

BILL ANALYSIS

Senate Research Center

H.B. 2960
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Windstorm Insurance Association (association), known as the Texas Catastrophe Property Insurance Association until September 1, 1997, was established by the Texas Legislature in 1971 as a mechanism to provide wind and hail coverage to applicants unable to obtain insurance in the voluntary market. The legislature's action was a response to market constrictions along the Texas Gulf Coast after several hurricanes.

Since the association's inception, the legislature has made it clear that the association was to write limited coverage for wind and hail in order to provide for the "orderly economic growth of the coastal counties." Persons who own businesses or residences in the following counties are eligible for coverage through the association: Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kennedy, Kleberg, Matagorda, Nueces, Refugio, San Patricio, and Willacy. Portions of Harris County east of Highway 146 are also eligible. The association is also authorized to provide coverage in other areas designated as "catastrophe areas" by the commissioner of insurance. The term "catastrophe area" is defined in the Insurance Code to include, among other things, areas where "windstorm and hail insurance is not reasonably available to a substantial number of owners of insurable property."

The association's exposure has been growing rapidly in recent years. It is estimated that the association's exposure, including miscellaneous coverages such as business interruption, will exceed \$60 billion by the end of this year. This growth increases the possible losses arising out of a given storm, placing state revenues at an ever-increasing risk. The current catastrophe funding capacity available to cover losses before the reimbursable tax credits are triggered (approximately \$1.039 billion) is estimated to cover the probable losses from a storm that would be expected to occur every 20-25 years (a four percent to five percent chance of striking in any given year). An example might be a Hurricane Rita-type storm striking Galveston.

Texas' general revenue stream would be at significant risk should a more severe storm strike the coast. For example, losses from a so-called 100-year storm (one having a one percent chance of striking in any given year) are estimated at about \$3.3 billion, placing about \$2.3 billion of state revenues at risk; a 250-year storm (one with a 0.4 percent chance of striking in any given year) would produce about \$5.2 billion in losses for the association, jeopardizing about \$4.2 billion in state revenues.

The current funding mechanism for the association was developed in 1993 at a time when the association's exposure to loss was considerably less. In that year, the combined residential and commercial exposure was \$6.5 billion, about one-tenth of today's levels. What may have been adequate then to promote the property market and protect state revenues is inadequate today.

H.B. 2960 restructures the funding mechanism for the association and makes other changes to the association, with the overall goal of creating a system that does not excessively expose the state's general revenue to hurricane losses while at the same time allowing for strong, sustainable economic growth along the coast by making necessary insurance coverage available.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 20 (Section 2210.210, Insurance Code), SECTION 28 (Section 2210.356, Insurance Code), and SECTION 34 (Sections 2210.611, 2210.612, 2210.614, and 2210.653) of this bill.

Rulemaking authority previously granted to the commissioner of insurance is modified in SECTION 17 (Section 2210.151, Insurance Code), and SECTION 30 (Section 2210.452, Insurance Code) of this bill.

Rulemaking authority previously granted to the commissioner of insurance is rescinded in SECTION 21 (Section 2210.251, Insurance Code), SECTION 22 (Section 2210.252, Insurance Code), SECTION 23 (Section 2210.254, Insurance Code), and SECTION 24 (Section 2210.255, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2210.001, Insurance Code, as follows:

(a) Creates this subsection from existing text. Provides that an adequate market for windstorm and hail insurance, rather than windstorm, hail, and fire insurance, in the seacoast territory is necessary to the economic welfare of this state. Makes conforming changes.

(b) Provides that the purpose of the Texas Windstorm Insurance Association (association) is to serve as a residual insurer of last resort for windstorm and hail insurance in the seacoast territory. Requires the association to function in such manner as to not be a direct competitor in the private market and to provide insurance coverage to persons who are unable to obtain insurance coverage in the private market.

SECTION 2. Amends Section 2210.003(6), Insurance Code, to redefine "insurance."

SECTION 3. Amends Sections 2210.004(a) and (g), Insurance Code, as follows:

(a) Redefines "insurable property."

(g) Deletes existing text providing that a residential structure is insurable property if a building permit or plat for the residential structure was filed with the municipality, the county, or the United States Army Corps of Engineers before January 1, 2004.

SECTION 4. Amends Section 2210.005, Insurance Code, as follows:

Sec. 2210.005. New heading: DESIGNATION AS CATASTROPHE AREA; REVOCATION OF DESIGNATION. (a) Authorizes the commissioner of insurance (commissioner) to designate an area of the seacoast area of this state, rather than an area of this state, as a catastrophe area under certain circumstances.

(b) Redesignated from existing Subsection (c). Deletes existing Subsection (b) authorizing the commissioner to 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. Makes a conforming change.

(c) Redesignated from existing Subsection (d). Makes conforming changes.

SECTION 5. Amends Subchapter A, Chapter 2210, Insurance Code, by adding Section 2210.009, as follows:

Sec. 2210.009. LIST OF PRIVATE INSURERS; INCENTIVE PLAN. (a) Requires the Texas Department of Insurance (TDI) to 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) Requires TDI to 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 6. Amends Sections 2210.052(a), (c), and (d), Insurance Code, as follows:

(a) Requires each member of the association to participate in insured losses and operating expenses of the association, in excess of premium and other revenue of the association, rather than participate in 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).

(c) Deletes existing text requiring the determination to also include the net direct premiums of an affiliate that is under that common management or control, including an affiliate that is not authorized to engage in the business of property insurance in this state.

(d) Requires the member's participation in the insured losses and operating expenses of the association in excess of premium and other revenue, rather than the writings, of the association to be reduced in accordance with the plan of operation. Requires incentives adopted under the plan of operation to include a minimum level of participation for an insurer voluntarily writing coverage in a catastrophe area, and prohibits the incentives from including a maximum level to cap a member's actual statewide writings compared with other members.

SECTION 7. Amends Section 2210.058, Insurance Code, as follows:

Sec. 2210.058. New heading: PAYMENT OF EXCESS LOSSES. (a) Requires excess losses to be paid as provided by this section.

(b) Requires the association to pay excess losses from available reserves of the association and available amounts in the catastrophe reserve trust fund established under Subchapter J. Deletes existing text providing the amount of money to be paid as excess losses to members and any reinsurance program established by the association.

(c) Created from part of existing Subsection (a). Authorizes catastrophe area public securities to be issued in the manner prescribed by Subsection M for losses in excess of those paid under Subsection (b). Authorizes said securities to be issued before or on or after the occurrence of a catastrophic event in amounts necessary to fund not more than 45 percent of the required solvency level determined under Subchapter N. Requires all catastrophe area public securities obligations to be paid in the manner prescribed by Section 2210.609, if applicable, and Section 2210.611.

(d) Created from part of existing Subsection (a). Authorizes Class 1 public securities to be issued before or on or after the occurrence of a catastrophic event in the manner prescribed in Subchapter M for losses in excess of those paid under Subsections (b) and (c). Authorizes said securities to be issued only on or after a named storm has caused damage in the seacoast territory and the board of directors of the association (board of directors) has determined that the combination of association reserves, amounts available in the catastrophe reserve trust fund, catastrophe area public securities, and Class 1 pre-event public securities, if any, are insufficient to pay the losses. Authorizes the board of directors to request the commissioner to authorize Class 1 public securities in an amount sufficient to pay projected losses up to an amount not to exceed 50 percent of the required solvency level determined under Subchapter N. Requires all Class 1 public securities obligations to be paid in the manner prescribed by Section 2210.609, if applicable, and Section 2210.612.

(e) Authorizes the board of directors of the association to request the commissioner to authorize member company public securities, in an amount not to exceed \$500 million, to be issued after a catastrophic event in the manner prescribed by Subchapter M for losses in excess of those paid under Subsections

(b) through (d). Requires member company public securities obligations to be paid in the manner prescribed by Section 2210.613.

(f) Authorizes the board of director to request the commissioner to authorize Class 2 post-event public securities to be issued under this subsection on or after a catastrophic event in the manner prescribed by Subchapter M for losses in excess of those paid under Subsections (b) through (e). Authorizes the commissioner to authorize Class 2 post-event public securities under this subsection to pay losses above the required solvency level determined under Subchapter N, in an amount sufficient to pay losses but not to exceed \$3 billion. Requires all Class 2 post-event public securities obligations to be paid in the manner prescribed by Section 2210.614.

(g) Authorizes the association, notwithstanding any other provision of this section, to pay losses in excess of premium and other revenue of the association with reinsurance proceeds from reinsurance purchase by the association. Deletes existing Subsection (b) requiring the proportion of the losses allocable to each insurer to be determined in the manner used to determine each insurer's participation in the association for the year. Deletes existing Subsection (c) authorizing an insurer to credit a certain amount paid against the insurer's premium tax.

SECTION 8. Amends Section 2210.060(c), Insurance Code, to provide that Subsection (a) does not authorize the association to indemnify a member of the association for participating in the assessments made by the association, rather than the writings, expenses, profits, and losses of the association, in the manner provided by this chapter.

SECTION 9. Amends Subchapter B, Chapter 2210, Insurance Code, by adding Section 2210.061, as follows:

Sec. 2210.061. ELIGIBLE SURPLUS LINES INSURERS. (a) Provides that an eligible surplus lines insurer may not be a member of the association and is not subject to assessment as a member of the association.

(b) Requires each surplus lines agent placing property insurance through an eligible surplus lines insurer to collect from the policyholder and to remit to the association a surplus lines policy fee on all premiums collected after January 1, 2008, for all insurance written by the surplus lines agent for a policy from an eligible surplus lines insurer for all risks on real property and contents in first tier coastal counties. Provides that, by procuring or selling insurance on property in this state through an eligible surplus lines insurer, each surplus lines agent described by this subsection agrees to be subject to the provisions of this chapter, and to collect and remit the surplus lines policy fee described by this section.

(c) Requires the surplus lines policy fee to be five percent of the total policy premium, but prohibits the fee from being considered premium and provides that it is not subject to premium taxes or commissions. Requires the failure to pay the surplus lines policy fee to be treated as a failure to pay premium. Defines "total policy premium."

(d) Requires each surplus lines agent placing insurance through an eligible surplus lines insurer, not later than the 20th day after the last day of each calendar quarter, to remit directly to the association all surplus lines policy fees collected in the preceding quarter.

SECTION 10. Amends the heading to Subchapter C, Chapter 2210, Insurance Code, to read as follows:

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

SECTION 11. Amends Section 2210.101, Insurance Code, as follows:

Sec. 2210.101. New heading: ACCOUNTABLE TO GOVERNOR AND COMMISSIONER. Provides that the board of directors is responsible and accountable to the governor and the commissioner.

SECTION 12. Amends Section 2210.102, Insurance Code, as follows:

Sec. 2210.102. COMPOSITION. (a) Provides that the board of directors is composed of seven, rather than nine, members appointed by the governor in accordance with this section.

(b) Requires three members to be employed by or affiliated with, other than as agents, insurers who are members of the association.

(c) Requires two members to be public representatives, one of whom, as of the date of the appointment, resides in or owns property in the seacoast territory, and one of whom, as of the date of the appointment, does not reside in or own property in the seacoast territory.

(d) Requires at two members to be general property and casualty agents licensed under this code, one of whom, as of the date of appointment, maintains the agent's principal office in the seacoast territory, and one of whom, as of the date of the appointment, does not maintain the agent's principal office in the seacoast territory.

(e) Requires all members to have demonstrated experience in insurance, general business, or actuarial principals sufficient to make the success of the association probable. Deletes existing text providing the composition of the board of directors. Deletes existing Subsection (b) requiring the persons appointed under existing Subsections (a)(2) and (3) to be from different counties.

SECTION 13. Amends Section 2210.103, Insurance Code, as follows:

Sec. 2210.103. TERMS. (a) Provides that members of the board of directors serve two-year terms, rather than three-year staggered terms. Deletes existing text providing the expiration of the terms.

(b) Deletes existing text limiting directors' consecutive terms to nine years.

(c) Requires the governor to 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 14. Amends Section 2210.104, Insurance Code, to delete existing text requiring at least one of the officers of the board of directors to be a member appointed under Section 2210.102(a)(2) or (3).

SECTION 15. Amends Subchapter C, Chapter 2210, Insurance Code, by adding Section 2210.1051, as follows:

Sec. 2210.1051. MEETINGS OF BOARD OF DIRECTORS. (a) Authorizes members of the board of directors, notwithstanding Chapter 551, Government Code, or any other law, to meet by telephone conference call, video conference, or other similar telecommunication method. Authorizes the board to use telephone conference call, video conference, 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). Provides that this subsection applies without regard to the subject matter discussed or considered by the members of the board at the meeting.

(b) Provides that a meeting held by telephone conference call, video conference, or other similar telecommunication method is subject to certain requirements and restrictions.

SECTION 16. Amends Subchapter C, Chapter 2210, Insurance Code, by adding Section 2210.107, as follows:

Sec. 2210.107. PRIMARY BOARD OBJECTIVES. Provides that the primary objectives of the board of directors are to ensure that the association operates in accordance with this chapter and commissioner rules, complies with sound insurance principles, and meets the solvency standards imposed under this chapter.

SECTION 17. Amends Section 2210.151, Insurance Code, to delete existing text requiring the commissioner by rule to adopt the plan of operation to provide Texas fire and explosion insurance in an inadequate fire insurance area.

SECTION 18. Amends Section 2210.202(a), Insurance Code, to require an applicant to demonstrate, in the manner established in the plan of operation, inability to obtain insurance coverage from insurers authorized to engage in the business of property and casualty insurance in this state in order to be eligible for insurance through the association.

SECTION 19. Amends Section 2210.203, Insurance Code, by adding Subsection (a-1), as follows:

(a-1) Prohibits the association from issuing a new or renewal insurance policy unless evidence that the property is covered by a flood insurance policy is submitted to the association, notwithstanding Subsection (a), if the property is located in certain zones and if flood insurance under the National Flood Insurance Program is available. Provides that, if that flood insurance is unavailable, an association policy insuring a residential structure is subject to a premium surcharge for the insurance coverage obtained through the association in an amount equal to not less than 10 percent of the premium, as set by the commissioner after notice and a hearing.

SECTION 20. Amends Subchapter E, Chapter 2210, Insurance Code, by adding Section 2210.210, as follows:

Sec. 2210.210. NOTICE TO APPLICANTS FOR INSURANCE AND POLICYHOLDERS; CONSUMER INFORMATION. (a) Requires each application for insurance and each policy issued by the association to include a notice as provided by this section. Authorizes the commissioner by rule to prescribe specific requirements for the notice. Sets forth the language required to be included on the notice.

(b) Requires TDI to establish a link on TDI's website through which applicants for insurance coverage through the association and association policyholders may obtain information in a format easily understood about the association's exposure and available resources.

SECTION 21. Amends Sections 2210.251(a) through (f), Insurance Code, to require a structure that is constructed or repaired or to which additions are made on or after January 1, 1988, to be inspected by the association, rather than be inspected and approved by TDI, for compliance with the plan of operation in order to be considered insurable property for windstorm and hail insurance coverage from the association.

(b) Requires the board of directors, after January 1, 2004, for geographic areas specified by the commissioner, to recognize for the purposes of this chapter, rather than the commissioner by rule to adopt, the 2003 International Residential Code for one- and two-family dwellings published by the International Code Council. Authorizes, for those geographic areas, the board of directors to recognize, rather than the commissioner by rule to adopt, a subsequent edition of that code and any supplements published by the International Code Council and amendments to that code.

(c) Requires a person, after January 1, 2004, to submit a notice of a windstorm inspection to the association, rather than the unit responsible for certification of windstorm inspections at TDI, before beginning to construct, alter, remodel, enlarge, or repair a structure.

(d) and (e) Makes conforming changes.

(f) Requires the association, rather than TDI, to issue a certificate of compliance for each structure that qualifies for coverage.

SECTION 22. Amends Section 2210.252, Insurance Code, as follows:

Sec. 2210.252. INTERNATIONAL RESIDENTIAL CODE BUILDING SPECIFICATIONS. (a) Authorizes the association, rather than the commissioner by rule, to supplement the plan of operation building specifications with certain structural provisions published by entities recognized by the board of directors, rather than TDI.

(b) Authorizes the board of directors to recognize, rather than the commissioner by rule to adopt, a subsequent edition of the International Residential Code for one- and two-family dwellings and a supplement published by the International Code Council or an amendment to that code.

SECTION 23. Amends Sections 2210.254(a) and (b), Insurance Code, as follows:

(a) Redefines "qualified inspector."

(b) Authorizes a windstorm inspection to be performed only by a qualified inspector who is employed by or under contract with the association.

SECTION 24. Amends Section 2210.255, Insurance Code, as follows:

Sec. 2210.255. APPOINTMENT OF LICENSED ENGINEER AS INSPECTOR. (a) Authorizes the association, rather than requires the commissioner, to appoint an engineer, on request by that engineer, as an inspector under this subchapter on receipt of information satisfactory to the board of directors that the engineer is qualified to perform windstorm inspections under this subchapter. Deletes existing text providing that the engineer is appointed not later than the 10th day after the date the engineer delivers certain information relating to his or her qualifications to the commissioner.

(b) Requires the board of director to consult with the commissioner regarding the information to be considered in appointing engineers under this section. Deletes existing text requiring the commissioner to adopt rules establishing the information to be considered in appointing engineers under this section.

SECTION 25. Amends Subchapter F, Chapter 2210, Insurance Code, by adding Section 2210.258, as follows:

Sec. 2210.258. SURCHARGE FOR CERTAIN NONCOMPLIANT CONSTRUCTION. (a) Provides that, for purposes of this section, property is not in compliance with mandatory building codes if the property has not been inspected for compliance with the plan of operation in accordance with Section 2210.251(a) or a certificate of compliance has not been issued in accordance with Section 2210.251(f).

(b) Provides that an applicant for coverage from the association or a policyholder of the association whose property is determined to not be in compliance as provided by Subsection (a) is subject to a premium surcharge for insurance coverage obtained through the association. Requires the surcharge to be an amount not less than an amount equal to 10 percent of the premium, as determined by the commissioner after notice and a hearing.

SECTION 26. Amends Sections 2210.351(a), (c), and (d), Insurance Code, as follows:

(a) Requires the association to file with TDI in the manner prescribed by Section 2251.101 certain manuals that the association proposes to use.

(c) Authorizes the association to use a filed rate after the filing has been made, and provides that a filed rate is subject to disapproval by the commissioner in the manner prescribed by Subchapter C (Rate Filings), Chapter 2251. Deletes existing text requiring the commissioner to approve, modify, or disapprove the filing.

(d) Authorizes the commissioner, if at any time he or she determines that a filing in effect under Subsection (c) no longer meets the requirements of this chapter, to disapprove the filing in the manner described by Section 2251.104 for disapproval of a rate, rather than to issue an order withdrawing approval of the filing. Deletes existing text requiring the order to specify in what respects the commissioner determines that the filing no longer meets the requirements of this chapter and prohibiting the order from taking effect before the 30th day after issuance.

SECTION 27. Amends Sections 2210.355(b) and (g), Insurance Code, as follows:

(b) Requires the association, in adopting rates under this chapter, to comply with certain rate standards, ensure that the rates are actuarially sound, and include rating factors for the purpose of funding certain obligations. Deletes existing text requiring certain factors to be considered in adopting rates under this chapter.

(g) Requires a commission paid to an agent for an association policy to be reasonable, adequate, not unfairly discriminatory, and nonconfiscatory, and prohibits the commission from exceeding 10 percent with refund for any unearned portion.

SECTION 28. Amends Section 2210.356, Insurance Code, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Requires the catastrophe element used to develop rates under this subchapter to be developed using industry data, association data, and catastrophe models approved by TDI for use in association filings. Deletes existing text requiring the catastrophe element applicable to risks written by the association to be uniform throughout the seacoast territory. Deletes existing text providing the factors used to determine the catastrophe element of the rates.

(b-1) Requires the commissioner to adopt rules establishing the procedure for approval by TDI of catastrophe models used by the association in the development of rates and the methodology of use for those models.

SECTION 29. Amends Subchapter H, Chapter 2210, Insurance Code, by adding Section 2210.364, as follows:

Sec. 2210.364. REVIEW OF RATES. Authorizes a person who is aggrieved by a rate under this subchapter to proceed as provided by Chapter 2251.

SECTION 30. Amends Sections 2210.452(a), (c), and (d), Insurance Code, as follows:

(a) Requires the commissioner to adopt rules under which the association makes payments to the catastrophe reserve trust fund, rather than rules under which the association members relinquish their net equity on an annual basis as provided by those rules by making payments to the catastrophe reserve trust fund. Authorizes said trust fund to be used only to fund the obligations of the trust fund under Section 2210.058. Deletes existing text authorizing the trust fund to be used to fund 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) Requires the association to pay the net gain from operations of the association, rather than to pay the equity, including all premium and other revenue of the association in

excess of incurred losses and operating expenses, to the trust fund or a reinsurance program approved by the commissioner.

(d) Changes a reference to a disbursement under Section 2210.058(a) to a disbursement under Section 2210.058.

SECTION 31. Amends Section 2210.453, Insurance Code, as follows:

Sec. 2210.453. REINSURANCE PROGRAM. (a) Authorizes the association to make payments into the trust fund and purchase reinsurance as part of the association's annual operating expenses to the extent approved by the commissioner. Deletes existing text requiring the association to make payments into the trust fund or establishing a reinsurance program approved by TDI.

(b) Authorizes the association to purchase reinsurance, rather than establish a reinsurance program, with the approval of the commissioner, rather than of TDI, that operates in addition to or in concert with the trust fund and with public securities and assessments authorized by this chapter.

SECTION 32. Amends Section 2210.454(b), Insurance Code, to authorize TDI to fund the mitigation and preparedness plan using available funds, rather than a specified amount of money, each state fiscal year.

SECTION 33. Amends Section 2210.551, Insurance Code, by adding Subsection (a-1) and amending Subsections (c) and (d), as follows:

(a-1) Provides that this section does not apply to a matter subject to Section 2210.364.

(c) Authorizes the association or any interested party, rather than just the association, to make a written request to the commissioner for a hearing on an action. Makes a conforming change.

(d) Makes a conforming change.

SECTION 34. Amends Chapter 2210, Insurance Code, by adding Subchapters M and N, as follows:

SUBCHAPTER M. PUBLIC SECURITIES PROGRAM

Sec. 2210.601. PURPOSE. Provides that the legislature finds that issuing public securities to provide a method to raise funds to provide windstorm and hail insurance through the association in certain designated areas of the state is to benefit the public and to further a public purpose.

Sec. 2210.602. DEFINITIONS. Defines "board," "catastrophe area public security," "Class 1 public securities," "Class 2 public securities," "credit agreement," "credit agreement obligation," "insurer," "member company public security," "public security," "public security administrative expenses," "public security obligations," "public security obligation revenue fund," and "public security resolution."

Sec. 2210.603. APPLICABILITY OF OTHER LAWS. Requires the board of directors of the Texas Public Finance Authority (board) to issue public securities under this subchapter 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. Provides that in the event of a conflict, this subchapter controls.

Sec. 2210.604. ISSUANCE OF PUBLIC SECURITIES AUTHORIZED. (a) Requires the board to issue public securities provide payment for certain expenses at the request of the board of directors of the association and with the approval of the commissioner.

(b) Authorizes the board to issue, on behalf of the association, public securities in a specific amount determined by the association and approved by the commissioner after at least 10 days' notice and a hearing if a hearing is requested by any person within the 10-day notice period.

Sec. 2210.605. **TERMS OF ISSUANCE.** (a) Requires the board to 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. Authorizes the board to enter into a credit agreement in connection with the public securities.

(b) Requires public securities to include the name of the association.

Sec. 2210.606. **CONTENTS OF PUBLIC SECURITY RESOLUTION; ADMINISTRATION OF ACCOUNTS.** (a) Authorizes the board, in a public security resolution, to provide for the flow of funds and the establishment, maintenance, and investment of funds and special accounts with regard to the public securities and make additional covenants with respect to the public securities and the designated income and receipts of the association pledged to the payment of the public securities.

(b) Requires the association to administer the accounts in accordance with this subchapter.

Sec. 2210.607. **PUBLIC SECURITY PROCEEDS.** (a) Authorizes the proceeds of public securities to be deposited with a trustee selected by the association in consultation with the commissioner or if no trustee is selected, held by the comptroller of public accounts (comptroller) in a dedicated trust fund outside the state treasury in the custody of the comptroller.

(b) Authorizes any excess public security proceeds remaining after the purposes for which the public securities were issued are satisfied to be used to pay public security obligations or administrative expenses or pay, purchase, defease, or redeem outstanding public securities. Requires the excess proceeds to be transferred to the catastrophe reserve trust fund if there are no outstanding public security obligations or public security administrative expenses.

Sec. 2210.608. **SOURCE OF PAYMENT; REVENUE FUND.** (a) Provides that public security obligations are payable only from the public security obligation revenue fund, into which certain amounts are deposited.

(b) Requires the board to notify the association of the estimated amount of public security administrative expenses and the amount of the public security obligations 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 or other assessment if necessary.

(c) Requires the association to deposit all revenue collected under Sections 2210.611 through 221.614 in the public security obligation revenue fund. Authorizes money deposited into the fund to be invested as permitted by general law. Requires money in the fund required to be used to pay public security administrative expenses and public security obligations to be transferred to the appropriate funds in the manner and at the time specified in the public security resolution to ensure timely payment of obligations and expenses.

(d) Requires the association to provide for the payment of the public security administrative expenses and the public security obligations by irrevocably pledging certain revenues in the public security obligation revenue fund, together with any reserve fund, as provided in the public security resolution and amounts realized under related credit agreements.

(e) Authorizes revenue deposited into the public security obligation revenue fund that exceeds the amount of the public security obligations payable in that year and interest earned on the public security obligation fund to be used to pay certain obligations, used to redeem, purchase, or defease outstanding public securities, or deposited in the catastrophe reserve trust fund.

(f) Provides that the public securities are obligations solely of the association and do not create a pledge, gift, or loan of the faith, credit, or taxing authority of this state.

(g) Requires each public security to include certain statements.

Sec. 2210.609. PAYMENT OF INTEREST; PAYMENT OF PRE-EVENT PUBLIC SECURITY OBLIGATIONS. (a) Requires the association to pay all interest, except as provided by Subsection (b), and authorizes the association to pay principal, on any pre-event public security issued as described by Section 2210.058(c) or (d) from the existing premiums of the association.

(b) Requires public security obligations described by Subsection (a) with existing premiums to be paid from the service fees collected in accordance with Sections 2210.611 and 2210.612 if the association is unable to pay them.

Sec. 2210.610. REFINANCING PUBLIC SECURITIES. Authorizes the association to request the board to refinance any public securities issued in accordance with Section 2210.058, whether pre-event or post-event public securities, with the refinanced public securities payable from the same sources as the original public securities.

Sec. 2210.611. CATASTROPHE AREA PUBLIC SECURITY SERVICE FEE; PREMIUM SURCHARGE AND ASSESSMENT. (a) Requires the catastrophe area public security obligations and administrative expenses to be serviced as provided by this section.

(b) Requires the public security obligations and administrative expenses to be collected from association policyholders each year until all outstanding public security obligations and administrative expenses have been satisfied and paid.

(c) Requires the service fee imposed on association policyholders under this section to be determined and collected as provided by this subsection. Requires the association to determine the amount of service fee imposed under this section at least annually. Requires the association to charge the service fee to its policyholders, on approval by the commissioner of the amount of a service fee after at least 10 days' notice and a hearing, if a hearing is requested by any person within the 10-day notice period. Requires the service fee to be set in an amount sufficient to pay all public security obligations and administrative expenses. Requires the service fee to be collected in the form of a premium surcharge and to be remitted to the association as required by the commissioner by rule. Provides that the service fees collected under this subsection are separate charges in addition to premiums collected and are not subject to premium taxes or commissions. Provides that, for purposes of policy cancellation, failure by a policyholder to pay a premium surcharge imposed under this subsection is equivalent to failure to pay premium.

Sec. 2210.612. SERVICE FEE: CLASS 1 PUBLIC SECURITIES; PREMIUM SURCHARGE. (a) Requires a fee to service Class 1 public securities issued by the association in accordance with Section 2210.058(d) to be collected by each insurer, the association, and the FAIR Plan Association from policyholders who reside or have operations in, or whose insured property is located in, a catastrophe area.

(b) Requires the association to determine the amount of a service fee imposed under Subsection (a) at least annually.

(c) Requires certain parties to charge the service fee to the policyholders on approval by the commissioner after at least 10 days' notice and a hearing, if a hearing is requested by any person within the 10-day notice period. Requires the service fee to be set in an amount sufficient to pay all public security obligations and administrative expenses. Requires the service fee to be collected in the form of a premium surcharge and be remitted to the association as required by the commissioner by rule.

(d) Requires the premium surcharge to apply to all insurance policies for all property and casualty lines other than workers' compensation, accident and health, and medical malpractice. Provides that the service fees collected in the form of a premium surcharge under this section are separate charges in addition to premiums collected and are not subject to premium taxes or commissions.

(e) Provides that, for purposes of policy cancellation, failure by a policyholder to pay a premium surcharge imposed under this section is equivalent to failure to pay premium.

Sec. 2210.613. POST-EVENT ASSESSMENT: MEMBER COMPANY PUBLIC SECURITIES. (a) Requires an assessment to service member company public security obligations and administrative expenses issued by the association after a catastrophic event to be assessed to and collected from each member company.

(b) Requires the association to determine the amount of each member company assessment at least annually. Requires the assessment to be set in an amount sufficient to pay all public security obligations and administrative expenses.

(c) Requires each member company to be assessed with the proportion of the loss allocable to each member company determined in the same manner as its participation in the association has been determined for the year under Section 2210.052.

Sec. 2210.614. POST-EVENT SERVICE FEE: CLASS 2 PUBLIC SECURITIES; PREMIUM SURCHARGE. (a) Requires a fee to service Class 2 public securities issued by the association after a catastrophic event to be collected by certain parties from policyholders who reside or have operations in, or whose insured property is located in, this state.

(b) Requires the association to determine the amount of a service fee imposed under Subsection (a) at least annually.

(c) Requires certain parties to charge the service fee to the policy holders on approval by the commissioner after at least 10 days' notice and a hearing, if a hearing is requested by any person within the 10-day notice period. Requires the service fee to be set in an amount sufficient to pay all public security obligations and administrative expenses. Requires the service fee to be collected in the form of a premium surcharge and be remitted to the association as required by the commissioner by rule.

(d) Requires the premium surcharge to apply to all insurance policies for all property and casualty lines other than workers' compensation, accident and health, and medical malpractice. Provides that the service fees collected in the form of a premium surcharge under this section are separate charges in addition to premiums collected and are not subject to premium taxes or commissions.

(e) Provides that, for purposes of policy cancellation, failure by a policyholder to pay a premium surcharge imposed under this section is equivalent to failure to pay premium.

Sec. 2210.615. EXEMPTION FROM TAXATION. Provides that public securities issued under this subchapter, any interest from those public securities, and all assets

pledged to secure the payment of the public securities are free from taxation by the state or a political subdivision of this state.

Sec. 2210.616. AUTHORIZED INVESTMENTS. Provides that public securities issued under this subchapter are authorized investments under Subchapter B, Chapter 424, and Subchapters C and D, Chapter 425.

Sec. 2210.617. STATE PLEDGE REGARDING PUBLIC SECURITY OWNER RIGHTS AND REMEDIES. (a) Provides that the state pledges to and agrees with the owners of public securities issued in accordance with this subchapter that the state will not limit or alter the rights vested in the association to fulfill the terms of agreements made with the owners or in any way impair the rights and remedies of those owners until the public security obligations are fully discharged.

(b) Authorizes the board to include the state's pledge and agreement under Subsection (a) in a public security resolution.

Sec. 2210.618. PAYMENT ENFORCEABLE BY MANDAMUS. Provides that a writ of mandamus from any Travis County district court and any other legal or equitable remedy are available to a party in interest to require the association or another party to fulfill an agreement or perform a function or duty under this subchapter, the Texas Constitution, or a public security resolution.

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

SUBCHAPTER N. ASSOCIATION SOLVENCY REQUIREMENTS

Sec. 2210.651. SOLVENCY DUTIES. Requires the board of directors to maintain the required solvency level of the association.

Sec. 2210.652. REQUIRED SOLVENCY LEVEL; FUNDING SOURCES. (a) Defines "required solvency level."

(b) Requires the board of directors to maintain the funding of the association at a level sufficient to achieve the required solvency level.

(c) Requires the association to derive the funding to maintain the required solvency level from a combination of certain funds and securities.

(d) Prohibits Class 1 pre-event and post-event public securities from being used to achieve more than 50 percent of the required solvency level, as prescribed by Section 2210.058(d).

Sec. 2210.653. CERTIFICATION; ANNUAL SOLVENCY REPORT. (a) Requires the board of directors to certify to the governor, the lieutenant governor, the speaker of the house of representatives, and the commissioner, not later than April 15 of each calendar year, that the required solvency level of the association is satisfied for that calendar year

(b) Requires the board of directors to make the certification in the manner prescribed by commissioner rule.

(c) Prohibits the association from issuing any new coverage after April 15 if the board of directors has not certified the required solvency level in the annual solvency report after calendar year 2008, in any calendar year. Provides that this subsection does not apply to renewal of a policy issued through the association.

Sec. 2210.654. DETERMINATION OF PROBABLE MAXIMUM LOSS. (a) Requires the board of directors to determine the association's current probable maximum loss,

based on an average of at least two recognized catastrophe models, not later than April 1 of each calendar year, to establish the required solvency level under Section 2210.652.

(b) Requires the board of directors to ensure the ability of the association to generate funding sufficient to cover the probable maximum loss without reliance on any member company public securities or Class 2 post-event public securities.

SECTION 35. Amends Section 2251.003, Insurance Code, by adding Subsection (a-1), to provide that, except as otherwise provided by Chapter 2210, Subchapters B and C apply to the Texas Windstorm Insurance Association.

SECTION 36. Repealer: Sections 2210.003(5) (defining "inadequate fire insurance area") and (12) (defining "Texas fire and explosion insurance"), Section 2210.059 (Notification Regarding Tax Credits), Section 2210.351(b) (regarding the character and extent of the coverage contemplated in a filing under this section and the policy and endorsement forms proposed to be used), Section 2210.352 (Manual Rate Filings: Annual Filing), Section 2210.353 (Manual Rate Filings: Amended Filing), Section 2210.354 (Manual Rate Filings: Additional Supporting Information), Sections 2210.355(c) (providing that rates must be reasonable, adequate, not unfairly discriminatory, and nonconfiscatory as to any class of insurer), (d) (authorizing the risks to be grouped by classification for the establishment of rates and minimum premiums), and (e) (authorizing classification rates to be modified to produce rates for individual risks in accordance with certain rating plans and authorizing classification rates to include certain rules), Sections 2210.356(a) (providing that each rate approved by the commissioner of insurance in accordance with this subchapter must be uniform throughout the first tier coastal counties), (c) (setting forth certain coverage loss and related premium income that must be used to develop the noncatastrophe element of the noncommercial rates), and (d) (providing that certain loss experience and related premium income must be used to develop the noncatastrophe element of the commercial rates), Section 2210.359 (Limitation on Certain Rate Changes), Section 2210.360 (Use of Certain Surcharges in Developing Rates), Section 2210.502(c) (authorizing the board of directors of the association to propose additional increases in the maximum liability limits as the board determines necessary to implement the purposes of this chapter), and Subchapter I (Rate Rollback), Chapter 2210 (Texas Windstorm Insurance Association), Insurance Code.

SECTION 37. (a) Abolishes, effective December 31, 2007, the board of directors established under Section 2210.102, Insurance Code, as that section existed before amendment by this Act.

(b) Requires the governor to appoint the members of the board of directors under Section 2210.102, Insurance Code, as amended by this Act, for terms beginning on January 1, 2008.

(c) Provides that the term of a person serving as a member of the board of directors before the abolition of that board expires on December 31, 2007.

SECTION 38. Requires the commissioner to adopt rules as required by Section 2210.356(b-1), Insurance Code, as added by this Act, not later than the 180th day after the effective date of this Act.

SECTION 39. Prohibits an assessment from being made before the end of the 2007-2008 state fiscal biennium under Chapter 2210, Insurance Code, as amended by this Act, against any member of the association until the comptroller has certified that any tax credits allowable to that member under Chapter 2210, Insurance Code, as that chapter existed immediately before amendment by this Act, may be taken within available revenue that has been certified by the comptroller.

SECTION 40. (a) Effective date, except as provided by Subsection (b) of this section: upon passage or September 1, 2007.

(b) Effective date, Sections 2210.251, 2210.252, 2210.254, and 2210.255, Insurance Code: September 1, 2008.