may vary rates among the territories.

SECTION 36. Subsection (b), Section 2210.361, Insurance Code, is amended to read as follows:

(b) After notice and hearing, the commissioner may accept[ ~~modify,~~] or reject a recommendation made by the association under this section. [~~Chapter 40 does not apply to an action taken under this section.~~]

SECTION 37. Subchapter H, Chapter 2210, Insurance Code, is amended by adding Section 2210.364 to read as follows:

Sec. 2210.364. MIGRATION TO ACTUARIALLY SOUND RATES. Not later than September 1, 2009, the association shall begin implementing rates that are actuarially sound as determined by the association. Not later than August 31, 2012, all rates used by the association for an initial policy or renewal policy issued by the association shall be actuarially sound as determined by the association.

SECTION 38. Subsections (a), (c), and (d), Section 2210.452, Insurance Code, are amended to read as follows:

(a) The commissioner shall adopt rules under which the association makes [~~members relinquish their net equity on an annual basis as provided by those rules by making~~] payments to the catastrophe reserve trust fund. The trust fund may be used only to fund[+]

[~~(1)~~] the obligations of the trust fund under Subchapter B-1 [~~Section 2210.058(a); and~~

[~~(2)~~] ~~the mitigation and preparedness plan established under Section 2210.454 to reduce the potential for payments by association members that give rise to tax credits in the event of loss~~].

(c) At the end of each calendar year or policy year, the association shall use [~~pay~~] the net gain from operations [~~equity~~] of the association [~~a member~~], including all premium and other revenue of the association in excess of incurred losses and operating expenses, to make payments to the trust fund, to procure [~~or a~~] reinsurance, or to make payments to the trust fund and to procure reinsurance [~~program approved by the commissioner~~].

(d) The commissioner by rule shall establish the procedure relating to the disbursement of money from the trust fund to policyholders in the event of an occurrence or series of occurrences within a catastrophe area that results in a disbursement under Subchapter B-1 [~~Section 2210.058(a)~~].

SECTION 39. Section 2210.453, Insurance Code, is amended to read as follows:

Sec. 2210.453. REINSURANCE [~~PROGRAM~~]. (a) The association

may [~~shall~~]:

(1) make payments into the trust fund; and [~~or~~]

(2) purchase [~~establish a~~] reinsurance [~~program approved by the department~~].

(b) The [~~With the approval of the department, the~~] association may purchase [~~establish a~~] reinsurance [~~program~~] that operates in addition to or in concert with the trust fund, public securities, financial instruments, and assessments authorized by this chapter.

SECTION 40. Subsection (b), Section 2210.454, Insurance Code, is amended to read as follows:

(b) Each state fiscal year, the department may fund the mitigation and preparedness plan using available funds [~~the investment income of the trust fund in an amount not less than \$1 million and not more than 10 percent of the investment income of the prior fiscal year. From that amount and as part of that plan, the department may use in each fiscal year \$1 million for the windstorm inspection program established under Section 2210.251~~].

SECTION 41. Section 2210.552, Insurance Code, is amended to read as follows:

Sec. 2210.552. CLAIM DISPUTES; VENUE. (a) Except as provided by Sections 2210.007 and 2210.106, a person insured under this chapter who is aggrieved by an act, ruling, or decision of the association relating to the payment of, the amount of, or the denial of a claim may:

(1) bring an action for policy benefits against the

association[, ~~including an action under Chapter 541~~]; or

(2) appeal [~~the act, ruling, or decision~~] under Section 2210.551.

(b) The remedies provided by Subsection (a) and Section 2210.551 are exclusive. A person may not proceed under both Section 2210.551 and this section for the same act, ruling, or decision.

(c) Venue [~~Except as provided by Subsection (d), venue~~] in an action brought under this section[, ~~including an action under Chapter 541,~~] against the association is in the county in which the insured property is located or in a district court in Travis County.

[~~(d) Venue in an action, including an action under Chapter 541, brought under this section in which the claimant joins the department as a party to the action is only in a district court in Travis County.~~]

SECTION 42. Chapter 2210, Insurance Code, is amended by adding Subchapter M to read as follows:

SUBCHAPTER M. PUBLIC SECURITIES PROGRAM

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

Sec. 2210.602. DEFINITIONS. In this subchapter:

(1) "Board" means the board of directors of the Texas

Public Finance Authority.

(2) "Class 1 public securities" means public securities authorized to be issued before or on or after the occurrence of a catastrophic event by Section 2210.073.

(3) "Class 2 public securities" means public securities authorized to be issued on or after the occurrence of a catastrophic event by Section 2210.074, 2210.076, or 2210.077.

(4) "Credit agreement" has the meaning assigned by Chapter 1371, Government Code.

(5) "Insurer" means each property and casualty insurer authorized to engage in the business of property and casualty insurance in this state and an affiliate of such an insurer, as described by Section 823.003, including an affiliate that is not authorized to engage in the business of property and casualty insurance in this state. The term specifically includes a county mutual insurance company, a Lloyd's plan, and a reciprocal or interinsurance exchange.

(6) "Public security" means a debt instrument or other public security issued by the Texas Public Finance Authority.

(7) "Public security administrative expenses" means expenses incurred to administer public securities issued under this subchapter, including fees for paying agents, trustees, and attorneys, and for other professional services necessary to ensure compliance with applicable state or federal law.

(8) "Public security obligations" means the principal of a public security and any premium and interest on a public security

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issued under this subchapter, together with any amount owed under a related credit agreement.

(9) "Public security obligation revenue fund" means the dedicated trust fund established by the association outside the state treasury under this subchapter.

(10) "Public security resolution" means the resolution or order authorizing public securities to be issued under this subchapter.

Sec. 2210.603. APPLICABILITY OF OTHER LAWS. The board shall issue the public securities as described by Section 2210.604 in accordance with and subject to the requirements of Chapter 1232, Government Code, and other provisions of Title 9, Government Code, that apply to issuance of a public security by a state agency. In the event of a conflict, this subchapter controls.

Sec. 2210.604. ISSUANCE OF PUBLIC SECURITIES AUTHORIZED.

(a) At the request of the association and with the approval of the commissioner, the Texas Public Finance Authority shall issue Class 1 or Class 2 public securities.

(b) The association shall specify in the association's request to the board the maximum principal amount of the public securities and the maximum term of the public securities.

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

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

(2) provide a public security reserve fund; and

(3) capitalize interest for the period determined necessary by the association, not to exceed two years.

Sec. 2210.605. TERMS OF ISSUANCE. (a) The board shall determine the method of sale, type and form of public security, maximum interest rates, and other terms of the public securities that, in the board's judgment, best achieve the goals of the association and effect the borrowing at the lowest practicable cost. The board may enter into a credit agreement in connection with the public securities.

(b) Public securities must be issued in the name of the association.

Sec. 2210.606. ADDITIONAL COVENANTS. The board may make additional covenants with respect to the public securities and the designated income and receipts of the association pledged to their payment, and provide for the flow of funds and the establishment, maintenance, and investment of funds and accounts with respect to the public securities, and the administration of those funds and accounts, as provided in the proceedings authorizing the public securities.

Sec. 2210.607. PUBLIC SECURITY PROCEEDS. The proceeds of public securities issued by the board under this subchapter may be deposited with a trustee selected by the association in consultation with the commissioner or held by the comptroller in a dedicated trust fund outside the state treasury in the custody of the comptroller.

Sec. 2210.608. USE OF PUBLIC SECURITY PROCEEDS. (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;

(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; and

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

(b) Any excess public security proceeds remaining after the purposes for which the public securities were issued are satisfied may be used to purchase or redeem outstanding public securities. If there are no outstanding public security obligations or public security administrative expenses, the excess proceeds shall be transferred to the catastrophe reserve trust fund.

Sec. 2210.609. REPAYMENT OF ASSOCIATION'S PUBLIC SECURITY OBLIGATIONS. (a) The association shall pay all public security obligations from available funds collected by the association and deposited into the public security obligation revenue fund. 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 Sections 2210.612 and 2210.613, as applicable.

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

(c) The association shall deposit all revenue collected under Sections 2210.612 and 2210.613 in the public security obligation revenue fund. Money deposited in the fund may be invested as permitted by general law. Money in the 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.

(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 public security obligation revenue 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 or amounts from the obligation trust fund to the extent provided in the proceedings authorizing the credit

agreement.

Sec. 2210.610. PUBLIC SECURITY PAYMENTS. (a) Revenues received from the premium surcharges under Section 2210.612 or 2210.613 may be applied only as provided by this subchapter.

(b) The association may pay public security obligations with other legally available funds.

(c) Public security obligations are payable only from sources provided for payment in this subchapter.

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

(1) used to pay public security obligations payable in the subsequent 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.

Sec. 2210.612. CLASS 1 PREMIUM SURCHARGE; REPAYMENT OF AMOUNTS OWED UNDER FINANCIAL INSTRUMENTS. (a) Each insurer, the association, and the Texas FAIR Plan Association shall collect from their policyholders a surcharge in addition to any premiums to pay:

(1) public security obligations and public security administrative expenses, if any, on Class 1 public securities; and

(2) principal and interest on any financial instruments entered into by the association under Section 2210.073.

(b) The association shall determine the premium surcharge at least annually.

(c) On approval by the commissioner, each insurer, the association, and the Texas FAIR Plan Association shall assess a premium surcharge to its policyholders as provided by this section.

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 or financial instruments, as applicable. The premium surcharge shall be assessed on all policyholders who reside or have operations in, or whose insured property is located in a catastrophe area.

(d) The percent of premium assessed as surcharges to all policies issued or renewed by the association must be at least twice the percent of premium assessed as surcharges to all other policies.

(e) The association shall collect the premium surcharge from its policyholders. Each insurer and the Texas FAIR Plan Association shall collect the premium surcharge from their affected policyholders and shall remit the premium surcharge to the association as required by commissioner rule.

(f) A premium surcharge under this section shall apply to all policies that provide coverage on any premises, locations,

operations, or property located in the area described by Subsection (c) for all property and casualty lines of insurance, other than federal flood insurance, workers' compensation insurance, accident and health insurance, and medical malpractice insurance.

(g) A premium surcharge under this section is a separate nonrefundable charge in addition to the premiums collected and is not subject to premium tax or commissions. Failure to pay the surcharge by a policyholder constitutes failure to pay premium for purposes of policy cancellation.

Sec. 2210.613. CLASS 2 PREMIUM SURCHARGE; REPAYMENT OF AMOUNTS OWED UNDER FINANCIAL INSTRUMENTS. (a) Each insurer, the association, and the Texas FAIR Plan Association shall collect from their policyholders a premium surcharge to pay:

(1) public security obligations and public security administrative expenses, if any, on Class 2 public securities issued under Section 2210.074;

(2) public security obligations and public security administrative expenses, if any, on Class 2 public securities issued under Section 2210.076;

(3) public security obligations and public security administrative expenses, if any, on Class 2 public securities issued under Section 2210.077;

(4) principal and interest on financial instruments entered into by the association under Section 2210.074; or

(5) principal and interest on financial instruments entered into by the association under Section 2210.076.

(b) The association shall determine the premium surcharge at least annually.

(c) On approval by the commissioner, each insurer, the association, and the Texas FAIR Plan Association shall assess a premium surcharge to its policyholders as provided by this section.

The premium surcharge must be set in an amount sufficient to pay all debt service and all related expenses on the public securities or financial instruments, as applicable.

(d) Each insurer, the association, and the Texas FAIR Plan Association shall collect the premium surcharge under this section from their policyholders who have a property or casualty policy that provides coverage for premises, locations, operations, or property located in this state, and shall remit the premium surcharge to the association as required by commissioner rule.

(e) A premium surcharge under this section shall apply to all policies that provide coverage on any premises, locations, operations, or property located in this state for all property and casualty lines of insurance, other than federal flood insurance, workers' compensation insurance, accident and health insurance, and medical malpractice insurance. The premium surcharge does not apply to premiums charged for any premises, locations, operations, or property located outside this state.

(f) Seventy percent of a premium surcharge assessed under Subsection (a)(1), (2), (4), or (5) must be assessed on policyholders who have a property or casualty policy that provides coverage for premises, locations, operations, or property located

in a catastrophe area.

(g) With respect to the premium surcharge assessed under Subsection (a)(1), (2), (4), or (5) in accordance with Subsection (f), the percent of premium assessed as surcharges to all policies issued or renewed by the association must be at least twice the percent of premium assessed as surcharges to all other new or renewal policies.

(h) A premium surcharge under this section is a separate nonrefundable charge in addition to the premiums collected and is not subject to premium tax or commissions. Failure to pay the surcharge by a policyholder constitutes failure to pay premium for purposes of policy cancellation.

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

Sec. 2210.615. SOURCE OF PAYMENT; STATE DEBT NOT CREATED.

(a) A public security or credit agreement is payable solely from revenue as provided by this subchapter.

(b) A public security issued under this subchapter, and any related credit agreement, is not a debt of this state or any state agency or political subdivision of this state, and does not constitute a pledge of the faith and credit of this state or any state agency or political subdivision of this state.

(c) Each public security, and any related credit agreement, issued under this subchapter must state on the security's face that:

(1) neither the state nor a state agency, political corporation, or political subdivision of the state is obligated to pay the principal of or interest on the public security except as provided by this subchapter; and

(2) neither the faith and credit nor the taxing power of the state or any state agency, political corporation, or political subdivision of the state is pledged to the payment of the principal of or interest on the public security.

Sec. 2210.616. STATE NOT TO IMPAIR PUBLIC SECURITY OBLIGATIONS. If public securities under this subchapter are outstanding, the state may not:

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

(2) in any way impair the rights and remedies of the public security owners until the public securities are fully discharged.

Sec. 2210.617. ENFORCEMENT BY MANDAMUS. A writ of mandamus and any other legal and equitable remedies are available to a party at interest to require the association or another party to fulfill an agreement and to perform functions and duties under:

(1) this subchapter;

(2) the Texas Constitution; or

(3) a relevant public security resolution.

Sec. 2210.618. EXEMPTION FROM TAXATION. A public security issued under this subchapter, any transaction relating to the public security, and profits made from the sale of the public security are exempt from taxation by this state or by a municipality or other political subdivision of this state.

Sec. 2210.619. NO PERSONAL LIABILITY. The members of the association, members of the association board of directors, association employees, the board, the employees of the Texas Public Finance Authority, the commissioner, and department employees are not personally liable as a result of exercising the rights and responsibilities granted under this subchapter.

Sec. 2210.620. AUTHORIZED INVESTMENTS. Public securities issued under this subchapter are authorized investments under:

- (1) Subchapter B, Chapter 424;
- (2) Subchapter C, Chapter 425; and
- (3) Sections 425.203-425.213.

SECTION 43. Section 941.003, Insurance Code, is amended by adding Subsection (e) to read as follows:

(e) A Lloyd's plan is subject to Chapter 2210, as provided by that chapter.

SECTION 44. Section 942.003, Insurance Code, is amended by adding Subsection (f) to read as follows:

(f) An exchange is subject to Chapter 2210, as provided by that chapter.

SECTION 45. The following laws are repealed:

(1) Subdivisions (5) and (12), Section 2210.003, Insurance Code;

(2) Sections 2210.058 and 2210.059, Insurance Code;

(3) Sections 2210.205 and 2210.206, Insurance Code;

(4) Sections 2210.256 and 2210.257, Insurance Code;

(5) Sections 2210.356, 2210.359, 2210.360, and 2210.363, Insurance Code; and

(6) Subchapter G, Chapter 2210, Insurance Code.

SECTION 46. (a) The board of directors of the Texas Windstorm Insurance Association established under Section 2210.102, Insurance Code, as that section existed before amendment by this Act, is abolished effective December 31, 2009.

(b) The commissioner of insurance shall appoint the members of the board of directors of the Texas Windstorm Insurance Association under Section 2210.102, Insurance Code, as amended by this Act, not later than December 31, 2009.

(c) The term of a person who is serving as a member of the board of directors of the Texas Windstorm Insurance Association immediately before the abolition of that board under Subsection (a) of this section expires on December 31, 2009. Such a person is eligible for appointment by the commissioner of insurance to the new board of directors of the Texas Windstorm Insurance Association under Section 2210.102, Insurance Code, as amended by this Act.

SECTION 47. (a) The commissioner of insurance shall adopt rules as required by Chapter 2210, Insurance Code, as amended by this Act, as soon as possible after the effective date of this Act,

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but not later than the 30th day after the effective date of this Act.

(b) The Texas Windstorm Insurance Association, through the board of directors of that association, shall propose to the commissioner of insurance amendments to the association's plan of operation as required by Chapter 2210, Insurance Code, as amended by this Act, not later than March 1, 2010.

SECTION 48. Sections 2210.202 and 2210.203, Insurance Code, as amended by this Act, apply to an application for insurance coverage submitted to the Texas Windstorm Insurance Association on or after the effective date of this Act.

SECTION 49. Section 2210.251, Insurance Code, as amended by this Act, applies to an inspection conducted by the Texas Windstorm Insurance Association on or after September 1, 2009. Except as otherwise specifically provided by that section, a structure that has been inspected and is the subject of a certificate of compliance issued by the Texas Department of Insurance under Subsection (g), Section 2210.251, Insurance Code, as that section existed immediately before September 1, 2009, is not required to obtain an inspection certificate from the Texas Windstorm Insurance Association to remain eligible for insurance coverage through that association unless the structure is altered, remodeled, enlarged, or repaired on or after September 1, 2009.

SECTION 50. The changes in law made by this Act in amending Sections 2210.251, 2210.254, and 2210.255, Insurance Code, adding Section 2210.2565, Insurance Code, and repealing Section 2210.256,

Insurance Code, take effect September 1, 2009.

SECTION 51. Section 2210.552, Insurance Code, as amended by this Act, applies to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before the effective date of this Act is governed by the law as it exists immediately before that date, and that law is continued in effect for that purpose.

SECTION 52. Except as otherwise provided by this Act, this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.