

SENATE AMENDMENTS

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By: Smithee

H.B. No. 3

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the operation and name of the Texas Windstorm Insurance
3 Association, to the resolution of certain disputes concerning
4 claims made to that association, and to the issuance of windstorm
5 and hail insurance policies in the private insurance market by
6 certain insurers; providing penalties.

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

8 SECTION 1. Section 83.002, Insurance Code, is amended by
9 adding Subsection (c) to read as follows:

10 (c) This chapter also applies to:

11 (1) a person appointed as a qualified inspector under
12 Section 2210.254 or 2210.255; and

13 (2) a person acting as a qualified inspector under
14 Section 2210.254 or 2210.255 without being appointed as a qualified
15 inspector under either of those sections.

16 SECTION 2. Section 541.152, Insurance Code, is amended by
17 amending Subsection (b) and adding Subsection (c) to read as
18 follows:

19 (b) Except as provided by Subsection (c), on [On] a finding
20 by the trier of fact that the defendant knowingly committed the act
21 complained of, the trier of fact may award an amount not to exceed
22 three times the amount of actual damages.

23 (c) Subsection (b) does not apply to an action under this
24 subchapter brought against the Texas Windstorm Insurance

1 Association.

2 SECTION 3. The heading to Chapter 2210, Insurance Code, is
3 amended to read as follows:

4 CHAPTER 2210. TEXAS COASTAL [~~WINDSTORM~~] INSURANCE PLAN
5 [~~ASSOCIATION~~]

6 SECTION 4. Section 2210.002(a), Insurance Code, is amended
7 to read as follows:

8 (a) This chapter may be cited as the Texas Coastal
9 [~~Windstorm~~] Insurance Plan [~~Association~~] Act. A reference to the
10 Texas Windstorm Insurance Association Act means this chapter.

11 SECTION 5. If S.B. No. 652, Acts of the 82nd Legislature,
12 Regular Session, 2011, becomes law, Section 2210.002(b), Insurance
13 Code, as amended by that Act, is amended to read as follows:

14 (b) The association is subject to review under Chapter 325,
15 Government Code (Texas Sunset Act), but is not abolished under that
16 chapter. The association shall be reviewed during the period in
17 which state agencies abolished in 2015 [~~2013~~] are reviewed. The
18 association shall pay the costs incurred by the Sunset Advisory
19 Commission in performing the review of the association under this
20 subsection. The Sunset Advisory Commission shall determine the
21 costs of the review performed under this subsection, and the
22 association shall pay the amount of those costs promptly on receipt
23 of a statement from the Sunset Advisory Commission regarding those
24 costs. This subsection expires September 1, 2015 [~~2013~~].

25 SECTION 6. Section 2210.003(1), Insurance Code, is amended
26 to read as follows:

27 (1) "Association" means the Texas Coastal [~~Windstorm~~]

1 Insurance Plan Association.

2 SECTION 7. Section 2210.003, Insurance Code, is amended by
3 adding Subdivision (3-b) to read as follows:

4 (3-b) "Catastrophe year" means a calendar year in
5 which an occurrence or a series of occurrences results in insured
6 losses, regardless of when the insured losses are ultimately paid.

7 SECTION 8. Section 2210.009(a), Insurance Code, is amended
8 to read as follows:

9 (a) The department shall maintain a list of all authorized
10 insurers that engage in the business of property and casualty
11 insurance in the voluntary market in the seacoast territory.

12 SECTION 9. Subchapter A, Chapter 2210, Insurance Code, is
13 amended by adding Sections 2210.0081, 2210.010, 2210.012, and
14 2210.013 to read as follows:

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

18 (1) the association's inability to satisfy obligations
19 under Subchapter M related to the issuance of public securities
20 under this chapter constitutes a condition that makes the
21 association's continuation in business hazardous to the public or
22 to the association's policyholders for the purposes of Section
23 441.052;

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

1 association; and

2 (3) unless the commissioner takes further action
3 against the association under Chapter 441, as a condition of
4 release from supervision, the association must demonstrate to the
5 satisfaction of the commissioner that the association is able to
6 satisfy obligations under Subchapter M related to the issuance of
7 public securities under this chapter.

8 Sec. 2210.010. APPLICABILITY OF CERTAIN OTHER LAW. (a) A
9 person may not bring a private action against the association,
10 including a claim against an agent or representative of the
11 association, under Chapter 541 or 542. Notwithstanding any other
12 provision of this code or this chapter, a class action under
13 Subchapter F, Chapter 541, or under Rule 42, Texas Rules of Civil
14 Procedure, may only be brought against the association by the
15 attorney general at the request of the department.

16 (b) Chapter 542 does not apply to the processing and
17 settlement of claims by the association.

18 Sec. 2210.012. STANDARDS OF CONDUCT: BOARD OF DIRECTORS AND
19 EMPLOYEES; REPORT OF CERTAIN FRAUDULENT CONDUCT. (a) A member of
20 the board of directors or an employee of the association may not:

21 (1) accept or solicit any gift, favor, or service that
22 might reasonably tend to influence the member or employee in the
23 discharge of duties related to the operation or business of the
24 association or that the member or employee knows or should know is
25 being offered with the intent to influence the member's or
26 employee's conduct related to the operation or business of the
27 association;

1 (2) accept other employment or engage in a business or
2 professional activity that the member or employee might reasonably
3 expect would require or induce the member or employee to disclose
4 confidential information acquired by reason of the member's or
5 employee's position with the association;

6 (3) accept other employment or compensation that could
7 reasonably be expected to impair the member's or employee's
8 independence of judgment in the performance of the member's or
9 employee's duties related to the operation or business of the
10 association;

11 (4) make personal investments that could reasonably be
12 expected to create a substantial conflict between the member's or
13 employee's private interest and the interest of the association; or

14 (5) intentionally or knowingly solicit, accept, or
15 agree to accept any benefit for having exercised the member's or
16 employee's powers related to the operation or business of the
17 association or having performed, in favor of another, the member's
18 or employee's duties related to the operation or business of the
19 association.

20 (b) An association employee who violates Subsection (a) or a
21 code of conduct established under Section 2210.107(a)(4) is subject
22 to an employment-related sanction, including termination of the
23 employee's employment with the association.

24 (c) A member of the board of directors or an association
25 employee who violates Subsection (a) is subject to any applicable
26 civil or criminal penalty if the violation also constitutes a
27 violation of another statute or rule.

1 (d) A board member or employee of the association who
2 reasonably suspects that a fraudulent insurance act has been or is
3 about to be committed by any board member or employee of the
4 association shall, not later than the 30th day after discovering
5 the conduct, report the conduct and identity of the person engaging
6 in the conduct to the department and may report the conduct and the
7 identity of the person engaging in the conduct to another
8 appropriate governmental authority. The department shall forward a
9 report received under this subsection to the appropriate
10 governmental authority if the department does not have the
11 authority to finally resolve, or jurisdiction over, the matter that
12 is the subject of the report.

13 Sec. 2210.013. CERTAIN EMPLOYMENT AND CONTRACTS
14 PROHIBITED. A member of the board of directors or an employee of
15 the association may not appoint or employ, or contract with, the
16 following individuals for the provision of goods or services in
17 connection with the operation or business of the association, if
18 the individual to be appointed or employed, or with whom a contract
19 is to be entered into, is to be directly or indirectly compensated
20 from funds of the association:

21 (1) an individual related to the member or employee
22 within a degree of relationship described by Section 573.002,
23 Government Code; or

24 (2) an individual related to any member of the board of
25 directors or employee of the association within a degree of
26 relationship described by Section 573.002, Government Code.

27 SECTION 10. Section 2210.053, Insurance Code, is amended by

1 amending Subsection (b) and adding Subsection (c) to read as
2 follows:

3 (b) The department may develop programs to improve the
4 efficient operation of the association, including a program for
5 approving policy forms under Section 2301.010 and a program
6 designed to create incentives for insurers to write windstorm and
7 hail insurance voluntarily to cover property located in a
8 catastrophe area, especially property located on the barrier
9 islands of this state.

10 (c) The association may not be considered a debtor
11 authorized to file a petition or seek relief in bankruptcy under
12 Title 11, United States Code.

13 SECTION 11. Subchapter B, Chapter 2210, Insurance Code, is
14 amended by adding Sections 2210.058 and 2210.061 to read as
15 follows:

16 Sec. 2210.058. CLAIMS PRACTICES AUDIT. (a) The
17 commissioner, in the manner and at the time the commissioner
18 determines to be necessary, shall conduct a random audit of claim
19 files concerning claims the bases of which are damage to insured
20 property caused by a particular storm to:

21 (1) determine whether the association is adequately
22 and properly documenting claims decisions in each claim file; and

23 (2) ensure that each claim is being handled
24 appropriately, including being handled in accordance with the terms
25 of the policy under which the claim is filed.

26 (b) The department shall conduct an audit required under
27 this section as soon as possible to ensure the quality of the

1 process with which the association is handling claims described by
2 Subsection (a).

3 (c) If, following an audit conducted under this section, the
4 commissioner determines that the association is not adequately and
5 properly documenting claims decisions or that claims described by
6 Subsection (a) are not otherwise being handled appropriately, the
7 commissioner shall:

8 (1) notify the board of directors of that
9 determination; and

10 (2) identify the manner in which the association
11 should correct any deficiencies identified by the commissioner and
12 issue an order to that effect.

13 Sec. 2210.061. CONTRACTORS AND MANAGERIAL EMPLOYEES:
14 COMPENSATION AND BONUSES. The association shall post on the
15 association's Internet website any compensation, monetary or
16 otherwise, and any bonus that, when aggregated, exceed \$100,000 in
17 a calendar year and that are paid or given by the association to:

18 (1) a vendor or independent contractor with whom the
19 association has a contract; or

20 (2) an association employee.

21 SECTION 12. Section 2210.071(a), Insurance Code, is amended
22 to read as follows:

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

1 SECTION 13. Section 2210.072, Insurance Code, is amended by
2 amending Subsections (a), (b), and (c) and adding Subsections
3 (b-1), (e), and (f) to read as follows:

4 (a) Losses not paid under Section 2210.071(b) [~~2210.071~~]
5 shall be paid as provided by this section from the proceeds from
6 Class 1 public securities authorized to be issued in accordance
7 with Subchapter M before, on, or after the date of any occurrence or
8 series of occurrences that results in insured losses. Public
9 securities issued under this section must be repaid within a period
10 not to exceed 14 [~~10~~] years, and may be repaid sooner if the board of
11 directors elects to do so and the commissioner approves.

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

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

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

20 (b-1) Public securities described by Subsection (a):

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

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

7 (c) If [~~the losses are paid with~~] public securities are
8 issued as described by this section, the public securities shall be
9 repaid in the manner prescribed by Subchapter M from association
10 premium revenue.

11 (e) The proceeds of any outstanding public securities
12 described by Subsection (a) that are issued before an occurrence or
13 series of occurrences shall be depleted before the proceeds of any
14 securities issued after an occurrence or series of occurrences may
15 be used. This subsection does not prohibit the association from
16 issuing securities after an occurrence or series of occurrences
17 before the proceeds of outstanding public securities issued during
18 a previous catastrophe year have been depleted.

19 (f) If, under Subsection (e), the proceeds of any
20 outstanding public securities issued during a previous catastrophe
21 year must be depleted, those proceeds shall count against the \$1
22 billion limit on public securities described by this section in the
23 catastrophe year in which the proceeds must be depleted.

24 SECTION 14. Section 2210.073, Insurance Code, is amended by
25 amending Subsection (b) and adding Subsection (c) to read as
26 follows:

27 (b) Public securities described by Subsection (a):

1 (1) may be issued as necessary in a principal amount
2 not to exceed \$1 billion per catastrophe year, in the aggregate,
3 whether for a single occurrence or a series of occurrences; and

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

10 (c) If the losses are paid with public securities described
11 by this section, the public securities shall be repaid in the manner
12 prescribed by Subchapter M.

13 SECTION 15. Section 2210.074, Insurance Code, is amended by
14 amending Subsection (b) and adding Subsection (c) to read as
15 follows:

16 (b) Public securities described by Subsection (a):

17 (1) may be issued as necessary in a principal amount
18 not to exceed \$500 million per catastrophe year, in the aggregate,
19 whether for a single occurrence or a series of occurrences; and

20 (2) subject to the \$500 million maximum described by
21 Subdivision (1), may be issued, in one or more issuances or
22 tranches, during the calendar year in which the occurrence or
23 series of occurrences occurs or, if the public securities cannot
24 reasonably be issued in that year, during the following calendar
25 year.

26 (c) If the losses are paid with public securities described
27 by this section, the public securities shall be repaid in the manner

1 prescribed by Subchapter M through member assessments as provided
2 by this section. The association shall notify each member of the
3 association of the amount of the member's assessment under this
4 section. The proportion of the losses allocable to each insurer
5 under this section shall be determined in the manner used to
6 determine each insurer's participation in the association for the
7 year under Section 2210.052. A member of the association may not
8 recoup an assessment paid under this subsection through a premium
9 surcharge or tax credit.

10 SECTION 16. Section 2210.075, Insurance Code, is amended to
11 read as follows:

12 Sec. 2210.075. REINSURANCE. (a) Before any occurrence or
13 series of occurrences, an insurer may elect to purchase reinsurance
14 to cover an assessment for which the insurer would otherwise be
15 liable under Section 2210.074(c) [~~2210.074(b)~~].

16 (b) An insurer must notify the board of directors, in the
17 manner prescribed by the association whether the insurer will be
18 purchasing reinsurance. If the insurer does not elect to purchase
19 reinsurance under this section, the insurer remains liable for any
20 assessment imposed under Section 2210.074(c) [~~2210.074(b)~~].

21 SECTION 17. Section 2210.102, Insurance Code, is amended by
22 adding Subsection (i) to read as follows:

23 (i) Notwithstanding Subsection (f), for a vacancy occurring
24 in a position under Subsection (b), the commissioner may appoint,
25 for the lesser of 120 days or until the vacancy is filled, a person
26 who has demonstrated knowledge in insurance principles. This
27 subsection does not apply to a vacancy due to the expiration of a

1 term occurring under Section 2210.103. This subsection expires
2 December 31, 2012, and any appointment in effect on that date is
3 continued until the expiration of the term of the appointment.

4 SECTION 18. Section 2210.105, Insurance Code, is amended by
5 amending Subsections (a) and (b) and adding Subsections (b-1), (e),
6 and (f) to read as follows:

7 (a) Except for an emergency meeting, the association shall:

8 (1) notify the department not later than the 11th day
9 before the date of a meeting of the board of directors or of the
10 members of the association; and

11 (2) not later than the seventh day before the date of a
12 meeting of the board of directors, post notice of the meeting on the
13 association's Internet website and the department's Internet
14 website.

15 (b) Except for a closed meeting authorized by Subchapter D,
16 Chapter 551, Government Code, a meeting of the board of directors or
17 of the members of the association is open to[+

18 [~~1~~] ~~the commissioner or the commissioner's designated~~
19 ~~representative, and~~

20 [~~2~~] the public.

21 (b-1) The commissioner or the commissioner's designated
22 representative may attend a meeting of the board of directors or the
23 members of the association, including a closed meeting authorized
24 by Subchapter D, Chapter 551, Government Code, except for those
25 portions of a closed meeting that involve the rendition of legal
26 advice to the board concerning a regulatory matter or that would
27 constitute an ex parte communication with the commissioner.

1 (e) The association shall:

2 (1) broadcast live on the association's Internet
3 website all meetings of the board of directors, other than closed
4 meetings; and

5 (2) maintain on the association's Internet website an
6 archive of meetings of the board of directors.

7 (f) A recording of a meeting must be maintained in the
8 archive required under Subsection (e) through and including the
9 second anniversary of the meeting.

10 SECTION 19. Section 2210.107, Insurance Code, is amended to
11 read as follows:

12 Sec. 2210.107. PRIMARY BOARD OBJECTIVES; REPORT. (a) The
13 primary objectives of the board of directors are to ensure that the
14 board and the association:

15 (1) operate [~~operates~~] in accordance with this
16 chapter, the plan of operation, and commissioner rules;

17 (2) comply [~~complies~~] with sound insurance
18 principles; [~~and~~]

19 (3) meet [~~meets~~] all standards imposed under this
20 chapter;

21 (4) establish a code of conduct and performance
22 standards for association employees and persons with which the
23 association contracts; and

24 (5) establish, and adhere to terms of, an annual
25 evaluation of association management necessary to achieve the
26 statutory purpose, board objectives, and any performance or
27 enterprise risk management objectives established by the board.

1 (b) Not later than June 1 of each year, the association
2 shall submit to the commissioner, the legislative oversight board
3 established under Subchapter N, the governor, the lieutenant
4 governor, and the speaker of the house of representatives a report
5 evaluating the extent to which the board met the objectives
6 described by Subsection (a) in the 12-month period immediately
7 preceding the date of the report.

8 SECTION 20. Subchapter C, Chapter 2210, Insurance Code, is
9 amended by adding Section 2210.108 to read as follows:

10 Sec. 2210.108. OPEN MEETINGS AND OPEN RECORDS. (a) Except
11 as specifically provided by this chapter or another law, the
12 association is subject to Chapters 551 and 552, Government Code.

13 (b) A settlement agreement to which the association is a
14 party:

15 (1) subject to Subsection (d), is public information
16 and is not exempted from required disclosure under Chapter 552,
17 Government Code; and

18 (2) if applicable, must contain the name of any
19 attorney representing a claimant or the association in connection
20 with the claim that is the basis of the settlement.

21 (c) Subsection (b) may not be construed to limit or
22 otherwise restrict the categories of information that are public
23 information under Section 552.022, Government Code.

24 (d) The association, before disclosing a settlement
25 agreement to which the association is a party, shall redact from the
26 settlement agreement any information that is confidential under
27 Chapter 552, Government Code.

1 SECTION 21. Section 2210.152, Insurance Code, is amended by
2 adding Subsection (c) to read as follows:

3 (c) The plan of operation shall require the association to
4 use the claim settlement guidelines published by the commissioner
5 under Section 2210.578(f) in evaluating the extent to which a loss
6 to insured property is incurred as a result of wind, waves, tidal
7 surges, or rising waters not caused by waves or surges.

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

10 Sec. 2210.202. APPLICATION FOR COVERAGE. (a) A person who
11 has an insurable interest in insurable property may apply to the
12 association for insurance coverage provided under the plan of
13 operation and an inspection of the property, subject to any rules
14 established by the board of directors and approved by the
15 commissioner. The association shall make insurance available to
16 each applicant in the catastrophe area whose property is insurable
17 property but who, after diligent efforts, is unable to obtain
18 property insurance through the voluntary market, as evidenced by
19 one declination from an insurer authorized to engage in the
20 business of, and writing, property insurance providing windstorm
21 and hail coverage in the first tier coastal counties. For purposes
22 of this section, "declination" has the meaning assigned by the plan
23 of operation and shall include a refusal to offer coverage for the
24 perils of windstorm and hail and the inability to obtain
25 substantially equivalent insurance coverage for the perils of
26 windstorm and hail. Notwithstanding Section 2210.203(c), evidence
27 of one declination every three calendar years is also required with

1 an application for renewal of an association policy.

2 (b) A property and casualty agent must submit an application
3 for initial ~~[the]~~ insurance coverage on behalf of the applicant on
4 forms prescribed by the association. The association shall develop
5 a simplified process that allows for the acceptance of an
6 application for initial or renewal coverage from, and payment of
7 premiums by, a property and casualty agent, a person insured under
8 this chapter, or an applicant for coverage under this chapter. Each
9 ~~[The]~~ application for initial or renewal coverage must contain:

10 (1) a statement as to whether the applicant has
11 submitted or will submit the premium in full from personal funds or,
12 if not, to whom a balance is or will be due; and

13 (2) ~~[. Each application for initial or renewal~~
14 ~~coverage must also contain]~~ a statement that the agent acting on
15 behalf of the applicant possesses proof of the declination
16 described by Subsection (a) and proof of flood insurance coverage
17 or unavailability of that coverage as described by Section
18 2210.203(a-1), regardless of whether the agent or the applicant
19 submits the application for coverage.

20 SECTION 23. Section 2210.203, Insurance Code, is amended by
21 amending Subsection (a) and adding Subsection (d) to read as
22 follows:

23 (a) If the association determines that the property for
24 which an application for initial insurance coverage is made is
25 insurable property, the association, on payment of the premium,
26 shall direct the issuance of an insurance policy as provided by the
27 plan of operation.

1 (d) The commissioner, after receiving a recommendation from
2 the board of directors, shall approve a commission structure for
3 payment of an agent who submits an application for coverage to the
4 association on behalf of a person who has an insurable interest in
5 insurable property. The commission structure adopted by the
6 commissioner must be fair and reasonable, taking into consideration
7 the amount of work performed by an agent in submitting an
8 application to the association and the prevailing commission
9 structure in the private windstorm market.

10 SECTION 24. Sections 2210.204(d) and (e), Insurance Code,
11 are amended to read as follows:

12 (d) If an insured requests cancellation of the insurance
13 coverage, the association shall refund the unearned premium, less
14 any minimum retained premium set forth in the plan of operation,
15 payable to the insured and the holder of an unpaid balance. The
16 property and casualty agent who received a commission as the result
17 of the issuance of an association policy providing the canceled
18 coverage [~~submitted the application~~] shall refund the agent's
19 commission on any unearned premium in the same manner.

20 (e) For cancellation of insurance coverage under this
21 section, the minimum retained premium in the plan of operation must
22 be for a period of not less than 90 [~~180~~] days, except for events
23 specified in the plan of operation that reflect a significant
24 change in the exposure or the policyholder concerning the insured
25 property, including:

26 (1) the purchase of similar coverage in the voluntary
27 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 Sections 2210.205 and 2210.210 to read as follows:

Sec. 2210.205. REQUIRED POLICY PROVISIONS: DEADLINE FOR FILING CLAIM; NOTICE CONCERNING RESOLUTION OF CERTAIN DISPUTES.

(a) A windstorm and hail insurance policy issued by the association must:

(1) require an insured to file a claim under the policy not later than the first anniversary of the date on which the damage to property that is the basis of the claim occurs; and

(2) contain, in boldface type, a conspicuous notice concerning the resolution of disputes under the policy, including:

(A) the processes and deadlines for appraisal under Section 2210.574 and alternative dispute resolution under Section 2210.575;

(B) the binding effect of appraisal under Section 2210.574; and

(C) the necessity of complying with the requirements of Subchapter L-1 to seek administrative or judicial relief.

(b) The commissioner, on a showing of good cause by a person insured under this chapter, may extend the one-year period described by Subsection (a)(1) for a period not to exceed 180 days.

Sec. 2210.210. COVERAGE OF CERTAIN STRUCTURES PROHIBITED.

1 The association may not issue coverage for the following
2 structures, regardless of whether the structure is otherwise
3 insurable property under this chapter:

4 (1) a wind turbine;

5 (2) a structure used primarily as a casino or other
6 gambling establishment, other than a premises on which bingo may be
7 conducted under Chapter 2001, Occupations Code;

8 (3) a structure used as a sexually oriented business,
9 as defined by Section 243.002, Local Government Code; or

10 (4) a structure in which, or in any portion of which,
11 an establishment is located that is used primarily for the
12 operation of video lottery machines, eight-liners, or other
13 gambling devices, regardless of whether the gambling devices are
14 regulated under state law.

15 SECTION 26. Section 2210.251(g), Insurance Code, is amended
16 to read as follows:

17 (g) The department shall issue a certificate of compliance
18 for each structure that qualifies for coverage. The certificate is
19 evidence of insurability of the structure by the association. The
20 decision whether to issue a certificate of compliance for a
21 structure is wholly within the discretion of the department and is
22 not dependent on the actions of the Texas Board of Professional
23 Engineers or any other regulatory agency.

24 SECTION 27. Section 2210.254, Insurance Code, is amended by
25 amending Subsection (a) and adding Subsection (e) to read as
26 follows:

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

1 includes:

2 (1) a person determined by the department to be
3 qualified because of training or experience to perform building
4 inspections;

5 (2) a licensed professional engineer who is on the
6 roster described by Section 1001.652, Occupations Code, and meets
7 the requirements specified by commissioner rule for appointment to
8 conduct windstorm inspections; and

9 (3) an inspector who:

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

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

17 (C) complies with other requirements specified
18 by commissioner rule.

19 (e) The department may establish an annual renewal period
20 for persons appointed as qualified inspectors.

21 SECTION 28. Section 2210.255(a), Insurance Code, is amended
22 to read as follows:

23 (a) On request of an engineer who is licensed by the Texas
24 Board of Professional Engineers and is on the roster described by
25 Section 1001.652, Occupations Code, the commissioner shall appoint
26 the engineer as an inspector under this subchapter not later than
27 the 10th day after the date the engineer delivers to the

1 commissioner information demonstrating that the engineer is
2 qualified to perform windstorm inspections under this subchapter.

3 SECTION 29. Subchapter F, Chapter 2210, Insurance Code, is
4 amended by adding Section 2210.2551 to read as follows:

5 Sec. 2210.2551. ENFORCEMENT AUTHORITY; RULES. (a) The
6 department has exclusive authority over all matters relating to the
7 appointment and oversight of qualified inspectors for purposes of
8 this chapter and to the physical inspection of structures for the
9 purposes of this chapter, including the submission of documents to
10 the department or association regarding the physical inspection of
11 structures.

12 (b) The commissioner by rule shall establish criteria to
13 ensure that a person seeking appointment as a qualified inspector
14 under this subchapter, including an engineer seeking appointment
15 under Section 2210.255, possesses the knowledge, understanding,
16 and professional competence to perform windstorm inspections under
17 this chapter and to comply with other requirements of this chapter.

18 (c) Subsection (b) applies only to a determination
19 concerning the appointment of a qualified inspector under this
20 chapter. The exclusive jurisdiction of the department under this
21 section does not apply to the practice of engineering as defined by
22 Section 1001.003, Occupations Code, or to a license issued,
23 qualification required, determination made, order issued, judgment
24 rendered, or other action of a board operating under Chapter 1001,
25 Occupations Code. In the event of conflict, the authority of that
26 board prevails with regard to the practice of engineering.

27 (d) The department shall report to the Texas Board of

1 Professional Engineers if the department determines that:

2 (1) after an oversight inspection, the results of a
3 windstorm inspection performed by a qualified inspector who is
4 licensed by that board are based on questionable grounds or were the
5 result of questionable circumstances; or

6 (2) a qualified inspector on the roster described by
7 Section 1001.652, Occupations Code, failed to submit to the
8 department plans, designs, or calculations of other substantiating
9 information necessary to demonstrate that an inspected structure
10 meets the requirements of this chapter and department rules.

11 (e) The department shall include in its biennial report to
12 the legislature under Section 32.022 the number of matters reported
13 to the Texas Board of Professional Engineers under this section and
14 the outcome of those matters.

15 SECTION 30. The heading to Section 2210.256, Insurance
16 Code, is amended to read as follows:

17 Sec. 2210.256. DISCIPLINARY PROCEEDINGS REGARDING
18 APPOINTED INSPECTORS AND CERTAIN OTHER PERSONS.

19 SECTION 31. Section 2210.256, Insurance Code, is amended by
20 adding Subsection (a-1) to read as follows:

21 (a-1) In addition to any other action authorized under this
22 section, the commissioner ex parte may enter an emergency cease and
23 desist order under Chapter 83 against a qualified inspector, or a
24 person acting as a qualified inspector, if:

25 (1) the commissioner believes that:

26 (A) the qualified inspector has:

27 (i) through submitting or failing to submit

1 to the department sealed plans, designs, calculations, or other
2 substantiating information, failed to demonstrate that a structure
3 or a portion of a structure subject to inspection meets the
4 requirements of this chapter and department rules; or

5 (ii) refused to comply with requirements
6 imposed under this chapter or department rules; or

7 (B) the person acting as a qualified inspector is
8 acting without appointment as a qualified inspector under Section
9 2210.254 or 2210.255; and

10 (2) the commissioner determines that the conduct
11 described by Subdivision (1) is fraudulent or hazardous or creates
12 an immediate danger to the public.

13 SECTION 32. Section 2210.259, Insurance Code, is amended by
14 adding Subsection (c) to read as follows:

15 (c) The commissioner by rule may provide for a discount of,
16 or a credit against, a surcharge assessed under Subsection (a) in
17 instances in which a policyholder demonstrates that the
18 noncompliant structure was constructed with at least one structural
19 building component that complies with the building code standards
20 set forth in the plan of operation.

21 SECTION 33. Subchapter F, Chapter 2210, Insurance Code, is
22 amended by adding Section 2210.260 to read as follows:

23 Sec. 2210.260. ALTERNATIVE ELIGIBILITY FOR COVERAGE. (a)
24 On and after August 31, 2011, a person who has an insurable interest
25 in a residential structure may obtain insurance coverage through
26 the association for that structure without obtaining a certificate
27 of compliance under Section 2210.251(g) in accordance with this

1 section and rules adopted by the commissioner.

2 (b) The department may issue an alternative certification
3 for a residential structure if the person who has an insurable
4 interest in the structure demonstrates that at least one qualifying
5 structural building component of the structure has been:

6 (1) inspected by a department inspector or by a
7 qualified inspector; and

8 (2) determined to be in compliance with applicable
9 building code standards, as set forth in the plan of operation.

10 (c) The commissioner shall adopt reasonable and necessary
11 rules to implement this section. The rules adopted under this
12 section must establish which structural building components are
13 considered qualifying structural building components for the
14 purposes of Subsection (b), taking into consideration those items
15 that are most probable to generate losses for the association's
16 policyholders and the cost to upgrade those items.

17 (d) Except as provided in Section 2210.251(f), a person who
18 has an insurable interest in a residential structure that is
19 insured by the association as of January 1, 2012, but for which the
20 person has not obtained a certificate of compliance under Section
21 2210.251(g), must obtain an alternative certification under this
22 section before the association, on or after January 1, 2013, may
23 renew coverage for the structure.

24 (e) Each residential structure for which a person obtains an
25 alternative certification under this section must comply with:

26 (1) the requirements of this chapter, including
27 Section 2210.258; and

1 (2) the association's underwriting requirements,
2 including maintaining the structure in an insurable condition and
3 paying premiums in the manner required by the association.

4 (f) The association shall develop and implement an
5 actuarially sound rate, credit, or surcharge that reflects the
6 risks presented by structures with reference to which alternative
7 certifications have been obtained under this section. A rate,
8 credit, or surcharge under this subsection may vary based on the
9 number of qualifying structural building components included in a
10 structure with reference to which an alternative certification is
11 obtained under this section. A surcharge under this subsection
12 must be developed and implemented in an amount that does not exceed
13 the percentage of premium at which a surcharge under Section
14 2210.259(a) is assessed.

15 SECTION 34. Section 2210.453, Insurance Code, is amended by
16 adding Subsections (c), (d), and (e) to read as follows:

17 (c) If the association does not purchase reinsurance as
18 authorized by this section, the board, not later than June 1 of each
19 year, shall submit to the commissioner, the legislative oversight
20 board established under Subchapter N, the governor, the lieutenant
21 governor, and the speaker of the house of representatives a report
22 containing an actuarial plan for paying losses in the event of a
23 catastrophe with estimated damages of \$2.5 billion or more. The
24 report required by this subsection must:

25 (1) document and denominate the association's
26 resources available to pay claims, including cash or other highly
27 liquid assets, assessments that the association is projected to

1 impose, pre-event and post-event bonding capacity, and
2 private-sector recognized risk-transfer mechanisms, including
3 catastrophe bonds and reinsurance;

4 (2) include an independent, third-party appraisal of
5 the likelihood of an assessment, the maximum potential size of the
6 assessment, and an estimate of the probability that the assessment
7 would not be adequate to meet the association's needs; and

8 (3) include an analysis of financing alternatives to
9 assessments that includes the costs of borrowing and the
10 consequences that additional purchase of reinsurance, catastrophe
11 bonds, or other private-sector recognized risk-transfer
12 instruments would have in reducing the size or potential of
13 assessments.

14 (d) A person who prepares a report required by Subsection
15 (c) may not contract to provide any other service to the
16 association, except for the preparation of similar reports, before
17 the third anniversary of the date the last report prepared by the
18 person under that subsection is submitted.

19 (e) The report submitted under this section is for
20 informational purposes only and does not bind the association to a
21 particular course of action.

22 SECTION 35. Subchapter J, Chapter 2210, Insurance Code, is
23 amended by adding Section 2210.455 to read as follows:

24 Sec. 2210.455. CATASTROPHE PLAN. (a) Not later than June 1
25 of each year, the board shall submit to the commissioner, the
26 legislative oversight board established under Subchapter N, the
27 governor, the lieutenant governor, and the speaker of the house of

1 representatives a catastrophe plan covering the period beginning on
2 the date the plan is submitted and ending on the following May 31.

3 (b) The catastrophe plan must:

4 (1) describe the manner in which the association will,
5 during the period covered by the plan, evaluate losses and process
6 claims after the following windstorms affecting an area of maximum
7 exposure to the association:

8 (A) a windstorm with a four percent chance of
9 occurring during the period covered by the plan;

10 (B) a windstorm with a two percent chance of
11 occurring during the period covered by the plan; and

12 (C) a windstorm with a one percent chance of
13 occurring during the period covered by the plan; and

14 (2) include, if the association does not purchase
15 reinsurance under Section 2210.453 for the period covered by the
16 plan, an actuarial plan for paying losses in the event of a
17 catastrophe with estimated damages of \$2.5 billion or more.

18 (c) The catastrophe plan must include a description of how
19 losses under association policies will be paid, and how claims
20 under association policies will be administered and adjusted,
21 during the period covered by the plan.

22 (d) The catastrophe plan submitted under this section is for
23 informational purposes only and does not bind the association to a
24 particular course of action.

25 SECTION 36. Section 2210.502, Insurance Code, is amended by
26 adding Subsection (e) to read as follows:

27 (e) Notwithstanding Subsection (a), the maximum liability

1 limit for dwellings and corporeal movable property described by
2 Section 2210.501(b)(1) may not exceed \$1.5 million.

3 SECTION 37. Sections 2210.551(a) and (b), Insurance Code,
4 are amended to read as follows:

5 (a) This section:

6 (1) does not apply to a person who is required to
7 resolve a dispute under Subchapter L-1; and

8 (2) applies only to:

9 (A) [~~1~~] a person not described by Subdivision
10 (1) who is insured under this chapter or an authorized
11 representative of the person; or

12 (B) [~~2~~] an affected insurer.

13 (b) A person or entity described by Subsection (a)(2) [~~a~~]
14 who is aggrieved by an act, ruling, or decision of the association
15 may appeal to the commissioner not later than the 30th day after the
16 date of that act, ruling, or decision.

17 SECTION 38. Chapter 2210, Insurance Code, is amended by
18 adding Subchapter L-1 to read as follows:

19 SUBCHAPTER L-1. CLAIMS: SETTLEMENT AND DISPUTE RESOLUTION

20 Sec. 2210.571. DEFINITIONS. In this subchapter:

21 (1) "Association policy" means a windstorm and hail
22 insurance policy issued by the association.

23 (2) "Claim" means a request for payment under an
24 association policy. The term also includes any other claim against
25 the association, or an agent or representative of the association,
26 relating to an insured loss, under any theory or cause of action of
27 any kind, regardless of the theory under which the claim is

1 asserted, the cause of action brought, or the type of damages
2 sought.

3 (3) "Claimant" means a person who makes a claim.

4 Sec. 2210.572. EXCLUSIVE REMEDIES AND LIMITATION ON AWARD.

5 (a) This subchapter provides the exclusive remedies for a claim
6 against the association, including an agent or representative of
7 the association.

8 (b) Subject to Section 2210.576, the association may not be
9 held liable for any amount other than covered losses payable under
10 the terms of the association policy.

11 (c) The association, and an agent or representative of the
12 association, may not be held liable for damages under Chapter 17,
13 Business & Commerce Code, or under any provision of any law
14 providing for additional damages, punitive damages, or a penalty.

15 Sec. 2210.573. FILING OF CLAIM; CLAIM PROCESSING. (a)
16 Subject to Section 2210.205(b), an insured must file a claim under
17 an association policy not later than the first anniversary of the
18 date on which the damage to property that is the basis of the claim
19 occurs.

20 (b) The claimant may submit written materials, comments,
21 documents, records, and other information to the association
22 relating to the claim. If the claimant fails to submit information
23 in the claimant's possession that is necessary for the association
24 to determine whether to accept or reject a claim, the association
25 may, not later than the 30th day after the date the claim is filed,
26 request in writing the necessary information from the claimant.

27 (c) The association shall, on request, provide a claimant

1 reasonable access to all information relevant to the determination
2 of the association concerning the claim. The claimant may copy the
3 information at the claimant's own cost or may request the
4 association to provide a copy of all or part of the information to
5 the claimant. The association may charge a claimant the actual cost
6 incurred by the association in providing a copy of information
7 under this section, excluding any amount for labor involved in
8 making any information or copy of information available to a
9 claimant.

10 (d) Unless the applicable 60-day period described by this
11 subsection is extended by order of the commissioner, not later than
12 the later of the 60th day after the date the association receives a
13 claim or the 60th day after the date the association receives
14 information requested under Subsection (b), the association shall
15 provide the claimant, in writing, notification that:

16 (1) the association has accepted coverage for the
17 claim in full;

18 (2) the association has accepted coverage for the
19 claim in part and has denied coverage for the claim in part; or

20 (3) the association has denied coverage for the claim
21 in full.

22 (e) In a notice described by Subsection (d)(1), the
23 association must inform the claimant of the amount of loss the
24 association will pay and of the time limit to request appraisal
25 under Section 2210.574.

26 (f) In a notice described by Subsection (d)(2) or (3), the
27 association must inform the claimant of, as applicable:

1 (1) the portion of the loss for which the association
2 accepts coverage and the amount of loss the association will pay;

3 (2) the portion of the loss for which the association
4 denies coverage and a detailed summary of the manner in which the
5 association determined not to accept coverage for that portion of
6 the claim; and

7 (3) the time limit to:

8 (A) request appraisal under Section 2210.574 of
9 the portion of the loss for which the association accepts coverage;
10 and

11 (B) provide notice of intent to bring an action
12 as required by Section 2210.575.

13 (g) In addition to the notice required under Subsection
14 (d)(2) or (3), the association shall provide a claimant with a form
15 on which the claimant may provide the association notice of intent
16 to bring an action as required by Section 2210.575.

17 Sec. 2210.574. DISPUTES CONCERNING AMOUNT OF ACCEPTED
18 COVERAGE. (a) If the association accepts coverage for a claim in
19 full and a claimant disputes only the amount of loss the association
20 will pay for the claim, or if the association accepts coverage for a
21 claim in part and a claimant disputes the amount of loss the
22 association will pay for the accepted portion of the claim, the
23 claimant may request from the association a detailed summary of the
24 manner in which the association determined the amount of loss the
25 association will pay.

26 (b) If a claimant disputes the amount of loss the
27 association will pay for a claim or a portion of a claim, the

1 claimant, not later than the 60th day after the date the claimant
2 receives the notice described by Section 2210.573(d)(1) or (2), may
3 demand appraisal in accordance with the terms of the association
4 policy.

5 (c) If a claimant, on a showing of good cause and not later
6 than the 15th day after the expiration of the 60-day period
7 described by Subsection (b), requests in writing that the 60-day
8 period be extended, the association may grant an additional 30-day
9 period in which the claimant may demand appraisal.

10 (d) If a claimant demands appraisal under this section:

11 (1) the appraisal must be conducted as provided by the
12 association policy; and

13 (2) the claimant and the association are responsible
14 in equal shares for paying any costs incurred or charged in
15 connection with the appraisal, including a fee charged under
16 Subsection (e).

17 (e) If a claimant demands appraisal under this section and
18 the appraiser retained by the claimant and the appraiser retained
19 by the association are able to agree on an appraisal umpire to
20 participate in the resolution of the dispute, the appraisal umpire
21 is the umpire chosen by the two appraisers. If the appraiser
22 retained by the claimant and the appraiser retained by the
23 association are unable to agree on an appraisal umpire to
24 participate in the resolution of the dispute, the commissioner
25 shall select an appraisal umpire from a roster of qualified umpires
26 maintained by the department. The department may:

27 (1) require appraisers to register with the department

1 as a condition of being placed on the roster of umpires; and

2 (2) charge a reasonable registration fee to defray the
3 cost incurred by the department in maintaining the roster and the
4 commissioner in selecting an appraisal umpire under this
5 subsection.

6 (f) The appraisal decision is binding on the claimant and
7 the association as to the amount of loss the association will pay
8 for a fully accepted claim or the accepted portion of a partially
9 accepted claim and is not appealable or otherwise reviewable. A
10 claimant that does not demand appraisal before the expiration of
11 the periods described by Subsections (b) and (c) waives the
12 claimant's right to contest the association's determination of the
13 amount of loss the association will pay with reference to a fully
14 accepted claim or the accepted portion of a partially accepted
15 claim.

16 (g) A claimant may not bring an action against the
17 association with reference to a claim for which the association has
18 accepted coverage in full.

19 Sec. 2210.575. DISPUTES CONCERNING DENIED COVERAGE. (a)
20 If the association denies coverage for a claim in part or in full
21 and the claimant disputes that determination, the claimant, not
22 later than the expiration of the limitations period described by
23 Section 2210.577(a), but after the date the claimant receives the
24 notice described by Section 2210.573(d)(2) or (3), must provide the
25 association with notice that the claimant intends to bring an
26 action against the association concerning the partial or full
27 denial of the claim.

1 (b) If a claimant provides notice of intent to bring an
2 action under Subsection (a), the association may require the
3 claimant, as a prerequisite to filing the action against the
4 association, to submit the dispute to alternative dispute
5 resolution by mediation or moderated settlement conference, as
6 provided by Chapter 154, Civil Practice and Remedies Code. A
7 claimant that does not provide notice of intent to bring an action
8 before the expiration of the period described by Subsection (a)
9 waives the claimant's right to contest the association's partial or
10 full denial of coverage and is barred from bringing an action
11 against the association concerning the denial of coverage.

12 (c) The association must request alternative dispute
13 resolution of a dispute described by Subsection (b) not later than
14 the 60th day after the date the association receives from the
15 claimant notice of intent to bring an action.

16 (d) Alternative dispute resolution under this section must
17 be completed not later than the 60th day after the date a request
18 for alternative dispute resolution is made under Subsection (c).
19 The 60-day period described by this subsection may be extended by
20 the commissioner by rule or by the association and a claimant by
21 mutual consent.

22 (e) If the claimant is not satisfied after completion of
23 alternative dispute resolution, or if alternative dispute
24 resolution is not completed before the expiration of the 60-day
25 period described by Subsection (d) or any extension under that
26 subsection, the claimant may bring an action against the
27 association in a district court in the county in which the loss that

1 is the subject of the coverage denial occurred. An action brought
2 under this subsection shall be presided over by a judge appointed by
3 the judicial panel on multidistrict litigation designated under
4 Section 74.161, Government Code. A judge appointed under this
5 section must be a resident of a first tier coastal county or a
6 second tier coastal county.

7 (f) If a claimant brings an action against the association
8 concerning a partial or full denial of coverage, the court shall
9 abate the action until the notice of intent to bring an action has
10 been provided and, if requested by the association, the dispute has
11 been submitted to alternative dispute resolution, in accordance
12 with this section.

13 (g) A moderated settlement conference under this section
14 may be conducted by a panel consisting of one or more impartial
15 third parties.

16 (h) If the association requests mediation under this
17 section, the claimant and the association are responsible in equal
18 shares for paying any costs incurred or charged in connection with
19 the mediation.

20 (i) If the association requests mediation under this
21 section, and the claimant and the association are able to agree on a
22 mediator, the mediator is the mediator agreed to by the claimant and
23 the association. If the claimant and the association are unable to
24 agree on a mediator, the commissioner shall select a mediator from a
25 roster of qualified mediators maintained by the department. The
26 department may:

27 (1) require mediators to register with the department

1 as a condition of being placed on the roster; and

2 (2) charge a reasonable registration fee to defray the
3 cost incurred by the department in maintaining the roster and the
4 commissioner in selecting a mediator under this section.

5 (j) The commissioner shall establish rules to implement
6 this section, including provisions for expediting alternative
7 dispute resolution, facilitating the ability of a claimant to
8 appear with or without counsel, establishing qualifications
9 necessary for mediators to be placed on the roster maintained by the
10 department under Subsection (i), and providing that formal rules of
11 evidence shall not apply to the proceedings.

12 Sec. 2210.576. ISSUES BROUGHT TO SUIT; LIMITATIONS ON
13 RECOVERY. (a) The only issues a claimant may raise in an action
14 brought against the association under Section 2210.575 are:

15 (1) whether the association's denial of coverage was
16 proper; and

17 (2) the amount of the damages described by Subsection
18 (b) to which the claimant is entitled, if any.

19 (b) A claimant that brings an action against the association
20 under Section 2210.575 may recover only:

21 (1) the covered loss payable under the terms of the
22 association policy less, if applicable, the amount of loss already
23 paid by the association for any portion of a covered loss for which
24 the association accepted coverage;

25 (2) prejudgment interest from the 30th day after the
26 date specified in Section 2210.573(d), at the prejudgment interest
27 rate provided in Subchapter B, Chapter 304, Finance Code; and

1 (3) court costs and reasonable and necessary
2 attorney's fees.

3 Sec. 2210.577. LIMITATIONS PERIOD. (a) Notwithstanding
4 any other law, a claimant who brings an action against the
5 association under Section 2210.575 must bring the action not later
6 than the second anniversary of the date on which the person receives
7 a notice described by Section 2210.573(d)(2) or (3).

8 (b) This section is a statute of repose and controls over
9 any other applicable limitations period.

10 Sec. 2210.578. EXPERT PANEL. (a) The commissioner shall
11 appoint a panel of experts to advise the association concerning the
12 extent to which a loss to insurable property was incurred as a
13 result of wind, waves, tidal surges, or rising waters not caused by
14 waves or surges. The panel shall consist of a number of experts to
15 be decided by the commissioner. The commissioner shall appoint one
16 member of the panel to serve as the presiding officer of the panel.

17 (b) Members of the panel must have professional expertise
18 in, and be knowledgeable concerning, the geography and meteorology
19 of the Texas seacoast territory, as well as the scientific basis for
20 determining the extent to which damage to property is caused by
21 wind, waves, tidal surges, or rising waters not caused by waves or
22 surges.

23 (c) The panel shall meet at the request of the commissioner
24 or the call of the presiding officer of the panel.

25 (d) The panel shall investigate, collect, and evaluate the
26 information necessary to provide recommendations under Subsection
27 (e). The cost and expense incurred by the panel associated with the

1 work of the panel under this section shall be paid or reimbursed by
2 the association.

3 (e) At the request of the commissioner, the panel shall
4 recommend to the commissioner methods or models for determining the
5 extent to which a loss to insurable property may be or was incurred
6 as a result of wind, waves, tidal surges, or rising waters not
7 caused by waves or surges for geographic areas or regions
8 designated by the commissioner.

9 (f) After consideration of the recommendations made by the
10 panel under Subsection (e), the commissioner shall publish
11 guidelines that the association will use to settle claims.

12 (g) A member of the panel is not individually liable for an
13 act or failure to act in the performance of the official duties in
14 connection with the individual's work on the panel.

15 (h) In any review of a claim under this subchapter, and in
16 any action brought against the association under Section 2210.575,
17 the guidelines published by the commissioner under Subsection (f)
18 govern the claim and are presumed to be accurate and correct, unless
19 clear and convincing evidence supports a deviation from the
20 guidelines.

21 Sec. 2210.579. CONSTRUCTION WITH OTHER LAW. To the extent
22 of any conflict between a provision of this subchapter and any other
23 law, the provision of this subchapter prevails.

24 Sec. 2210.580. RULEMAKING. (a) The commissioner shall
25 adopt rules regarding the provisions of this subchapter, including
26 rules concerning:

27 (1) qualifications and selection of appraisers for the

1 appraisal procedure, mediators for the mediation process, and
2 members of the expert panel;

3 (2) procedures and deadlines for the payment and
4 handling of claims by the association as well as the procedures and
5 deadlines for a review of a claim by the association;

6 (3) notice of expert panel meetings and the
7 transparency of deliberations of the panel; and

8 (4) any other matters regarding the handling of claims
9 that are not inconsistent with this subchapter.

10 (b) All rules adopted by the commissioner under this section
11 shall promote the fairness of the process, protect the rights of
12 aggrieved policyholders, and ensure that policyholders may
13 participate in the claims review process without the necessity of
14 engaging legal counsel.

15 SECTION 39. Section 2210.602(2), Insurance Code, is amended
16 to read as follows:

17 (2) "Class 1 public securities" means public
18 securities authorized to be issued before, on, or after an
19 occurrence or series of occurrences by Section 2210.072, including
20 a commercial paper program authorized before the occurrence of a
21 catastrophic event but in which [~~so long as~~] no tranche of
22 commercial paper is issued under the program until after the
23 catastrophic event.

24 SECTION 40. Section 2210.604, Insurance Code, is amended by
25 amending Subsection (a) and adding Subsection (a-1) to read as
26 follows:

27 (a) At the request of the association and with the approval

1 of the commissioner, the Texas Public Finance Authority shall issue
2 Class 1, Class 2, or Class 3 public securities. The association
3 shall submit to the commissioner a cost-benefit analysis of various
4 financing methods and funding structures when requesting the
5 issuance of public securities under this subsection.

6 (a-1) The association and the commissioner must approve
7 each tranche of commercial paper issued under a commercial paper
8 program established under this chapter.

9 SECTION 41. Section 2210.608, Insurance Code, is amended by
10 adding Subsection (c) to read as follows:

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

16 SECTION 42. Section 2210.609(b), Insurance Code, is amended
17 to read as follows:

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

24 SECTION 43. Section 2210.611, Insurance Code, is amended to
25 read as follows:

26 Sec. 2210.611. EXCESS REVENUE COLLECTIONS AND INVESTMENT
27 EARNINGS. Revenue collected in any calendar year from a premium

1 surcharge under Section 2210.613 that exceeds the amount of the
2 public security obligations and public security administrative
3 expenses payable in that calendar year and interest earned on the
4 public security obligation fund may, in the discretion of the
5 association, be:

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

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

12 (3) deposited in the catastrophe reserve trust fund.

13 SECTION 44. Section 2210.612(b), Insurance Code, is amended
14 to read as follows:

15 (b) The association may enter financing arrangements as
16 described by Section 2210.072(d) as necessary to obtain public
17 securities issued under that section. Nothing in this subsection
18 prevents [~~shall prevent~~] the authorization and creation of one or
19 more programs for the issuance of commercial paper before the date
20 of an occurrence that results in insured losses under Section
21 2210.072(a) but in which [~~so long as~~] no tranche of commercial paper
22 is issued under a commercial paper program until after such an
23 occurrence.

24 SECTION 45. Section 2210.613, Insurance Code, is amended to
25 read as follows:

26 Sec. 2210.613. PAYMENT OF CLASS 2 PUBLIC SECURITIES. (a)
27 The association shall pay Class 2 public securities issued under

1 Section 2210.073 as provided by this section. Thirty percent of the
2 cost of the public securities shall be paid through member
3 assessments as provided by this section. The association shall
4 notify each member of the association of the amount of the member's
5 assessment under this section. The proportion of the losses
6 allocable to each insurer under this section shall be determined in
7 the manner used to determine each insurer's participation in the
8 association for the year under Section 2210.052. A member of the
9 association:

10 (1) may not recoup an assessment paid under this
11 subsection through a premium surcharge or tax credit; and

12 (2) notwithstanding Section 2210.073(a), may elect to
13 pay an assessment under this subsection in a lump sum.

14 (b) Seventy percent of the cost of the public securities
15 shall be paid by a ~~[nonrefundable]~~ premium surcharge collected
16 under this section in an amount set by the commissioner. On
17 approval by the commissioner, each insurer, the association, and
18 the Texas FAIR Plan Association shall assess, as provided by this
19 section, a premium surcharge to each policyholder of a policy that
20 is in effect on or after the 180th day after the date the
21 commissioner issues notice of the approval of the public securities
22 [its policyholders as provided by this section]. The premium
23 surcharge must be set in an amount sufficient to pay, for the
24 duration of the issued public securities, all debt service not
25 already covered by available funds and all related expenses on the
26 public securities.

27 (c) The premium surcharge under Subsection (b) shall be

1 assessed on all policyholders of policies that cover ~~[who reside or~~
2 ~~have operations in, or whose]~~ insured property that is located in a
3 catastrophe area, including automobiles principally garaged in a
4 catastrophe area. The premium surcharge shall be assessed on ~~[for]~~
5 each Texas windstorm and hail insurance policy and each property
6 and casualty insurance policy, including an automobile insurance
7 policy, issued for automobiles and other property located in the
8 catastrophe area. A premium surcharge under Subsection (b) applies
9 to:

10 (1) all policies written under the following lines of
11 insurance:

12 (A) fire and allied lines;

13 (B) farm and ranch owners;

14 (C) residential property insurance;

15 (D) private passenger automobile liability and
16 physical damage insurance; and

17 (E) commercial passenger automobile liability
18 and physical damage insurance; and

19 (2) the property insurance portion of a commercial
20 multiple peril insurance ~~[that provide coverage on any premises,~~
21 ~~locations, operations, or property located in the area described by~~
22 ~~this subsection for all property and casualty lines of insurance,~~
23 ~~other than federal flood insurance, workers' compensation~~
24 ~~insurance, accident and health insurance, and medical malpractice~~
25 ~~insurance].~~

26 (d) A premium surcharge under Subsection (b) is a separate
27 ~~[nonrefundable]~~ charge in addition to the premiums collected and is

1 not subject to premium tax or commissions. Failure by a
2 policyholder to pay the surcharge constitutes failure to pay
3 premium for purposes of policy cancellation.

4 SECTION 46. Sections 2210.6135(a) and (c), Insurance Code,
5 are amended to read as follows:

6 (a) The association shall pay Class 3 public securities
7 issued under Section 2210.074 as provided by this section through
8 member assessments. The association, for the payment of the
9 losses, shall assess the members of the association an amount not to
10 exceed \$500 million per catastrophe year [~~for the payment of the~~
11 ~~losses~~]. The association shall notify each member of the
12 association of the amount of the member's assessment under this
13 section.

14 (c) A member of the association:

15 (1) may not recoup an assessment paid under this
16 section through a premium surcharge or tax credit; and

17 (2) notwithstanding Section 2210.074(a), may elect to
18 pay an assessment under this section in a lump sum.

19 SECTION 47. Subchapter A, Chapter 2301, Insurance Code, is
20 amended by adding Section 2301.010 to read as follows:

21 Sec. 2301.010. CONTRACTUAL LIMITATIONS PERIOD AND CLAIM
22 FILING PERIOD IN CERTAIN PROPERTY INSURANCE FORMS. (a) This
23 section applies only to an insurer that issues windstorm and hail
24 insurance in the catastrophe area, as defined by Section 2210.003.

25 (b) Notwithstanding Section 16.070, Civil Practice and
26 Remedies Code, and for the purpose described by Section
27 2210.053(b), a policy form or printed endorsement form for

1 residential or commercial property insurance that is filed by an
2 insurer described by Subsection (a) or adopted by the department
3 under this subchapter for use by an insurer described by Subsection
4 (a) may provide for a contractual limitations period for filing
5 suit on a first-party claim under the policy. The contractual
6 limitations period may not end before the earlier of:

7 (1) two years from the date the insurer accepts or
8 rejects the claim; or

9 (2) three years from the date of the loss that is the
10 subject of the claim.

11 (c) A policy or endorsement described by Subsection (b) may
12 also contain a provision requiring that a claim be filed with the
13 insurer not later than one year after the date of the loss that is
14 the subject of the claim. A provision under this subsection must
15 include a provision allowing the filing of claims after the first
16 anniversary of the date of the loss for good cause shown by the
17 person filing the claim.

18 (d) A contractual provision contrary to Subsection (b) or
19 (c) is void. If a contractual provision is voided under this
20 subsection, the voiding of the provision does not affect the
21 validity of other provisions of a contract that may be given effect
22 without the voided provision to the extent those provisions are
23 severable.

24 (e) The department, to encourage the authorized insurers to
25 write windstorm and hail insurance in the catastrophe area, as
26 defined by Section 2210.003, and in other areas of the state, may
27 approve policy or contractual provisions other than those described

1 by Subsections (b) and (c) that are consistent with sound
2 underwriting and insurance principles, provided that the policy or
3 contractual provisions meet the requirements of Sections
4 2301.007(a) and 2301.053.

5 (f) An insurer using a policy form or endorsement form in
6 this state that includes a provision described by Subsection (b) or
7 (c) shall, at the time the policy or endorsement is issued or
8 renewed, disclose in writing to an applicant or insured the
9 contractual limitations or claims filing period, as applicable, in
10 the policy or endorsement.

11 SECTION 48. Chapter 1001, Occupations Code, is amended by
12 adding Subchapter N to read as follows:

13 SUBCHAPTER N. WINDSTORM-RELATED DESIGN SERVICES

14 Sec. 1001.651. DEFINITIONS. In this subchapter:

15 (1) "Association" means the Texas Windstorm Insurance
16 Association.

17 (2) "Plan of operation" means the plan of operation of
18 the association.

19 (3) "Windstorm certification standards" means the
20 building specifications and building codes applicable to insurable
21 property under Subchapter F, Chapter 2210, Insurance Code, and the
22 plan of operation, and applicable rules of the Texas Department of
23 Insurance.

24 Sec. 1001.652. QUALIFICATIONS; ROSTER. (a) The board
25 shall:

26 (1) review the plan of operation and the windstorm
27 certification standards; and

1 (2) in consultation with the Texas Department of
2 Insurance, adopt rules establishing criteria for determining
3 whether an engineer possesses the knowledge, understanding, and
4 professional competence to be qualified to provide engineering
5 design services related to compliance with applicable windstorm
6 certification standards under Subchapter F, Chapter 2210,
7 Insurance Code.

8 (b) The board shall prepare and publish a roster of
9 engineers who satisfy the criteria adopted under Subsection (a)(2)
10 and shall make the roster available to the public without cost in an
11 online computer database format.

12 Sec. 1001.653. COMPLIANCE WITH BUILDING CODES;
13 ENFORCEMENT. (a) The board, in consultation with the Texas
14 Department of Insurance, shall adopt rules requiring an engineer
15 who is providing engineering design services to comply with
16 windstorm certification standards.

17 (b) The board may inspect a structure to ensure an
18 engineer's compliance with Subsection (a).

19 (c) If the board determines that an engineer's engineering
20 design services related to windstorm certification standards do not
21 comply with the standards, the board may:

22 (1) issue an emergency order prohibiting the engineer
23 from entering into a contract to provide design services related to
24 compliance with applicable windstorm certification standards for a
25 period not to exceed 30 days;

26 (2) remove the engineer from the roster described by
27 Section 1001.652(b); or

1 (3) determine that a structure was not constructed,
2 altered, remodeled, enlarged, repaired, or added to according to
3 the applicable windstorm certification standards and report that
4 finding to the association and the Texas Department of Insurance.

5 (d) The board shall give the engineer notice of any action
6 under this section.

7 (e) A violation of this subchapter, including a violation of
8 the windstorm inspection standards, is grounds for disciplinary
9 action under Section 1001.452.

10 SECTION 49. Sections 2210.551(e) and 2210.552, Insurance
11 Code, are repealed.

12 SECTION 50. Section 2301.010, Insurance Code, as added by
13 this Act, applies only to an insurance policy that is delivered,
14 issued for delivery, or renewed on or after January 1, 2012. A
15 policy delivered, issued for delivery, or renewed before January 1,
16 2012, is governed by the law as it existed immediately before the
17 effective date of this Act, and that law is continued in effect for
18 that purpose.

19 SECTION 51. Not later than December 1, 2011, the Texas Board
20 of Professional Engineers shall adopt rules to implement Subchapter
21 N, Chapter 1001, Occupations Code, as added by this Act.

22 SECTION 52. (a) A legislative interim study committee
23 shall conduct a study of alternative ways to provide insurance to
24 the seacoast territory of this state through a quasi-governmental
25 entity.

26 (b) The committee is composed of 12 members appointed as
27 follows:

1 (1) four members of the senate appointed by the
2 lieutenant governor, two of whom represent one or more first tier
3 coastal counties and two of whom do not represent a first tier
4 coastal county;

5 (2) four members of the house of representatives
6 appointed by the speaker of the house of representatives, two of
7 whom represent one or more first tier coastal counties and two of
8 whom do not represent a first tier coastal county; and

9 (3) four public members with a background in actuarial
10 science, law, business, or insurance, as follows:

11 (A) two members who do not reside in a first tier
12 coastal county, appointed by the governor;

13 (B) one member who resides in a first tier
14 coastal county, appointed by the lieutenant governor; and

15 (C) one member who resides in a first tier
16 coastal county, appointed by the speaker of the house of
17 representatives.

18 (c) The speaker of the house of representatives and the
19 lieutenant governor shall jointly designate a chair or,
20 alternatively, designate two co-chairs, from among the committee
21 membership, one of whom represents or resides in a first tier
22 coastal county.

23 (d) The committee shall:

24 (1) examine alternative ways to provide insurance to
25 the seacoast territory of this state through a quasi-governmental
26 entity, including providing insurance coverage through a system or
27 program in which insurers in this state provide insurance in the

1 seacoast territory of this state in proportion to the percentage of
2 insurance coverage provided in geographic areas of this state other
3 than the seacoast territory;

4 (2) study the residual markets for windstorm and hail
5 insurance in other states to determine if those markets operate
6 more efficiently and effectively than the residual market for
7 windstorm and hail insurance coverage in this state;

8 (3) study windstorm-related building codes and
9 mitigation strategies to determine which codes or strategies are
10 most effective;

11 (4) recommend:

12 (A) the appropriate scope of authority and
13 responsibility for the entity to provide insurance to the seacoast
14 territory of this state;

15 (B) an organizational structure to exercise
16 authority and responsibility over the provision of insurance to the
17 seacoast territory of this state;

18 (C) a timetable for implementation; and

19 (D) specific amendments to state laws and rules
20 that are necessary to implement the committee's recommendations
21 under this subdivision; and

22 (5) estimate funding requirements to implement the
23 recommendations.

24 (e) The committee may adopt rules necessary to conduct
25 business under and implement this section.

26 (f) Except as specifically provided by this section, the
27 committee may operate in the same manner as a joint committee of the

1 82nd Legislature.

2 (g) Not later than December 1, 2012, the committee shall
3 report to the governor and the legislature the recommendations made
4 under this section.

5 (h) This section expires June 1, 2013.

6 SECTION 53. (a) The name of the Texas Windstorm Insurance
7 Association is changed to the Texas Coastal Insurance Plan
8 Association.

9 (b) A reference in law to the Texas Windstorm Insurance
10 Association or the Texas Windstorm Insurance Association Act means
11 the Texas Coastal Insurance Plan Association or the Texas Coastal
12 Insurance Plan Act, respectively.

13 SECTION 54. (a) Except as otherwise specifically provided
14 by this section, this Act applies only to a Texas windstorm and hail
15 insurance policy, and to a dispute under a Texas windstorm and hail
16 insurance policy, that is delivered, issued for delivery, or
17 renewed by the Texas Windstorm Insurance Association on or after
18 the 60th day after the effective date of this Act. A Texas
19 windstorm and hail insurance policy, and a dispute under a Texas
20 windstorm and hail insurance policy, that is delivered, issued for
21 delivery, or renewed by the Texas Windstorm Insurance Association
22 before the 60th day after the effective date of this Act is governed
23 by the law in effect immediately before the effective date of this
24 Act, and the former law is continued in effect for that purpose.

25 (b) The deadline to file a claim under a Texas windstorm and
26 hail insurance policy delivered, issued for delivery, or renewed
27 before the effective date of this Act by the Texas Windstorm

1 Insurance Association is governed by the law in effect on the date
2 the policy under which the claim is filed was delivered, issued for
3 delivery, or renewed, and that law is continued in effect for that
4 purpose.

5 (c) If a person insured by the Texas Windstorm Insurance
6 Association disputes the amount the association will pay for a
7 partially or fully accepted claim filed by the person, Section
8 2210.574, Insurance Code, as added by this Act, applies only if the
9 claim is filed on or after the 60th day after the effective date of
10 this Act.

11 (d) If a person insured by the Texas Windstorm Insurance
12 Association disputes the amount the association will pay for a
13 partially or fully accepted claim filed by the person and the claim
14 is filed before the 60th day after the effective date of this Act:

15 (1) Section 2210.574, Insurance Code, as added by this
16 Act, does not apply to the resolution of the dispute; and

17 (2) notwithstanding Section 2210.574, Insurance Code,
18 as added by this Act, or any other provision of this Act, the
19 claimant must attempt to resolve the dispute through the appraisal
20 process contained in the association policy under which the claim
21 is filed before an action may be brought against the Texas Windstorm
22 Insurance Association concerning the claim.

23 (e) The person insured by the Texas Windstorm Insurance
24 Association and the association may agree that an appraisal
25 conducted under Subsection (d)(2) of this section is binding on the
26 parties.

27 (f) An action brought against the association concerning a

1 claim described by Subsection (d) of this section shall be abated
2 until the appraisal process under Subsection (d)(2) of this section
3 is completed.

4 (g) Notwithstanding Sections 2210.575 and 2210.576,
5 Insurance Code, as added by this Act, Subsection (b) of this
6 section, or any other provision of this Act, Sections
7 2210.576(b)(1)-(3), Insurance Code, apply to any cause of action
8 that accrues against the Texas Windstorm Insurance Association on
9 or after the effective date of this Act and the basis of which is a
10 claim filed under a Texas windstorm and hail policy that is
11 delivered, issued for delivery, or renewed by the association,
12 regardless of the date on which the policy was delivered, issued for
13 delivery, or renewed.

14 SECTION 55. The Texas Windstorm Insurance Association shall
15 amend the association's plan of operation to conform to the changes
16 in law made by this Act not later than the 60th day after the
17 effective date of this Act.

18 SECTION 56. If any provision of this Act or its application
19 to any person or circumstance is held invalid, the invalidity does
20 not affect other provisions or applications of this Act that can be
21 given effect without the invalid provision or application, and to
22 this end the provisions of this Act are severable.

23 SECTION 57. This Act takes effect immediately if it
24 receives a vote of two-thirds of all the members elected to each
25 house, as provided by Section 39, Article III, Texas Constitution.
26 If this Act does not receive the vote necessary for immediate
27 effect, this Act takes effect on the 91st day after the last day of

1 the legislative session.

ADOPTED

JUN 22 2011

Atty Gen
Secretary of the Senate

By: *Chen*

H.B. No. 3

Substitute the following for H.B. No. 3:

By: *Chen*

C.S. H.B. No. 3

A BILL TO BE ENTITLED

1

AN ACT

2 relating to the operation of the Texas Windstorm Insurance
3 Association and to the resolution of certain disputes concerning
4 claims made to that association; providing penalties.

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

6 SECTION 1. Section 83.002, Insurance Code, is amended by
7 adding Subsection (c) to read as follows:

8 (c) This chapter also applies to:

9 (1) a person appointed as a qualified inspector under
10 Section 2210.254 or 2210.255; and

11 (2) a person acting as a qualified inspector under
12 Section 2210.254 or 2210.255 without being appointed as a qualified
13 inspector under either of those sections.

14 SECTION 2. Section 542.052, Insurance Code, is amended to
15 read as follows:

16 Sec. 542.052. APPLICABILITY OF SUBCHAPTER. (a) This
17 subchapter applies to any insurer authorized to engage in business
18 as an insurance company or to provide insurance in this state,
19 including:

20 (1) a stock life, health, or accident insurance
21 company;

22 (2) a mutual life, health, or accident insurance
23 company;

24 (3) a stock fire or casualty insurance company;

- 1 (4) a mutual fire or casualty insurance company;
- 2 (5) a Mexican casualty insurance company;
- 3 (6) a Lloyd's plan;
- 4 (7) a reciprocal or interinsurance exchange;
- 5 (8) a fraternal benefit society;
- 6 (9) a stipulated premium company;
- 7 (10) a nonprofit legal services corporation;
- 8 (11) a statewide mutual assessment company;
- 9 (12) a local mutual aid association;
- 10 (13) a local mutual burial association;
- 11 (14) an association exempt under Section 887.102;
- 12 (15) a nonprofit hospital, medical, or dental service
- 13 corporation, including a corporation subject to Chapter 842;
- 14 (16) a county mutual insurance company;
- 15 (17) a farm mutual insurance company;
- 16 (18) a risk retention group;
- 17 (19) a purchasing group;
- 18 (20) an eligible surplus lines insurer; and
- 19 (21) except as provided by Section 542.053(b), a
- 20 guaranty association operating under Chapter 462 or 463.

21 (b) This subchapter does not apply to the Texas Windstorm
22 Insurance Association.

23 SECTION 3. Subchapter A, Chapter 2210, Insurance Code, is
24 amended by adding Sections 2210.0081 and 2210.010 to read as
25 follows:

26 Sec. 2210.0081. CERTAIN ACTIONS BROUGHT AGAINST
27 ASSOCIATION BY COMMISSIONER. In an action brought by the

1 commissioner against the association under Chapter 441:

2 (1) the association's inability to satisfy obligations
3 under Subchapter M related to the issuance of public securities
4 under this chapter constitutes a condition that makes the
5 association's continuation in business hazardous to the public or
6 to the association's policyholders for the purposes of Section
7 441.052;

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

13 (3) unless the commissioner takes further action
14 against the association under Chapter 441, as a condition of
15 release from supervision, the association must demonstrate to the
16 satisfaction of the commissioner that the association is able to
17 satisfy obligations under Subchapter M related to the issuance of
18 public securities under this chapter.

19 Sec. 2210.010. CERTAIN CONDUCT IN DISPUTE RESOLUTION
20 PROHIBITED. (a) For purposes of this section, "presiding officer"
21 includes a judge, arbitrator, appraiser, or panel member.

22 (b) If a person insured under this chapter is assigned to
23 act as presiding officer to preside over or resolve a dispute
24 involving the association and another person insured under this
25 chapter, the presiding officer shall, not later than the seventh
26 day after the date of assignment, give written notice to the
27 association and to each other party to the dispute, or the

1 association's or other party's attorney, that the presiding officer
2 is insured under this chapter.

3 (c) In a proceeding with respect to which the commissioner
4 has authority to designate the presiding officer, the association
5 or other party that receives notice under Subsection (b) may file
6 with the commissioner a written objection to the assignment of the
7 presiding officer to the dispute. The written objection must
8 contain the factual basis on which the association or other party
9 objects to the assignment.

10 (d) The commissioner shall assign a different presiding
11 officer to the dispute if, after reviewing the objection filed
12 under Subsection (c), the commissioner determines that the
13 presiding officer originally assigned to the dispute has a direct
14 financial or personal interest in the outcome of the dispute.

15 (e) The association or another party must file an objection
16 under Subsection (c) not later than the earlier of:

17 (1) the seventh day after the date the association or
18 other party receives actual notice that the presiding officer is
19 insured under this chapter; or

20 (2) the seventh day before the date of the first
21 proceeding concerning the dispute.

22 (f) The commissioner may, on a showing of good cause, extend
23 the deadline to file an objection under Subsection (e).

24 SECTION 4. Section 2210.054(a), Insurance Code, is amended
25 to read as follows:

26 (a) The association shall file annually with the department
27 and the state auditor's office a statement covering periods

1 designated by the department that summarizes the transactions,
2 conditions, operations, and affairs of the association during the
3 preceding year.

4 SECTION 5. Section 2210.056(c), Insurance Code, is amended
5 to read as follows:

6 (c) On dissolution of the association, all assets of the
7 association, other than assets pledged for the repayment of public
8 securities issued under this chapter, revert to this state.

9 SECTION 6. Subchapter B, Chapter 2210, Insurance Code, is
10 amended by adding Sections 2210.058, 2210.059, and 2210.061 to read
11 as follows:

12 Sec. 2210.058. AUDIT OF ASSOCIATION. (a) The association
13 is subject to audit by the state auditor and shall pay the costs
14 incurred by the state auditor in performing an audit under this
15 section.

16 (b) The association shall pay the costs described by
17 Subsection (a) promptly after receipt of a statement from the state
18 auditor's office regarding the amount of those costs.

19 Sec. 2210.059. CLAIMS PRACTICES AUDIT. (a) If the
20 commissioner determines that 1,000 or more claims have been filed
21 under association policies the bases of which are damage to insured
22 property caused by the same storm, the department shall conduct a
23 random audit of the claim files of those claims to:

24 (1) determine whether the association is adequately
25 and properly documenting claims decisions in each claim file; and

26 (2) ensure that each claim is being handled
27 appropriately, including being handled in accordance with the terms

1 of the policy under which the claim is filed.

2 (b) The department shall conduct an audit required under
3 this section as soon as possible after the filing of the 1,000th
4 claim described by Subsection (a) to ensure the quality of the
5 process with which the association is handling claims described by
6 Subsection (a).

7 (c) If, following an audit conducted under this section, the
8 commissioner determines that the association is not adequately and
9 properly documenting claims decisions or that claims described by
10 Subsection (a) are not otherwise being handled appropriately, the
11 commissioner shall:

12 (1) notify the board of directors of that
13 determination; and

14 (2) identify the manner in which the association
15 should correct any deficiencies identified by the commissioner.

16 Sec. 2210.061. CONTRACTORS AND MANAGERIAL EMPLOYEES:
17 COMPENSATION AND BONUSES. The association shall post on the
18 association's Internet website any compensation, monetary or
19 otherwise, and any bonus that, when aggregated, exceed \$100,000 in
20 a 12-month period and that are paid or given by the association to:

21 (1) a vendor or independent contractor with whom the
22 association has a contract; and

23 (2) an association employee who serves in a managerial
24 capacity.

25 SECTION 7. Section 2210.071, Insurance Code, is amended by
26 adding Subsection (c) to read as follows:

27 (c) Losses not paid under Subsection (b) shall be paid from

1 the proceeds from public securities issued in accordance with this
2 subchapter and Subchapter M and, notwithstanding Subsection (a),
3 may be paid from the proceeds of public securities issued under
4 Section 2210.072(a) before an occurrence or series of occurrences
5 that results in insured losses.

6 SECTION 8. Section 2210.072, Insurance Code, is amended by
7 amending Subsections (a) and (b) and adding Subsections (a-1) and
8 (a-2) to read as follows:

9 (a) Losses not paid under Section 2210.071 shall be paid as
10 provided by this section from the proceeds from Class 1 public
11 securities authorized to be issued in accordance with Subchapter M.
12 On request of the association and approval by the commissioner, and
13 subject to Subsection (a-2), Class 1 public securities may be
14 issued under this section at any time during a calendar year,
15 including before, on, or after an occurrence or series of
16 occurrences that results in insured losses, if the association
17 determines that insured losses in the calendar year have exceeded,
18 or are likely to exceed, the amount available for the payment of
19 losses under Section 2210.071(b).

20 (a-1) The commissioner by rule shall, subject to Subsection
21 (a-2), establish, for each calendar year, the maximum principal
22 amount in which public securities may be issued under this section
23 before an occurrence or series of occurrences that results in
24 insured losses. The commissioner shall consult the Texas Public
25 Finance Authority when adopting rules under this subsection.

26 (a-2) [~~on or after the date of any occurrence or series of~~
27 ~~occurrences that results in insured losses.~~] Public securities

1 issued under this section must be repaid within a period not to
2 exceed 14 [~~10~~] years, and may be repaid sooner if the board of
3 directors elects to do so and the commissioner approves. The amount
4 of outstanding public securities issued under this section before
5 an occurrence or series of occurrences that results in insured
6 losses may not, in the aggregate, exceed \$1 billion at any one time,
7 regardless of the calendar year or years in which the outstanding
8 public securities were issued.

9 (b) Public securities described by Subsection (a):

10 (1) shall be issued as necessary in a principal amount
11 not to exceed \$1 billion in the aggregate whether for a single
12 occurrence or a series of occurrences that takes place in a calendar
13 [per] year and results in insured losses; and

14 (2) may be issued, in one or more issuances or
15 tranches, during the calendar year in which the occurrence or
16 series of occurrences occurs or, if the public securities cannot
17 reasonably be issued in the calendar year in which the occurrence or
18 series of occurrences takes place, during the following calendar
19 year.

20 SECTION 9. Section 2210.073, Insurance Code, is amended by
21 amending Subsection (b) and adding Subsection (c) to read as
22 follows:

23 (b) Public securities described by Subsection (a):

24 (1) may be issued as necessary in a principal amount
25 not to exceed \$1 billion in the aggregate whether for a single
26 occurrence or a series of occurrences that takes place in a calendar
27 [per] year and results in insured losses; and

1 (2) may be issued, in one or more issuances or
2 tranches, during the calendar year in which the occurrence or
3 series of occurrences occurs or, if the public securities cannot
4 reasonably be issued in the calendar year in which the occurrence or
5 series of occurrences takes place, during the following calendar
6 year.

7 (c) If the losses are paid with public securities described
8 by this section, the public securities shall be repaid in the manner
9 prescribed by Subchapter M.

10 SECTION 10. Section 2210.074, Insurance Code, is amended by
11 amending Subsection (b) and adding Subsection (c) to read as
12 follows:

13 (b) Public securities described by Subsection (a):

14 (1) may be issued as necessary in a principal amount
15 not to exceed \$500 million in the aggregate whether for a single
16 occurrence or a series of occurrences that takes place in a calendar
17 [per] year and results in insured losses; and

18 (2) may be issued, in one or more issuances or
19 tranches, during the calendar year in which the occurrence or
20 series of occurrences occurs or, if the public securities cannot
21 reasonably be issued in the calendar year in which the occurrence or
22 series of occurrences takes place, during the following calendar
23 year.

24 (c) If the losses are paid with public securities described
25 by this section, the public securities shall be repaid in the manner
26 prescribed by Subchapter M through member assessments as provided
27 by this section. The association shall notify each member of the

1 association of the amount of the member's assessment under this
2 section. The proportion of the losses allocable to each insurer
3 under this section shall be determined in the manner used to
4 determine each insurer's participation in the association for the
5 year under Section 2210.052. A member of the association may not
6 recoup an assessment paid under this subsection through a premium
7 surcharge or tax credit.

8 SECTION 11. Section 2210.075, Insurance Code, is amended to
9 read as follows:

10 Sec. 2210.075. REINSURANCE. (a) Before any occurrence or
11 series of occurrences, an insurer may elect to purchase reinsurance
12 to cover an assessment for which the insurer would otherwise be
13 liable under Section 2210.074(c) [~~2210.074(b)~~].

14 (b) An insurer must notify the board of directors, in the
15 manner prescribed by the association whether the insurer will be
16 purchasing reinsurance. If the insurer does not elect to purchase
17 reinsurance under this section, the insurer remains liable for any
18 assessment imposed under Section 2210.074(c) [~~2210.074(b)~~].

19 SECTION 12. Section 2210.102, Insurance Code, is amended by
20 adding Subsection (i) to read as follows:

21 (i) Notwithstanding Subsection (f), for a vacancy occurring
22 in a position under Subsection (b), the commissioner may appoint,
23 for the lesser of 120 days or until the vacancy is filled, a person
24 who has demonstrated knowledge in insurance principles. This
25 subsection does not apply to a vacancy due to the expiration of a
26 term occurring under Section 2210.103. This subsection expires
27 December 31, 2012, and any appointment in effect on that date is

1 continued until the expiration of the term of the appointment.

2 SECTION 13. Section 2210.105, Insurance Code, is amended by
3 amending Subsections (a) and (b) and adding Subsections (b-1), (e),
4 and (f) to read as follows:

5 (a) Except for an emergency meeting, the association shall:

6 (1) notify the department not later than the 11th day
7 before the date of a meeting of the board of directors or of the
8 members of the association; and

9 (2) not later than the seventh day before the date of a
10 meeting of the board of directors, post notice of the meeting on the
11 association's Internet website and the department's Internet
12 website.

13 (b) Except for a closed meeting authorized by Subchapter D,
14 Chapter 551, Government Code, a meeting of the board of directors or
15 of the members of the association is open to[+

16 [~~(1) the commissioner or the commissioner's designated~~
17 ~~representative, and~~

18 [~~(2)~~] the public.

19 (b-1) The commissioner or the commissioner's designated
20 representative may attend a meeting of the board of directors or the
21 members of the association, including a closed meeting authorized
22 by Subchapter D, Chapter 551, Government Code, except for those
23 portions of a closed meeting that involve the rendition of legal
24 advice to the board concerning a regulatory matter or that would
25 constitute an ex parte communication with the commissioner.

26 (e) The association shall:

27 (1) broadcast live on the association's Internet

1 website all meetings of the board of directors, other than closed
2 meetings; and

3 (2) archive the recording of a meeting until the
4 second anniversary of the meeting.

5 (f) The presence of the commissioner or the commissioner's
6 designated representative at a closed meeting does not waive or
7 impair any privilege, including attorney-client privilege, that
8 exists in statute or at common law.

9 SECTION 14. Section 2210.107, Insurance Code, is amended to
10 read as follows:

11 Sec. 2210.107. PRIMARY BOARD OBJECTIVES; REPORT. (a) The
12 primary objectives of the board of directors are to ensure that the
13 association:

14 (1) operates in accordance with this chapter and
15 commissioner rules;

16 (2) complies with sound insurance principles; and

17 (3) meets all standards imposed under this chapter,
18 including that claims against the association are promptly and
19 fairly resolved.

20 (b) Every two months, the general manager of the association
21 shall submit to the board a report evaluating the extent to which
22 the association met the objectives described by Subsection (a) in
23 the two-month period immediately preceding the date of the report.

24 (c) Not later than June 1 of each year, the association
25 shall submit to the commissioner, the legislative oversight board
26 established under Subchapter N, the governor, the lieutenant
27 governor, and the speaker of the house of representatives a report

1 evaluating the extent to which the board met the objectives
2 described by Subsection (a) in the 12-month period immediately
3 preceding the date of the report.

4 SECTION 15. Subchapter C, Chapter 2210, Insurance Code, is
5 amended by adding Section 2210.108 to read as follows:

6 Sec. 2210.108. OPEN MEETINGS AND OPEN RECORDS. (a) Except
7 as specifically provided by this chapter or another law, the
8 association is subject to Chapters 551 and 552, Government Code.

9 (b) Except as provided by Subsection (c), the following
10 information is exempt from disclosure under Chapter 552, Government
11 Code:

12 (1) a name, address, telephone number, tax
13 identification number, social security number, or policy or claim
14 number of a person insured under this chapter;

15 (2) policy information related to:

16 (A) insured amounts; or

17 (B) insured items that identify specific
18 property or could reasonably be used to identify specific property;

19 (3) claim file information, including photographs and
20 descriptive reports, that identifies specific property or could
21 reasonably be used to identify specific property; and

22 (4) other information that could be considered
23 personally identifiable financial information.

24 (c) This section may not be construed to limit a request:

25 (1) by a person insured under this chapter, or the
26 person's counsel, for information contained in that person's
27 association policy or for claim information related to a loss

1 claimed under that policy;

2 (2) by the commissioner or the department for
3 information for a purpose authorized under this code, including for
4 the purposes of developing and implementing incentive programs
5 under Sections 2210.009(b) and 2210.053(b);

6 (3) for aggregate policy, coverage, and claims
7 information; or

8 (4) for discovery in a judicial or administrative
9 proceeding.

10 SECTION 16. Section 2210.202, Insurance Code, is amended to
11 read as follows:

12 Sec. 2210.202. APPLICATION FOR COVERAGE. (a) A person who
13 has an insurable interest in insurable property may apply to the
14 association for insurance coverage provided under the plan of
15 operation and an inspection of the property, subject to any rules
16 established by the board of directors and approved by the
17 commissioner. The association shall make insurance available to
18 each applicant in the catastrophe area whose property is insurable
19 property but who, after diligent efforts, is unable to obtain
20 property insurance through the voluntary market, as evidenced by
21 one declination from an insurer authorized to engage in the
22 business of, and writing, property insurance providing windstorm
23 and hail coverage in the first tier coastal counties. For purposes
24 of this section, "declination" has the meaning assigned by the plan
25 of operation and shall include a refusal to offer coverage for the
26 perils of windstorm and hail and the inability to obtain
27 substantially equivalent insurance coverage for the perils of

1 windstorm and hail. Notwithstanding Section 2210.203(c), evidence
2 of one declination every three calendar years is also required with
3 an application for renewal of an association policy.

4 (b) A property and casualty agent must submit an application
5 for initial [~~the~~] insurance coverage on behalf of the applicant on
6 forms prescribed by the association. The association shall develop
7 a simplified renewal process that allows for the acceptance of an
8 application for renewal coverage, and payment of premiums, from a
9 property and casualty agent or a person insured under this chapter.

10 An [~~The~~] application for initial or renewal coverage must contain:

11 (1) a statement as to whether the applicant has
12 submitted or will submit the premium in full from personal funds or,
13 if not, to whom a balance is or will be due; and

14 (2) [~~Each application for initial or renewal~~
15 ~~coverage must also contain~~] a statement that the agent acting on
16 behalf of the applicant possesses proof of the declination
17 described by Subsection (a) and proof of flood insurance coverage
18 or unavailability of that coverage as described by Section
19 2210.203(a-1).

20 SECTION 17. Section 2210.203, Insurance Code, is amended by
21 amending Subsections (a-1) and (c) and adding Subsections (a-2) and
22 (a-3) to read as follows:

23 (a-1) [~~This subsection applies only to a structure~~
24 ~~constructed, altered, remodeled, or enlarged on or after September~~
25 ~~1, 2009, and only for insurable property located in areas~~
26 ~~designated by the commissioner.~~] Notwithstanding Subsection (a),
27 if all or any part of the property to be insured [~~which this~~

1 ~~subsection applies~~] is located in Zone V or another similar zone
2 with an additional hazard associated with storm waves, as defined
3 by the National Flood Insurance Program, or is a residential
4 structure located in an area described by Section 2210.004(g)(2),
5 ~~[and if flood insurance under that federal program is available,]~~
6 the association may not issue an insurance policy for initial or
7 renewal coverage unless evidence is submitted to the association
8 that the property to be covered under the policy is also covered by
9 a flood insurance policy that has a deductible or self-insurance
10 amount comparable to the association policy to be issued and that is
11 issued under the National Flood Insurance Program or by an insurer
12 in an aggregate amount that is:

13 (1) equal to or greater than the amount of coverage
14 under the policy to be issued by the association; or

15 (2) equal to the maximum amount obtainable through the
16 National Flood Insurance Program or an insurer.

17 (a-2) Subsection (a-1) does not apply to property for which
18 flood insurance is not available under the National Flood Insurance
19 Program ~~[is submitted to the association].~~

20 (a-3) An agent offering or selling a Texas windstorm and
21 hail insurance policy ~~[in any area designated by the commissioner~~
22 ~~under this subsection]~~ shall offer flood insurance coverage
23 required under Subsection (a-1) to a ~~[the]~~ prospective insured, if
24 that coverage is available.

25 (c) A policy is automatically ~~[may be]~~ renewed annually ~~[on~~
26 ~~application for renewal]~~ as long as the property continues to be
27 insurable property.

1 SECTION 18. Subchapter E, Chapter 2210, Insurance Code, is
2 amended by adding Sections 2210.205, 2210.210, and 2210.211 to read
3 as follows:

4 Sec. 2210.205. REQUIRED POLICY PROVISIONS: DEADLINE FOR
5 FILING CLAIM; NOTICE CONCERNING DISPUTE RESOLUTION. (a) A
6 windstorm and hail insurance policy issued by the association must:

7 (1) require an insured to file a claim under the policy
8 not later than the first anniversary of the date on which the loss
9 that is the basis of the claim occurs; and

10 (2) contain a conspicuous notice concerning the
11 resolution of disputes under the policy, including:

12 (A) describing the appraisal process under
13 Section 2210.576;

14 (B) describing the alternative dispute
15 resolution process under Section 2210.577; and

16 (C) stating that compliance with the provisions
17 described by Paragraphs (A) and (B) is a condition precedent to
18 seeking administrative relief under Subchapter L-1.

19 (b) The association shall extend the one-year period
20 described by Subsection (a)(1) for an additional period not to
21 exceed 120 days if, before the 120th day after the expiration of the
22 one-year period, the insured shows good cause in a written request
23 to the association.

24 Sec. 2210.210. COVERAGE OF CERTAIN STRUCTURES PROHIBITED.
25 The association may not issue coverage for a wind turbine
26 regardless of whether the turbine could otherwise be considered
27 insurable property under this chapter.

1 Sec. 2210.211. PROOF OF OTHER COVERAGE REQUIRED FOR
2 SETTLEMENT OF CERTAIN CLAIMS; CLAIMS PAYMENT LIMITED. (a) This
3 section applies only to a claim filed under an association policy
4 the issuance or renewal of which, under Section 2210.203(a-1),
5 requires evidence of coverage by a flood insurance policy.

6 (b) The association may not pay or settle a portion of a
7 claim filed under a policy described by Subsection (a) if:

8 (1) that portion of the claim is for damage that is
9 covered by the flood insurance policy, if the required flood
10 insurance coverage was in effect on the date the damage occurred; or

11 (2) that portion of the claim is for damage that would
12 have been covered by the flood insurance policy, if the required
13 flood insurance coverage was not in effect on the date the damage
14 occurred.

15 SECTION 19. Section 2210.254, Insurance Code, is amended by
16 adding Subsection (e) to read as follows:

17 (e) The department may establish an annual renewal period
18 for persons appointed as qualified inspectors.

19 SECTION 20. Subchapter F, Chapter 2210, Insurance Code, is
20 amended by adding Section 2210.2551 to read as follows:

21 Sec. 2210.2551. EXCLUSIVE ENFORCEMENT AUTHORITY; RULES.

22 (a) The department has exclusive authority over all matters
23 relating to the appointment and oversight of qualified inspectors
24 for purposes of this chapter.

25 (b) The commissioner by rule shall establish criteria to
26 ensure that a person seeking appointment as a qualified inspector
27 under this subchapter, including an engineer seeking appointment

1 under Section 2210.255, possesses the knowledge, understanding,
2 and professional competence to perform windstorm inspections under
3 this chapter and to comply with other requirements of this chapter.

4 SECTION 21. The heading to Section 2210.256, Insurance
5 Code, is amended to read as follows:

6 Sec. 2210.256. DISCIPLINARY PROCEEDINGS REGARDING
7 APPOINTED INSPECTORS AND CERTAIN OTHER PERSONS.

8 SECTION 22. Section 2210.256, Insurance Code, is amended by
9 adding Subsection (a-1) to read as follows:

10 (a-1) In addition to any other action authorized under this
11 section, the commissioner ex parte may enter an emergency cease and
12 desist order under Chapter 83 against a qualified inspector, or a
13 person acting as a qualified inspector, if:

14 (1) the commissioner believes that:

15 (A) the qualified inspector has:

16 (i) through submitting or failing to submit
17 to the department sealed plans, designs, calculations, or other
18 substantiating information, failed to demonstrate that a structure
19 or a portion of a structure subject to inspection meets the
20 requirements of this chapter and department rules; or

21 (ii) refused to comply with requirements
22 imposed under this chapter or department rules; or

23 (B) the person acting as a qualified inspector is
24 acting without appointment as a qualified inspector under Section
25 2210.254 or 2210.255; and

26 (2) the commissioner determines that the conduct
27 described by Subdivision (1) is fraudulent or hazardous or creates

1 an immediate danger to the public.

2 SECTION 23. Section 2210.259, Insurance Code, is amended by
3 adding Subsection (c) to read as follows:

4 (c) The commissioner by rule may provide for a discount of,
5 or a credit against, a surcharge assessed under Subsection (a) in
6 instances in which a policyholder demonstrates that the
7 noncompliant structure was constructed with at least one structural
8 building component that complies with the building code standards
9 set forth in the plan of operation.

10 SECTION 24. Subchapter F, Chapter 2210, Insurance Code, is
11 amended by adding Section 2210.260 to read as follows:

12 Sec. 2210.260. ALTERNATIVE ELIGIBILITY FOR COVERAGE. (a)
13 On and after January 1, 2012, a person who has an insurable interest
14 in a residential structure may obtain insurance coverage through
15 the association for that structure without obtaining a certificate
16 of compliance under Section 2210.251(g) in accordance with this
17 section and rules adopted by the commissioner.

18 (b) The department may issue an alternative certification
19 for a residential structure if the person who has an insurable
20 interest in the structure demonstrates that at least one qualifying
21 structural building component of the structure has been:

22 (1) inspected by a department inspector or by a
23 qualified inspector; and

24 (2) determined to be in compliance with applicable
25 building code standards, as set forth in the plan of operation.

26 (c) The commissioner shall adopt reasonable and necessary
27 rules to implement this section. The rules adopted under this

1 section must establish which structural building components are
2 considered qualifying structural building components for the
3 purposes of Subsection (b), taking into consideration those items
4 that are most probable to generate losses for the association's
5 policyholders and the cost to upgrade those items.

6 (d) Except as provided in Section 2210.251(f), a person who
7 has an insurable interest in a residential structure that is
8 insured by the association as of January 1, 2012, but for which the
9 person has not obtained a certificate of compliance under Section
10 2210.251(g), must obtain an alternative certification under this
11 section before the association, on or after January 1, 2013, may
12 renew coverage for the structure.

13 (e) Each residential structure for which a person obtains an
14 alternative certification under this section must comply with:

15 (1) the requirements of this chapter, including
16 Section 2210.258; and

17 (2) the association's underwriting requirements,
18 including maintaining the structure in an insurable condition and
19 paying premiums in the manner required by the association.

20 (f) The association shall develop and implement an
21 actuarially sound rate, credit, or surcharge that reflects the
22 risks presented by structures with reference to which alternative
23 certifications have been obtained under this section. A rate,
24 credit, or surcharge under this subsection may vary based on the
25 number of qualifying structural building components included in a
26 structure with reference to which an alternative certification is
27 obtained under this section.

1 SECTION 25. The heading to Subchapter H, Chapter 2210,
2 Insurance Code, is amended to read as follows:

3 SUBCHAPTER H. RATES; DISCOUNTS AND CREDITS

4 SECTION 26. Sections 2210.355(b) and (g), Insurance Code,
5 are amended to read as follows:

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

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

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

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

14 (4) payment of public security obligations for Class 1
15 public securities issued under this chapter, including the
16 additional amount of any debt service coverage determined by the
17 association to be required for the issuance of marketable public
18 securities; and

19 (5) [~~4~~] all other relevant factors, within and
20 outside this state.

21 (g) A commission paid to an agent for a windstorm and hail
22 insurance policy issued by the association must comply with the
23 commission structure approved by the commissioner under Section
24 2210.356 and be reasonable, adequate, not unfairly discriminatory,
25 and nonconfiscatory.

26 SECTION 27. Subchapter H, Chapter 2210, Insurance Code, is
27 amended by adding Section 2210.356 to read as follows:

1 Sec. 2210.356. AGENT COMMISSIONS. (a) The commissioner,
2 after receiving a recommendation from the board, shall approve a
3 commission structure for payment of an agent who submits an
4 application for coverage to the association on behalf of a person
5 who has an insurable interest in insurable property.

6 (b) The commission structure adopted by the commissioner
7 must be fair and reasonable, taking into consideration the amount
8 of work performed by an agent in submitting an application to the
9 association and the prevailing commission structure in the private
10 windstorm insurance market.

11 SECTION 28. Subchapter H, Chapter 2210, Insurance Code, is
12 amended by adding Section 2210.363 to read as follows:

13 Sec. 2210.363. PREMIUM DISCOUNTS; SURCHARGE CREDITS. (a)
14 The association may offer a person insured under this chapter an
15 actuarially justified premium discount on a policy issued by the
16 association, or an actuarially justified credit against a surcharge
17 assessed against the person, other than a surcharge assessed under
18 Subchapter M, if the construction, alteration, remodeling,
19 enlargement, or repair of, or an addition to, insurable property
20 exceeds applicable building code standards set forth in the plan of
21 operation.

22 (b) The association shall offer a person insured under this
23 chapter an actuarially justified premium discount on a policy
24 issued by the association, or an actuarially justified credit
25 against a surcharge assessed against the person, other than a
26 surcharge assessed under Subchapter M, if, in the policy period
27 immediately preceding the policy period for which the premium is

1 paid, the person chose binding arbitration offered by the
2 association under Section 2210.553.

3 (c) The commissioner shall adopt rules necessary to
4 implement and enforce this section.

5 SECTION 29. Chapter 2210, Insurance Code, is amended by
6 adding Subchapter I to read as follows:

7 SUBCHAPTER I. EXPERT PANEL

8 Sec. 2210.401. FUNDING AND RESOURCES. (a) At the request
9 of the commissioner, the association shall provide the funds and
10 resources necessary to implement Section 2210.402, including:

11 (1) employing or retaining persons to perform the
12 functions necessary or proper under Section 2210.402;

13 (2) providing administrative assistance and services,
14 including planning, contracting, and purchasing; and

15 (3) providing computer equipment and support.

16 (b) A person or entity employed or retained under Subsection
17 (a) acts solely under the direction of, and performs duties
18 assigned by, the commissioner.

19 Sec. 2210.402. EXPERT PANEL. (a) This section applies only
20 to losses concurrently caused by wind and tidal surges in which no
21 substantial portion of an insured structure, other than the
22 foundation of the structure, remains.

23 (b) The commissioner shall appoint a panel of experts to
24 advise the association concerning the extent to which a loss to
25 insurable property that is described by Subsection (a) was caused
26 by wind and tidal surges. The panel consists of the number of
27 experts determined by the commissioner, and the commissioner shall

1 appoint one member of the panel to serve as the presiding officer of
2 the panel.

3 (c) Members of the panel must have professional expertise
4 in, and be knowledgeable concerning, the geography and meteorology
5 of the seacoast territory as well as the scientific basis for
6 determining the extent to which a loss is caused by wind and tidal
7 surges. The areas of expertise of the panel members may include
8 structural engineering, hydrology, statistical science, actuarial
9 science, claims adjusting, and other areas of expertise determined
10 to be necessary and advisable by the commissioner.

11 (d) The panel shall meet at the request of the commissioner
12 or the call of the presiding officer of the panel.

13 (e) The panel shall investigate, collect, and evaluate the
14 information necessary to provide recommendations under Subsection
15 (f).

16 (f) At the request of the commissioner, the panel shall
17 recommend to the commissioner methods or models for determining the
18 extent to which a loss to insurable property may be or was caused by
19 wind and tidal surges with respect to any weather-related event for
20 geographic areas or regions designated by the commissioner. The
21 panel shall, at the request of the commissioner, develop both
22 pre-event and post-event methods or models for determining the
23 extent to which a loss to insurable property may be or was caused by
24 wind and tidal surges. The methods or models developed by the panel
25 shall provide guidance to the commissioner on the issue of whether
26 loss to insurable property resulting from a weather-related event
27 may be or has been caused by wind and tidal surges. The methods or

1 models must be based on sound scientific principles.

2 (g) After consideration of the recommendations made by the
3 panel under Subsection (f), the commissioner shall publish
4 guidelines that the association will use to settle or pay a claim
5 based on a loss described by this section.

6 Sec. 2210.403. RULES. The commissioner may adopt rules as
7 necessary to implement this subchapter.

8 SECTION 30. Section 2210.452(c), Insurance Code, is amended
9 to read as follows:

10 (c) At the end of each calendar year or policy year, the
11 association shall use the net gain from operations of the
12 association, including all premium and other revenue of the
13 association in excess of incurred losses, ~~and~~ operating expenses,
14 public security obligations, and public security administrative
15 expenses, to make payments to the trust fund, to procure
16 reinsurance, or to make payments to the trust fund and to procure
17 reinsurance.

18 SECTION 31. The heading to Section 2210.453, Insurance
19 Code, is amended to read as follows:

20 Sec. 2210.453. RISK TRANSFER FINANCING; REINSURANCE.

21 SECTION 32. Section 2210.453, Insurance Code, is amended by
22 adding Subsections (c), (d), and (e) to read as follows:

23 (c) Not later than January 1 of each year, to establish the
24 solvency level required under this chapter, the board of directors
25 shall determine the association's current probable maximum loss,
26 based on an average of at least two recognized catastrophe models,
27 as follows:

1 (1) for calendar years 2011 and 2012, at not less than
2 a one in 50 year occurrence;

3 (2) for calendar year 2013, at not less than a one in
4 75 year occurrence; and

5 (3) for each calendar year after calendar year 2013,
6 at not less than a one in 100 year occurrence.

7 (d) The board of directors shall, on January 1 of each year,
8 develop a plan to obtain pre-event risk transfer financing from
9 private sector sources determined by the board of directors to be
10 reasonable and appropriate to the association's risk of loss and in
11 an amount sufficient to maintain the claims paying ability of the
12 association in the event of a catastrophe with estimated damages of
13 \$2.5 billion or more. The plan submitted under this subsection is
14 for informational purposes only and does not bind the association
15 to a particular course of action. The plan shall, at a minimum,
16 include:

17 (1) a certification to the governor, lieutenant
18 governor, speaker of the house of representatives, and commissioner
19 stating whether or not the required solvency level of the
20 association is satisfied for that calendar year;

21 (2) an analysis of the claims paying ability of the
22 association both with and without reliance upon borrowing
23 authorized by this chapter;

24 (3) consideration of the costs, availability, and
25 effects of reinsurance, bonds, and other risk transfer financing
26 mechanisms;

27 (4) the likelihood and maximum size of assessments

1 authorized by this chapter; and

2 (5) the probability of exhausting the association's
3 financial resources.

4 (e) If the association does not purchase reinsurance as
5 authorized by this section, the board, not later than June 1 of each
6 year, shall submit to the commissioner, the legislative oversight
7 board established under Subchapter N, the governor, the lieutenant
8 governor, and the speaker of the house of representatives a report
9 containing an actuarial plan for paying losses in the event of a
10 catastrophe with estimated damages of \$2.5 billion or more. The
11 report submitted under this subsection is for informational
12 purposes only and does not bind the association to a particular
13 course of action.

14 SECTION 33. Section 2210.502, Insurance Code, is amended by
15 adding Subsection (e) to read as follows:

16 (e) Notwithstanding Subsection (a), the maximum liability
17 limit described by Section 2210.501(b)(1) may not exceed \$1.5
18 million.

19 SECTION 34. The heading to Subchapter L, Chapter 2210,
20 Insurance Code, is amended to read as follows:

21 SUBCHAPTER L. CERTAIN APPEALS AND OTHER ACTIONS

22 SECTION 35. Sections 2210.551(a) and (b), Insurance Code,
23 are amended to read as follows:

24 (a) This section:

25 (1) does not apply to:

26 (A) a claimant who has made a claim, as those
27 terms are defined by Section 2210.571; or

1 (B) a person insured under this chapter who has
2 elected binding arbitration offered by the association under
3 Section 2210.553; and

4 (2) applies only to:

5 (A) [~~1~~] a person not described by Subdivision
6 (1) who is insured under this chapter or an authorized
7 representative of the person; or

8 (B) [~~2~~] an affected insurer.

9 (b) A person or entity described by Subsection (a)(2) [~~a~~]
10 who is aggrieved by an act, ruling, or decision of the association
11 may appeal to the commissioner not later than the 30th day after the
12 date of that act, ruling, or decision.

13 SECTION 36. The heading to Section 2210.552, Insurance
14 Code, is amended to read as follows:

15 Sec. 2210.552. CERTAIN [~~CLAIM~~] DISPUTES; VENUE AND NOTICE
16 OF INTENT TO BRING ACTION.

17 SECTION 37. Section 2210.552, Insurance Code, is amended by
18 amending Subsection (a) and adding Subsections (e) and (f) to read
19 as follows:

20 (a) Except as provided by Sections 2210.007 and 2210.106 and
21 subject to Subsection (e), a person insured under this chapter who
22 is aggrieved by an act, ruling, or decision of the association
23 relating to the payment of, the amount of, or the denial of a claim
24 may:

25 (1) after providing the association the notice that
26 meets the requirements of Section 541.154, bring an action against
27 the association, including an action under Chapter 541; or

1 (2) if applicable, appeal the act, ruling, or decision
2 under Section 2210.551.

3 (e) This subchapter and Subchapter L-1 provide the
4 exclusive remedies for a claimant to resolve a dispute with the
5 association concerning the payment of, the amount of, or the denial
6 of a claim. A claimant may not bring an action under this section,
7 including an action under Section 2210.578, against the association
8 concerning the payment of, the amount of, or the denial of a claim
9 before exhausting all other remedies under Subchapter L-1. If a
10 claimant brings an action against the association concerning the
11 payment of, the amount of, or the denial of a claim before
12 exhausting those remedies, the court shall abate the action until
13 those remedies have been exhausted. For purposes of this
14 subsection, "claim" and "claimant" have the meanings assigned by
15 Section 2210.571.

16 (f) A claimant who prevails in an action against the
17 association under this section:

18 (1) may recover:

19 (A) the relief described in Sections 541.152(a)
20 and 2210.575; and

21 (B) prejudgment interest; and

22 (2) may recover damages under Section 541.152(b) or
23 under Section 17.50, Business & Commerce Code, not to exceed two
24 times the amount of actual damages, only if the claimant proves by
25 clear and convincing evidence that the association intentionally or
26 knowingly committed an act prohibited by Chapter 541 as an unfair
27 method of competition or an unfair or deceptive act or practice in

1 the business of insurance.

2 SECTION 38. Subchapter L, Chapter 2210, Insurance Code, is
3 amended by adding Sections 2210.553 and 2210.554 to read as
4 follows:

5 Sec. 2210.553. VOLUNTARY ARBITRATION OF CERTAIN COVERAGE
6 AND CLAIM DISPUTES. (a) If a person insured under this chapter has
7 a dispute with the association involving an act, ruling, or
8 decision of the association relating to the payment of, the amount
9 of, or the denial of a claim filed by the person, the association
10 may offer to the person that the association and the person resolve
11 the dispute through binding arbitration.

12 (b) An arbitration under this section shall be conducted in
13 the manner and under rules and deadlines prescribed by the
14 commissioner by rule.

15 Sec. 2210.554. LIMITATIONS PERIOD. Notwithstanding any
16 other law, including Section 541.162, a person insured under this
17 chapter who brings an action against the association must bring the
18 action not later than the second anniversary of the date of the act,
19 ruling, or decision of the association by which the insured is
20 aggrieved.

21 SECTION 39. Chapter 2210, Insurance Code, is amended by
22 adding Subchapter L-1 to read as follows:

23 SUBCHAPTER L-1. CLAIMS: SETTLEMENT, APPRAISAL, AND DISPUTE
24 RESOLUTION

25 Sec. 2210.571. DEFINITIONS. In this subchapter:

26 (1) "Association policy" means a windstorm and hail
27 insurance policy issued by the association.

1 (2) "Claim" means a request for payment under an
2 association policy following damage to property insured under the
3 policy.

4 (3) "Claimant" means a person who makes a claim.

5 Sec. 2210.572. FILING OF CLAIM. Subject to the good cause
6 extension to which a claimant is entitled under Section
7 2210.205(b), an insured must file a claim under an association
8 policy not later than the first anniversary of the date on which the
9 damage to property that is the basis of the claim occurs.

10 Sec. 2210.573. RECEIPT OF NOTICE OF CLAIM. (a) Not later
11 than the 30th day after the date the association receives notice of
12 a claim, the association shall:

13 (1) acknowledge receipt of the claim;

14 (2) commence any investigation of the claim; and

15 (3) request from the claimant all items, statements,
16 and forms that the association reasonably believes, at that time,
17 will be required from the claimant.

18 (b) The association may make additional requests for
19 information if during the investigation of the claim the additional
20 requests are necessary.

21 (c) If the acknowledgment of receipt of a claim is not made
22 in writing, the association shall make a record of the date, manner,
23 and content of the acknowledgment.

24 Sec. 2210.574. NOTICE OF ACCEPTANCE OR REJECTION OF CLAIM.

25 (a) Except as provided by Subsection (c), the association shall
26 notify a claimant in writing of the acceptance or rejection of a
27 claim not later than the 30th day after the date the association

1 receives all items, statements, and forms required by the
2 association to secure final proof of loss.

3 (b) If the association rejects the claim, the notice
4 required by Subsection (a) must state the reasons for the
5 rejection.

6 (c) If the association is unable to accept or reject the
7 claim within the period specified by Subsection (a), the
8 association, within that same period, shall notify the claimant of
9 the reasons that the association needs additional time. The
10 association shall accept or reject the claim not later than the 30th
11 day after the date the association notifies a claimant under this
12 subsection.

13 Sec. 2210.575. PAYMENT OF CLAIM; DELAY IN PAYMENT OF CLAIM;
14 INTEREST ON CLAIM. (a) Except as provided by Subsection (b) or
15 (c), if the association notifies a claimant under Section 2210.574
16 that the association will pay a claim or part of a claim, the
17 association shall pay the claim not later than the 10th day after
18 the date notice is made.

19 (b) Except as provided by Subsection (c), if payment of the
20 claim or part of the claim is conditioned on the performance of an
21 act by the claimant, the association shall pay the claim not later
22 than the 10th day after the date the act is performed.

23 (c) If the association does not have sufficient cash on hand
24 or available in the catastrophe reserve trust fund to comply with
25 this section, the commissioner by rule may extend the periods
26 described by Subsections (a) and (b) by an additional period not to
27 exceed 120 days.

1 Sec. 2210.5751. EXTENSION OF CERTAIN DEADLINES. In the
2 event of a weather-related catastrophe or major natural disaster,
3 as defined by the commissioner, the claim-handling deadlines under
4 Sections 2210.573, 2210.574, and 2210.575 are extended for an
5 additional 15 days.

6 Sec. 2210.576. DISPUTES CONCERNING AMOUNT OF LOSS. (a) If a
7 claimant disputes the amount of loss determined by the association,
8 the claimant or the association may resolve that dispute by, not
9 later than the 60th day after the date the claimant receives the
10 notice from the association that gives rise to the dispute,
11 requesting appraisal in accordance with the terms of the insurance
12 policy.

13 (b) The 60-day period described by Subsection (a) may be
14 extended for:

15 (1) an agreed period of time by mutual consent of the
16 claimant and the association; or

17 (2) 30 days by the claimant if, before the expiration
18 of the 60-day period described by Subsection (a), the claimant is
19 unable to retain an appraiser and provides written notice of that
20 inability to the association.

21 (c) If a claimant or the association requests appraisal
22 under this section, the claimant is responsible for paying any
23 costs incurred or charged by an appraiser retained by and on behalf
24 of the claimant, the association is responsible for paying any
25 costs incurred or charged by an appraiser retained by and on behalf
26 of the association, and the claimant and the association are
27 responsible in equal shares for any costs incurred or charged by any

1 umpire.

2 (d) Except as provided by Subsection (b), if the association
3 or a claimant does not demand appraisal before the expiration of the
4 60-day period described by Subsection (a), the association or
5 claimant, as applicable, waives the right to have the amount of loss
6 determined by appraisal.

7 (e) This section applies only to disputes regarding the
8 amount of loss and does not apply to disputes regarding the
9 association's determination concerning coverage for a claim or
10 causation of damage to property insured under an association policy
11 that is the basis of a claim.

12 (f) The appraisal decision is binding on the claimant and
13 the association as to the amount of loss and is subject to review
14 only if the claimant brings an action against the association as
15 described by Section 2210.578.

16 Sec. 2210.577. ALTERNATE DISPUTE RESOLUTION. (a) If a
17 claimant disputes the association's determination concerning
18 coverage for a claim or causation of damage to property insured
19 under an association policy that is the basis of a claim and
20 provides notice of intent to bring an action that meets the
21 requirements of Section 541.154, the association may require the
22 claimant, as a prerequisite to filing the action against the
23 association, to submit the dispute to alternate dispute resolution
24 by mediation or moderated settlement conference, as provided by
25 Chapter 154, Civil Practice and Remedies Code.

26 (b) The association must request alternate dispute
27 resolution of a dispute described by Subsection (a) not later than

1 the 60th day after the date the association receives from the
2 claimant notice of intent to bring an action.

3 (c) Alternate dispute resolution under this section must be
4 completed not later than the 60th day after the date a request for
5 alternate dispute resolution is made under Subsection (b). The
6 60-day period described by this subsection may be extended by the
7 commissioner by rule or by the association and a claimant by mutual
8 consent.

9 (d) If alternate dispute resolution is not completed before
10 the expiration of the 60-day period described by Subsection (c) or,
11 if applicable, any extension under that subsection, the claimant
12 may bring an action against the association as described by Section
13 2210.578.

14 (e) A moderated settlement conference under this section
15 may be conducted by a panel consisting of one or more impartial
16 third parties.

17 (f) The commissioner shall establish rules to implement
18 this section, including provisions for expediting alternate
19 dispute resolution, facilitating the ability of a claimant to
20 appear with or without counsel, and providing that formal rules of
21 evidence shall not apply to the proceedings.

22 Sec. 2210.578. ACTION BY CLAIMANT. (a) Subject to
23 providing notice of intent to bring an action that meets the
24 requirements of Section 541.154, a claimant aggrieved by the
25 association's decision concerning a claim under this subchapter,
26 including an appraisal process under Section 2210.576 or the
27 outcome of alternate dispute resolution under Section 2210.577, may

1 bring an action against the association.

2 (b) If six or more claimants file civil actions against the
3 association as a result of a weather-related event, an action
4 brought against the association under this section must be presided
5 over by a judge appointed by the judicial panel on multidistrict
6 litigation designated under Section 74.161, Government Code. A
7 judge appointed under this section must be an active judge in Travis
8 County, for suits filed in Travis County, or an active judge in the
9 county in which suit is filed, for a suit filed in a county other
10 than Travis County. "Active judge" shall be defined as in Section
11 74.041, Government Code.

12 (c) An action brought against the association is governed by
13 this subchapter and Sections 2210.552 and 2210.554.

14 Sec. 2210.579. CONSTRUCTION WITH OTHER LAW. (a) To the
15 extent of any conflict between a provision of this subchapter and
16 any other law, the provision of this subchapter prevails.

17 (b) Notwithstanding any other law, the association may not
18 bring an action against a claimant, for declaratory or other
19 relief, before the 180th day after the date an appraisal under
20 Section 2210.576, or alternate dispute resolution under Section
21 2210.577, is completed.

22 SECTION 40. Section 2210.602, Insurance Code, is amended by
23 amending Subdivisions (1) and (2) and adding Subdivisions (1-a),
24 (1-b), (5-a), (6-a), (6-b), (6-c), and (6-d) to read as follows:

25 (1) "Authority" means the Texas Public Finance
26 Authority.

27 (1-a) "Board" means the board of directors of the

1 Texas Public Finance Authority.

2 (1-b) "Catastrophic event" means an occurrence or a
3 series of occurrences that occurs in a catastrophe area during a
4 calendar year and that results in insured losses and operating
5 expenses of the association in excess of premium and other revenue
6 of the association.

7 (2) "Class 1 public securities" means public
8 securities authorized to be issued [~~on or after an occurrence or~~
9 ~~series of occurrences~~] by Section 2210.072, including a commercial
10 paper program authorized before the occurrence of a catastrophic
11 event [~~so long as no tranche of commercial paper is issued under the~~
12 ~~program until after the catastrophic event~~].

13 (5-a) "Gross premium" means association premium, less
14 premium returned to policyholders for canceled or reduced policies.

15 (6-a) "Marketable" means, with reference to public
16 securities, securities:

17 (A) for which the authority has determined there
18 to be demonstrable market demand; and

19 (B) that can be rated by at least two nationally
20 recognized rating agencies for municipal securities in:

21 (i) the highest rating category for a
22 short-term debt instrument; or

23 (ii) one of the three highest rating
24 categories for a long-term debt instrument.

25 (6-b) "Member assessment trust fund" means the
26 dedicated trust fund established by the board and held by the Texas
27 Treasury Safekeeping Trust Company into which member assessments

1 collected under Sections 2210.613 and 2210.6135 are deposited.

2 (6-c) "Net premium" means gross premium, less:

3 (A) premium collected by the association but that
4 has not yet been earned by the association;

5 (B) earned premium expected to be paid in
6 connection with the disposition of losses not associated with a
7 catastrophic event;

8 (C) operating expenses; and

9 (D) any amounts necessary to fund or replenish a
10 reasonable operating reserve for the association.

11 (6-d) "Premium surcharge trust fund" means the
12 dedicated trust fund established by the board and held by the Texas
13 Treasury Safekeeping Trust Company into which premium surcharges
14 collected under Section 2210.613 are deposited.

15 SECTION 41. Section 2210.604, Insurance Code, is amended by
16 amending Subsections (b) and (c) and adding Subsection (d) to read
17 as follows:

18 (b) The association shall specify in the association's
19 request to the board the maximum principal amount of the public
20 securities and the maximum term of the public securities. The
21 maximum principal requested under this subsection may not exceed
22 the amount of public securities the association, in consultation
23 with the authority, determines to be marketable.

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

27 (1) pay the costs related to issuance of the public

1 securities;

2 (2) provide a public security reserve fund; ~~and~~

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

5 (4) provide the amount of debt service coverage for
6 public securities determined by the association, in consultation
7 with the authority, to be required for the issuance of marketable
8 public securities.

9 (d) If the amount of marketable Class 1 public securities is
10 insufficient to pay the excess losses for which the securities are
11 issued, marketable Class 2 public securities may be issued. If the
12 amount of marketable Class 2 public securities is insufficient to
13 pay the excess losses for which the securities are issued,
14 marketable Class 3 public securities may be issued.

15 SECTION 42. Section 2210.605(c), Insurance Code, is amended
16 to read as follows:

17 (c) Public securities issued under Section 2210.6136 [~~this~~
18 ~~chapter~~] are eligible obligations under Section 404.027,
19 Government Code.

20 SECTION 43. Section 2210.608(a), Insurance Code, is amended
21 to read as follows:

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

25 (1) pay incurred claims and operating expenses of the
26 association;

27 (2) purchase reinsurance for the association;

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

3 (4) provide a public security reserve; [~~and~~]

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

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

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

13 SECTION 44. Section 2210.609, Insurance Code, is amended to
14 read as follows:

15 Sec. 2210.609. REPAYMENT OF ASSOCIATION'S PUBLIC SECURITY
16 OBLIGATIONS. (a) The board and the association shall enter into an
17 agreement under which the association shall provide for the payment
18 of all public security obligations from available funds collected
19 by the association and deposited into the public security
20 obligation revenue fund. If the association determines that it is
21 unable to pay the public security obligations and public security
22 administrative expenses, if any, with available funds, the
23 association shall pay those obligations and expenses in accordance
24 with Sections 2210.612, 2210.613, [~~and~~] 2210.6135, and 2210.6136 as
25 applicable. Class 1, Class 2, or Class 3 public securities may be
26 issued on a parity or subordinate lien basis with other Class 1,
27 Class 2, or Class 3 public securities, respectively.

1 (b) If any public securities issued under this chapter are
2 outstanding, the authority [~~The board~~] shall notify the association
3 of the amount of the public security obligations and the estimated
4 amount of public security administrative expenses, if any, each
5 year in a period sufficient, as determined by the association, to
6 permit the association to determine the availability of funds,
7 assess members of the association under Sections 2210.613 and
8 2210.6135, and assess a premium surcharge if necessary.

9 (c) The association shall deposit all revenue collected
10 under Section [~~Sections~~] 2210.612 [~~, 2210.613, and 2210.6135~~] in
11 the public security obligation revenue fund, all revenue collected
12 under Section 2210.613(b) in the premium surcharge trust fund, and
13 all revenue collected under Sections 2210.613(a) and 2210.6135 in
14 the member assessment trust fund. Money deposited in a [~~the~~] fund
15 may be invested as permitted by general law. Money in a [~~the~~] fund
16 required to be used to pay public security obligations and public
17 security administrative expenses, if any, shall be transferred to
18 the appropriate funds in the manner and at the time specified in the
19 proceedings authorizing the public securities to ensure timely
20 payment of obligations and expenses. This may include the board
21 establishing funds and accounts with the comptroller that the board
22 determines are necessary to administer and repay the public
23 security obligations. If the association has not transferred
24 amounts sufficient to pay the public security obligations to the
25 board's designated interest and sinking fund in a timely manner,
26 the board may direct the Texas Treasury Safekeeping Trust Company
27 to transfer from the public security obligation revenue fund, the

1 premium surcharge trust fund, or the member assessment trust fund
2 to the appropriate account the amount necessary to pay the public
3 security obligation.

4 (d) The association shall provide for the payment of the
5 public security obligations and the public security administrative
6 expenses by irrevocably pledging revenues received from premiums,
7 member assessments, premium surcharges, and amounts on deposit in
8 the public security obligation revenue fund, the premium surcharge
9 trust fund, and the member assessment trust fund, together with any
10 public security reserve fund, as provided in the proceedings
11 authorizing the public securities and related credit agreements.

12 (e) An amount owed by the board under a credit agreement
13 shall be payable from and secured by a pledge of revenues received
14 by the association or amounts from the public security obligation
15 trust fund, the premium surcharge trust fund, and the member
16 assessment trust fund to the extent provided in the proceedings
17 authorizing the credit agreement.

18 SECTION 45. Section 2210.610(a), Insurance Code, is amended
19 to read as follows:

20 (a) Revenues received from the premium surcharges under
21 Section 2210.613 and member assessments under Sections 2210.613 and
22 2210.6135 may be applied only as provided by this subchapter.

23 SECTION 46. Section 2210.611, Insurance Code, is amended to
24 read as follows:

25 Sec. 2210.611. EXCESS REVENUE COLLECTIONS AND INVESTMENT
26 EARNINGS. Revenue collected in any year from a premium surcharge
27 under Section 2210.613 and member assessments under Sections

1 2210.613 and 2210.6135 that exceeds the amount of the public
2 security obligations and public security administrative expenses
3 payable in that year and interest earned on the public security
4 obligation fund may, in the discretion of the association, be:

5 (1) used to pay public security obligations payable in
6 the subsequent year, offsetting the amount of the premium surcharge
7 and member assessments, as applicable, that would otherwise be
8 required to be levied for the year under this subchapter;

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

11 (3) deposited in the catastrophe reserve trust fund.

12 SECTION 47. Section 2210.612, Insurance Code, is amended to
13 read as follows:

14 Sec. 2210.612. PAYMENT OF CLASS 1 PUBLIC SECURITIES. (a)
15 The association shall pay Class 1 public securities issued under
16 Section 2210.072 from its net premium and other revenue.

17 (b) The association may enter financing arrangements as
18 described by Section 2210.072(d) as necessary to obtain public
19 securities issued under Section 2210.072 [~~that section~~]. Nothing
20 in this subsection shall prevent the authorization and creation of
21 one or more programs for the issuance of commercial paper before the
22 date of an occurrence or series of occurrences that results in
23 insured losses under Section 2210.072(a) [~~so long as no tranche of~~
24 ~~commercial paper is issued under a commercial paper program until~~
25 ~~after such an occurrence~~].

26 SECTION 48. Sections 2210.613(b), (c), and (d), Insurance
27 Code, are amended to read as follows:

1 (b) Seventy percent of the cost of the public securities
2 shall be paid by a [~~nonrefundable~~] premium surcharge collected
3 under this section in an amount set by the commissioner. On
4 approval by the commissioner, each insurer, the association, and
5 the Texas FAIR Plan Association shall assess, as provided by this
6 section, a premium surcharge to each policyholder of a policy that
7 is in effect on or after the 180th day after the date the
8 commissioner issues notice of the approval of the public securities
9 [its policyholders as provided by this section]. The premium
10 surcharge must be set in an amount sufficient to pay, for the
11 duration of the issued public securities, all debt service not
12 already covered by available funds or member assessments and all
13 related expenses on the public securities.

14 (c) The premium surcharge under Subsection (b) shall be
15 assessed on all policyholders of policies that cover [~~who reside or~~
16 ~~have operations in, or whose~~] insured property that is located in a
17 catastrophe area, including automobiles principally garaged in a
18 catastrophe area. The premium surcharge shall be assessed on [~~for~~]
19 each Texas windstorm and hail insurance policy and each property
20 and casualty insurance policy, including an automobile insurance
21 policy, issued for automobiles and other property located in the
22 catastrophe area. A premium surcharge under Subsection (b) applies
23 to:

24 (1) all policies written under the following lines of
25 insurance:

26 (A) fire and allied lines;

27 (B) farm and ranch owners;

1 (C) residential property insurance;
2 (D) private passenger automobile liability and
3 physical damage insurance; and
4 (E) commercial passenger automobile liability
5 and physical damage insurance; and
6 (2) the property insurance portion of a commercial
7 multiple peril insurance policy [~~that provide coverage on any~~
8 ~~premises, locations, operations, or property located in the area~~
9 ~~described by this subsection for all property and casualty lines of~~
10 ~~insurance, other than federal flood insurance, workers'~~
11 ~~compensation insurance, accident and health insurance, and medical~~
12 ~~malpractice insurance~~].

13 (d) A premium surcharge under Subsection (b) is a separate
14 [~~nonrefundable~~] charge in addition to the premiums collected and is
15 not subject to premium tax or commissions. Failure by a
16 policyholder to pay the surcharge constitutes failure to pay
17 premium for purposes of policy cancellation.

18 SECTION 49. Section 2210.6135(a), Insurance Code, is
19 amended to read as follows:

20 (a) The association shall pay Class 3 public securities
21 issued under Section 2210.074 as provided by this section through
22 member assessments. For the payment of the losses, the [~~The~~]
23 association shall assess the members of the association an amount
24 not to exceed \$500 million per occurrence or series of occurrences
25 in a calendar year that results in insured losses [~~year for the~~
26 ~~payment of the losses~~]. The association shall notify each member of
27 the association of the amount of the member's assessment under this

1 section.

2 SECTION 50. Subchapter M, Chapter 2210, Insurance Code, is
3 amended by adding Section 2210.6136 to read as follows:

4 Sec. 2210.6136. COMBINED SOURCES OF PAYMENT. (a) In lieu
5 of issuing distinct Class 1, Class 2, or Class 3 public securities,
6 on request of the association and approval by the commissioner, the
7 board may issue public securities payable from all of the sources
8 described in Sections 2210.612, 2210.613, and 2210.6135 with:

9 (1) the first source of payment being as described in
10 Section 2210.612, to the extent public securities described by that
11 section are marketable;

12 (2) the second source of payment being as described in
13 Section 2210.613, in an amount not to exceed the amount of Class 2
14 public securities that could be issued under Section 2210.073 in
15 the calendar year in which securities are issued under this
16 section;

17 (3) the third source of payment being as described in
18 Section 2210.6135, in an amount not to exceed the amount of Class 3
19 public securities that could be issued under Section 2210.074 in
20 the calendar year in which securities are issued under this
21 section; and

22 (4) the fourth source of payment, if necessary, being
23 a distribution among member assessment and premium surcharges
24 described in Sections 2210.613 and 2210.6135 that complies with the
25 commissioner's order issued under Subsection (b).

26 (b) The commissioner by order shall specify the
27 distribution of the fourth source of payment under Subsection

1 (a)(4) based on the amount of public securities issued under this
2 section, the total amount of outstanding public securities issued
3 under this chapter, the sources of payment for the outstanding
4 public securities, and any other factors the commissioner
5 determines to be relevant.

6 (c) The aggregate principal amount of public securities
7 issued in the manner described by this section may not exceed \$2.5
8 billion in any consecutive 12-month period from the earlier of, as
9 applicable:

10 (1) the date on which public securities are issued
11 under Section 2210.072(a) before an occurrence or series of
12 occurrences that results in insured losses; or

13 (2) the date of an occurrence or series of occurrences
14 in a calendar year that results in insured losses in excess of
15 premium and other revenue of the association from available
16 reserves of the association and available amounts in the
17 catastrophe reserve trust fund.

18 SECTION 51. Section 2210.614, Insurance Code, is amended to
19 read as follows:

20 Sec. 2210.614. REFINANCING PUBLIC SECURITIES. (a) The
21 association may request the board to refinance, in accordance with
22 Chapter 1207, Government Code, any public securities issued in
23 accordance with Subchapter B-1, whether Class 1, Class 2, or Class 3
24 public securities, with public securities payable from any of the
25 [same] sources described by Section 2210.612, 2210.613, 2210.6135,
26 or 2210.6136 [as the original public securities]. The amount of
27 public securities that may be refinanced under this subsection with

1 the proceeds of Class 1 public securities may not exceed \$1 billion
2 for a single occurrence or a series of occurrences that takes place
3 in a calendar year.

4 (b) Notwithstanding Section 1207.006, Government Code,
5 public securities refinanced under this section may not have a term
6 that is greater than 14 years.

7 SECTION 52. Section 2210.616, Insurance Code, is amended to
8 read as follows:

9 Sec. 2210.616. STATE NOT TO IMPAIR PUBLIC SECURITY
10 OBLIGATIONS. (a) The state pledges for the benefit and protection
11 of financing parties, the board, and the association that the state
12 will not take or permit any action that would:

13 (1) impair the collection of member assessments and
14 premium surcharges or the deposit of those funds into the member
15 assessment trust fund or premium surcharge trust fund;

16 (2) reduce, alter, or impair the member assessments or
17 premium surcharges to be imposed, collected, and remitted to
18 financing parties until the principal, interest, and premium, and
19 any other charges incurred and contracts to be performed in
20 connection with the related public securities, have been paid and
21 performed in full; or

22 (3) [~~If public securities under this subchapter are~~
23 ~~outstanding, the state may not:~~

24 [~~(1) take action to limit or restrict the rights of the~~
25 ~~association to fulfill its responsibility to pay public security~~
26 ~~obligations, or~~

27 [~~(2)~~] in any way impair the rights and remedies of the

1 public security owners until the public securities are fully
2 discharged.

3 (b) A party issuing public securities under this subchapter
4 may include the pledge described by Subsection (a) in any
5 documentation relating to those securities.

6 SECTION 53. Subchapter M, Chapter 2210, Insurance Code, is
7 amended by adding Section 2210.6165 to read as follows:

8 Sec. 2210.6165. PROPERTY RIGHTS. If public securities
9 issued under this subchapter are outstanding, the rights and
10 interests of the association, a successor to the association, any
11 member of the association, or any member of the Texas FAIR Plan
12 Association, including the right to impose, collect, and receive a
13 premium surcharge or a member assessment authorized under this
14 subchapter, are only contract rights until those revenues are first
15 pledged for the repayment of the association's public security
16 obligations as provided by Section 2210.609.

17 SECTION 54. Sections 2210.502(c) and 2210.551(e),
18 Insurance Code, are repealed.

19 SECTION 55. (a) The Texas Department of Insurance and the
20 Texas Windstorm Insurance Association shall jointly study whether
21 the association's using a single adjuster program would improve the
22 effectiveness and efficiency with which the association receives,
23 processes, settles, and pays claims filed under insurance policies
24 issued by the association under Chapter 2210, Insurance Code.

25 (b) The commissioner of insurance shall study the
26 feasibility of the association writing policies directly and the
27 impact the association writing policies directly would have on

1 rates for policies issued by the association. The commissioner
2 shall submit the finding of the study conducted under this
3 subsection to the board of directors of the association.

4 (c) The results of the studies conducted under Subsections
5 (a) and (b) of this section shall be included in the 2012 biennial
6 report submitted to the legislature by the association under
7 Section 2210.0025, Insurance Code.

8 SECTION 56. (a) A legislative interim study committee
9 shall conduct a study of alternative ways to provide insurance to
10 the seacoast territory of this state through a quasi-governmental
11 entity.

12 (b) The committee is composed of 12 members appointed as
13 follows:

14 (1) four members of the senate appointed by the
15 lieutenant governor, two of whom represent one or more first tier
16 coastal counties and two of whom do not represent a first tier
17 coastal county;

18 (2) four members of the house of representatives
19 appointed by the speaker of the house of representatives, two of
20 whom represent one or more first tier coastal counties and two of
21 whom do not represent a first tier coastal county; and

22 (3) four public members with a background in actuarial
23 science, law, business, or insurance, as follows:

24 (A) two members who do not reside in a first tier
25 coastal county, appointed by the governor;

26 (B) one member who resides in a first tier
27 coastal county, appointed by the lieutenant governor; and

1 (C) one member who resides in a first tier
2 coastal county, appointed by the speaker of the house of
3 representatives.

4 (c) The speaker of the house of representatives and the
5 lieutenant governor shall jointly designate a chair or,
6 alternatively, designate two co-chairs, from among the committee
7 membership, one of whom represents or resides in a first tier
8 coastal county.

9 (d) The committee shall:

10 (1) examine alternative ways to provide insurance to
11 the seacoast territory of this state through a quasi-governmental
12 entity, including providing insurance coverage through a system or
13 program in which insurers in this state provide insurance in the
14 seacoast territory of this state in proportion to the percentage of
15 insurance coverage provided in geographic areas of this state other
16 than the seacoast territory;

17 (2) study the residual markets for windstorm and hail
18 insurance in other states to determine if those markets operate
19 more efficiently and effectively than the residual market for
20 windstorm and hail insurance coverage in this state;

21 (3) recommend:

22 (A) the appropriate scope of authority and
23 responsibility for the entity to provide insurance to the seacoast
24 territory of this state;

25 (B) an organizational structure to exercise
26 authority and responsibility over the provision of insurance to the
27 seacoast territory of this state;

1 (C) a timetable for implementation; and
2 (D) specific amendments to state laws and rules
3 that are necessary to implement the committee's recommendations
4 under this subdivision; and

5 (4) estimate funding requirements to implement the
6 recommendations.

7 (e) The committee may adopt rules necessary to conduct
8 business under and implement this section.

9 (f) Except as specifically provided by this section, the
10 committee may operate in the same manner as a joint committee of the
11 82nd Legislature.

12 (g) Not later than December 1, 2012, the committee shall
13 report to the governor and the legislature the recommendations made
14 under this section.

15 (h) This section expires June 1, 2013.

16 SECTION 57. (a) The adjuster advisory board established
17 under this section is composed of the following nine members
18 appointed by the commissioner:

- 19 (1) two public insurance adjusters;
20 (2) two members who represent the general public;
21 (3) two independent adjusters;
22 (4) one adjuster who represents a domestic insurer
23 authorized to engage in business in this state;
24 (5) one adjuster who represents a foreign insurer
25 authorized to engage in business in this state; and
26 (6) one representative of the Independent Insurance
27 Agents of Texas.

- 1 (b) A member who represents the general public may not be:
- 2 (1) an officer, director, or employee of:
- 3 (A) an adjuster or adjusting company;
- 4 (B) an insurance agent or agency;
- 5 (C) an insurance broker;
- 6 (D) an insurer; or
- 7 (E) any other business entity regulated by the
- 8 department;
- 9 (2) a person required to register as a lobbyist under
- 10 Chapter 305, Government Code; or
- 11 (3) a person related within the second degree of
- 12 affinity or consanguinity to a person described by Subdivision (1)
- 13 or (2).
- 14 (c) The advisory board shall make recommendations to the
- 15 commissioner regarding:
- 16 (1) matters related to the licensing, testing, and
- 17 continuing education of licensed adjusters;
- 18 (2) matters related to claims handling, catastrophic
- 19 loss preparedness, ethical guidelines, and other professionally
- 20 relevant issues; and
- 21 (3) any other matter the commissioner submits to the
- 22 advisory board for a recommendation.
- 23 (d) A member of the advisory board serves without
- 24 compensation. If authorized by the commissioner, a member is
- 25 entitled to reimbursement for reasonable expenses incurred in
- 26 attending meetings of the advisory board.
- 27 (e) The advisory board is subject to Chapter 2110,

1 Government Code.

2 SECTION 58. This Act applies only to a Texas windstorm and
3 hail insurance policy, and a claim or dispute arising under a Texas
4 windstorm and hail insurance policy, delivered, issued for
5 delivery, or renewed by the Texas Windstorm Insurance Association
6 on or after the 30th day after the effective date of this Act. A
7 Texas windstorm and hail insurance policy, and a claim or dispute
8 arising under a Texas windstorm and hail insurance policy,
9 delivered, issued for delivery, or renewed by the Texas Windstorm
10 Insurance Association before the 30th day after the effective date
11 of this Act, are governed by the law in effect on the date the policy
12 was delivered, issued for delivery, or renewed, and the former law
13 is continued in effect for that purpose.

14 SECTION 59. The Texas Windstorm Insurance Association shall
15 amend the association's plan of operation to conform to the changes
16 in law made by this Act not later than January 1, 2012.

17 SECTION 60. Section 2210.605(c), Insurance Code, as amended
18 by this Act, and Section 2210.6136, Insurance Code, as added by this
19 Act, apply to the issuance and repayment of public securities
20 issued by the Texas Windstorm Insurance Association under Chapter
21 2210, Insurance Code, in response to an occurrence or series of
22 occurrences that takes place on or after the effective date of this
23 Act. The issuance and repayment of public securities issued by the
24 association under Chapter 2210, Insurance Code, before the
25 effective date of this Act is governed by the law as it existed
26 immediately before the effective date of this Act, and that law is
27 continued in effect for that purpose.

1 SECTION 61. This Act takes effect immediately if it
2 receives a vote of two-thirds of all the members elected to each
3 house, as provided by Section 39, Article III, Texas Constitution.
4 If this Act does not receive the vote necessary for immediate
5 effect, this Act takes effect on the 91st day after the last day of
6 the legislative session.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82nd LEGISLATURE 1st CALLED SESSION - 2011

June 24, 2011

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB3 by Smithee (Relating to the operation of the Texas Windstorm Insurance Association and to the resolution of certain disputes concerning claims made to that association; providing penalties.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3, As Passed 2nd House: an impact of \$0 through the biennium ending August 31, 2013.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2012	\$0
2013	\$0
2014	\$0
2015	\$0
2016	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain from <i>Insurance Maint Tax Fees 8042</i>	Probable (Cost) from <i>Insurance Maint Tax Fees 8042</i>	Probable Revenue Gain from <i>Appropriated Receipts 666</i>	Probable (Cost) from <i>Appropriated Receipts 666</i>
2012	\$164,563	(\$164,563)	\$750,000	(\$750,000)
2013	\$154,960	(\$154,960)	\$0	\$0
2014	\$154,960	(\$154,960)	\$0	\$0
2015	\$154,960	(\$154,960)	\$0	\$0
2016	\$154,960	(\$154,960)	\$0	\$0

Fiscal Year	Change in Number of State Employees from FY 2011
2012	2.0
2013	2.0
2014	2.0
2015	2.0
2016	2.0

Fiscal Analysis

The bill would amend the Insurance Code relating to the operation of the Texas Windstorm Insurance Association (TWIA) and to the resolution of certain disputes concerning claims made to that association; providing penalties.

The bill would impose certain limitations on certain claims and actions brought against TWIA; require TWIA to make random audits of claims practices following certain storms; and describe the process and requirements for the filing of claims against TWIA, for the processing of those claims, and for the resolution of disputes concerning those claims.

The bill would grant the Texas Department of Insurance (TDI) exclusive authority over the appointment and oversight of qualified inspectors and allow TDI to issue emergency cease and desist orders to inspectors and persons acting as inspectors.

The bill would allow the issuance of public securities to cover TWIA's excess losses on a per occurrence or series of occurrences basis instead of the current yearly basis; allow TWIA to issue pre-event public securities to cover anticipated losses; detail the policies subject to a premium surcharge imposed to pay for Class II securities issued by TWIA; make the inability of TWIA to meet obligations related to the issuance of certain securities a condition that constitutes a hazard to the public for the purposes of Section 441.052 of the Insurance Code; and establish the new Premium Surcharge Trust Fund and the Member Assessment Trust Fund as dedicated funds held by the Texas Safekeeping Trust Company to receive any premium surcharges and member assessments levied to repay certain public securities.

The bill would require TWIA to annually determine the association's maximum probable loss; to develop a plan to obtain reinsurance; and, if TWIA does not purchase reinsurance, to submit an actuarial plan for paying losses in the event of a catastrophe with estimated damage of \$2.5 billion or more.

The bill would require studies by TDI and TWIA to determine whether using a single adjuster program would improve effectiveness and efficiency; and by the Commissioner of Insurance to examine the feasibility of TWIA writing policies directly. In addition, the bill would require that a legislative interim committee conduct a study of alternative ways to provide insurance in coastal areas.

The bill would make TWIA subject to audit by the State Auditor; restrict coverage for property not covered by flood insurance located in certain areas; prohibit TWIA from issuing coverage for wind turbines; provide for alternative eligibility for coverage for structures for which the insured does not have a certificate of compliance; allow premium discounts for certain property exceeding building code standards and for certain insureds who chose binding arbitration in disputes with TWIA; and require the Commissioner of Insurance to appoint an expert panel to advise the association concerning the extent to which insured storm damage was incurred as a result of wind and tidal surges.

Additionally, the bill would make various administrative changes involving dispute resolution; reports; compensation of employees and contractors; appointment of persons to the TWIA board of directors; meetings of the board of directors; open records; applications for and renewals of coverage; agent commissions; rate setting; liability limits; and issuance and repayment of public securities.

The bill would authorize TDI by rule to provide a discount or credit for certain assessed surcharges. Additionally, the bill would create a new adjuster advisory board.

The bill would repeal Sections 2210.502(c) and 2210.551(e), regarding the increases in maximum liability limits and certain claims hearings, respectively, and would make conforming changes elsewhere in the code.

The bill would take effect immediately upon receiving a two-thirds majority vote in each house. If the bill does not receive a two-thirds vote in each house, the bill would take effect September 1, 2011.

Methodology

Based on the analysis provided by TDI, the bill would create new procedures and processes for TWIA policyholders to obtain a review of a loss claim, request appraisal and the review by an independent review panel and judicial review. The bill requires the Commissioner of Insurance to appoint the independent review panel, review the panel's recommendations, and publish the panel's recommendations. Additionally, the bill requires the Commissioner to review the qualifications of presiding officers upon objection and to replace those who are determined to have a direct financial or personal interest in the case. The bill further provides that the Commissioner may initiate cease and desist actions against appointed qualified inspectors who perform building code inspections on structures in the catastrophe area. Based on the analysis provided by TDI, the agency will require 2.0 FTEs, an Attorney III and a Program Specialist II, for the processes for finalizing the reviews and gathering of information for executions of the reviews during a year without significant storms. The 2.0 FTEs would cost \$119,142 in salaries and wages with benefits cost of \$33,193, other operating expenses of \$225, and telephone costs of \$2,400 each fiscal year of 2012 through 2016. Additional one-time equipment costs would be \$9,603 in fiscal year 2012. These costs would be funded by General Revenue – Insurance Maintenance Tax. Since insurance maintenance tax is self-leveling, this analysis assumes that the costs to implement this bill would come from fund balances or the maintenance tax would be set to recover a higher level of revenue.

Based on the analysis provided by the Sunset Advisory Commission, it is assumed that all duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing agency resources. TWIA is scheduled in statute for Sunset review in the 2014-15 biennium, depending on the Legislature's determination of agencies scheduled for Sunset review for that biennium and subsequent biennia. According to current statute, the Association would be responsible for paying the costs incurred by the Sunset Commission in performing the review, meaning the review would not have a fiscal impact to the State.

The changes to the Insurance Code regarding the issuance of public securities will require the Texas Public Finance Authority (TPFA) to revise the commercial paper program documents prepared for the sale of Class I public securities. Additionally, revisions to the source of revenue for repayments of all classes of public securities will require TPFA to obtain a new opinion from bond counsel on whether debt can be issued as taxable or tax exempt. Based on the analysis provided by TPFA, implementation of the bill will cost \$750,000 in fiscal year 2012 for professional services to revise the commercial paper program documents and to obtain a new opinion from bond counsel on all classes of public securities. If debt is issued, the cost would be reimbursed by proceeds for costs of the issuance. Since the timing of a natural disaster that would require the issuance cannot be predicted, it is assumed that TWIA will fund this cost in fiscal year 2012 and recoup the expense from a future debt issuance.

Based on the analysis by the Bond Review Board, the public securities are obligations solely of TWIA and do not create a pledge, gift, or loan of the faith, credit, or taxing authority of this state. Since the issuance of TWIA debt is not and may not constitute a legal or moral obligation of the state, it should have no direct impact on the fiscal health of the state.

Based on the analysis provided by the State Auditor's Office (SAO), the bill would require TWIA to be subject to an audit by the SAO and pay for the costs incurred by the SAO in performing the audit. According to the bill, TWIA would be responsible for paying the costs incurred by the SAO in performing the audit, meaning the review would not have a fiscal impact to the State. Based on the analysis provided by the SAO, any audit of TWIA would be subject to the SAO's risk assessment process for inclusion in the SAO's annual audit plan. In accordance with Section 321.013, Government Code, all additional duties and responsibilities prescribed by the bill would be evaluated for inclusion in the SAO's annual audit plan for Legislative Audit Committee approval.

The bill creates new funds, the Premium Surcharge Trust Fund and the Member Assessment Trust Fund, to be held outside the Treasury. This analysis does not consider fiscal impacts for these funds since they are held outside the treasury. Based on the analysis by the Comptroller of Public Accounts, this legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. Legislative policy, implemented as Government Code 403.094,

consolidated special funds (except those affected by constitutional, federal, or other restrictions) into the General Revenue Fund as of August 31, 1993 and eliminated all applicable statutory revenue dedications as of August 31, 1995. Each subsequent Legislature has reviewed bills that affect funds consolidation. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

Technology

The technology impact to TDI would be \$2,450 in fiscal year 2012.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 304 Comptroller of Public Accounts, 308 State Auditor's Office, 347 Public Finance Authority, 352 Bond Review Board, 454 Department of Insurance

LBB Staff: JOB, SD, CH, AG, MW, KJG, JJO

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82nd LEGISLATURE 1st CALLED SESSION - 2011

June 22, 2011

TO: Honorable John Carona, Chair, Senate Committee on Business & Commerce

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB3 by Smithee (Relating to the operation of the Texas Windstorm Insurance Association and to the resolution of certain disputes concerning claims made to that association; providing penalties.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3, Committee Report 2nd House, Substituted: an impact of \$0 through the biennium ending August 31, 2013.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2012	\$0
2013	\$0
2014	\$0
2015	\$0
2016	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain from <i>Insurance Maint Tax</i> <i>Fees</i> 8042	Probable (Cost) from <i>Insurance Maint Tax</i> <i>Fees</i> 8042	Probable Revenue Gain from <i>Appropriated Receipts</i> 666	Probable (Cost) from <i>Appropriated Receipts</i> 666
2012	\$164,563	(\$164,563)	\$750,000	(\$750,000)
2013	\$154,960	(\$154,960)	\$0	\$0
2014	\$154,960	(\$154,960)	\$0	\$0
2015	\$154,960	(\$154,960)	\$0	\$0
2016	\$154,960	(\$154,960)	\$0	\$0

Fiscal Year	Change in Number of State Employees from FY 2011
2012	2.0
2013	2.0
2014	2.0
2015	2.0
2016	2.0

Fiscal Analysis

The bill would amend the Insurance Code relating to the operation of the Texas Windstorm Insurance Association (TWIA) and to the resolution of certain disputes concerning claims made to that association; providing penalties.

The bill would impose certain limitations on certain claims and actions brought against TWIA; require TWIA to make random audits of claims practices following certain storms; and describe the process and requirements for the filing of claims against TWIA, for the processing of those claims, and for the resolution of disputes concerning those claims.

The bill would grant the Texas Department of Insurance (TDI) exclusive authority over the appointment and oversight of qualified inspectors and allow TDI to issue emergency cease and desist orders to inspectors and persons acting as inspectors.

The bill would allow the issuance of public securities to cover TWIA's excess losses on a per occurrence or series of occurrences basis instead of the current yearly basis; allow TWIA to issue pre-event public securities to cover anticipated losses; detail the policies subject to a premium surcharge imposed to pay for Class II securities issued by TWIA; make the inability of TWIA to meet obligations related to the issuance of certain securities a condition that constitutes a hazard to the public for the purposes of Section 441.052 of the Insurance Code; and establish the new Premium Surcharge Trust Fund and the Member Assessment Trust Fund as dedicated funds held by the Texas Safekeeping Trust Company to receive any premium surcharges and member assessments levied to repay certain public securities.

The bill would require TWIA to annually determine the association's maximum probable loss; to develop a plan to obtain reinsurance; and, if TWIA does not purchase reinsurance, to submit an actuarial plan for paying losses in the event of a catastrophe with estimated damage of \$2.5 billion or more.

The bill would require studies by TDI and TWIA to determine whether using a single adjuster program would improve effectiveness and efficiency; and by the Commissioner of Insurance to examine the feasibility of TWIA writing policies directly. In addition, the bill would require that a legislative interim committee conduct a study of alternative ways to provide insurance in coastal areas.

The bill would make TWIA subject to audit by the State Auditor; restrict coverage for property not covered by flood insurance located in certain areas; prohibit TWIA from issuing coverage for wind turbines; provide for alternative eligibility for coverage for structures for which the insured does not have a certificate of compliance; allow premium discounts for certain property exceeding building code standards and for certain insureds who chose binding arbitration in disputes with TWIA; and require the Commissioner of Insurance to appoint an expert panel to advise the association concerning the extent to which insured storm damage was incurred as a result of wind and tidal surges.

Additionally, the bill would make various administrative changes involving dispute resolution; reports; compensation of employees and contractors; appointment of persons to the TWIA board of directors; meetings of the board of directors; open records; applications for and renewals of coverage; agent commissions; rate setting; liability limits; and issuance and repayment of public securities.

The bill would authorize TDI by rule to provide a discount or credit for certain assessed surcharges. Additionally, the bill would create a new adjuster advisory board.

The bill would repeal Sections 2210.502(c) and 2210.551(e), regarding the increases in maximum liability limits and certain claims hearings, respectively, and would make conforming changes elsewhere in the code.

The bill would take effect immediately upon receiving a two-thirds majority vote in each house. If the bill does not receive a two-thirds vote in each house, the bill would take effect September 1, 2011.

Methodology

Based on the analysis provided by TDI, the bill would create new procedures and processes for TWIA policyholders to obtain a review of a loss claim, request appraisal and the review by an independent review panel and judicial review. The bill requires the Commissioner of Insurance to appoint the independent review panel, review the panel's recommendations, and publish the panel's recommendations. Additionally, the bill requires the Commissioner to review the qualifications of presiding officers upon objection and to replace those who are determined to have a direct financial or personal interest in the case. The bill further provides that the Commissioner may initiate cease and desist actions against appointed qualified inspectors who perform building code inspections on structures in the catastrophe area. Based on the analysis provided by TDI, the agency will require 2.0 FTEs, an Attorney III and a Program Specialist II, for the processes for finalizing the reviews and gathering of information for executions of the reviews during a year without significant storms. The 2.0 FTEs would cost \$119,142 in salaries and wages with benefits cost of \$33,193, other operating expenses of \$225, and telephone costs of \$2,400 each fiscal year of 2012 through 2016. Additional one-time equipment costs would be \$9,603 in fiscal year 2012. These costs would be funded by General Revenue – Insurance Maintenance Tax. Since insurance maintenance tax is self-leveling, this analysis assumes that the costs to implement this bill would come from fund balances or the maintenance tax would be set to recover a higher level of revenue.

Based on the analysis provided by the Sunset Advisory Commission, it is assumed that all duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing agency resources. TWIA is scheduled in statute for Sunset review in the 2014-15 biennium, depending on the Legislature's determination of agencies scheduled for Sunset review for that biennium and subsequent biennia. According to current statute, the Association would be responsible for paying the costs incurred by the Sunset Commission in performing the review, meaning the review would not have a fiscal impact to the State.

The changes to the Insurance Code regarding the issuance of public securities will require the Texas Public Finance Authority (TPFA) to revise the commercial paper program documents prepared for the sale of Class I public securities. Additionally, revisions to the source of revenue for repayments of all classes of public securities will require TPFA to obtain a new opinion from bond counsel on whether debt can be issued as taxable or tax exempt. Based on the analysis provided by TPFA, implementation of the bill will cost \$750,000 in fiscal year 2012 for professional services to revise the commercial paper program documents and to obtain a new opinion from bond counsel on all classes of public securities. If debt is issued, the cost would be reimbursed by proceeds for costs of the issuance. Since the timing of a natural disaster that would require the issuance cannot be predicted, it is assumed that TWIA will fund this cost in fiscal year 2012 and recoup the expense from a future debt issuance.

Based on the analysis by the Bond Review Board, the public securities are obligations solely of TWIA and do not create a pledge, gift, or loan of the faith, credit, or taxing authority of this state. Since the issuance of TWIA debt is not and may not constitute a legal or moral obligation of the state, it should have no direct impact on the fiscal health of the state.

Based on the analysis provided by the State Auditor's Office (SAO), the bill would require TWIA to be subject to an audit by the SAO and pay for the costs incurred by the SAO in performing the audit. According to the bill, TWIA would be responsible for paying the costs incurred by the SAO in performing the audit, meaning the review would not have a fiscal impact to the State. Based on the analysis provided by the SAO, any audit of TWIA would be subject to the SAO's risk assessment process for inclusion in the SAO's annual audit plan. In accordance with Section 321.013, Government Code, all additional duties and responsibilities prescribed by the bill would be evaluated for inclusion in the SAO's annual audit plan for Legislative Audit Committee approval.

The bill creates new funds, the Premium Surcharge Trust Fund and the Member Assessment Trust Fund, to be held outside the Treasury. This analysis does not consider fiscal impacts for these funds since they are held outside the treasury. Based on the analysis by the Comptroller of Public Accounts, this legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. Legislative policy, implemented as Government Code 403.094,

consolidated special funds (except those affected by constitutional, federal, or other restrictions) into the General Revenue Fund as of August 31, 1993 and eliminated all applicable statutory revenue dedications as of August 31, 1995. Each subsequent Legislature has reviewed bills that affect funds consolidation. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

Technology

The technology impact to TDI would be \$2,450 in fiscal year 2012.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 304 Comptroller of Public Accounts, 308 State Auditor's Office, 347 Public Finance Authority, 352 Bond Review Board, 454 Department of Insurance

LBB Staff: JOB, CH, AG, MW, KJG, JJO

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82nd LEGISLATURE 1st CALLED SESSION - 2011

June 20, 2011

TO: Honorable John Carona, Chair, Senate Committee on Business & Commerce

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB3 by Smithee (Relating to the operation and name of the Texas Windstorm Insurance Association, to the resolution of certain disputes concerning claims made to that association, and to the issuance of windstorm and hail insurance policies in the private insurance market by certain insurers; providing penalties.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3, As Engrossed: an impact of \$0 through the biennium ending August 31, 2013.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2012	\$0
2013	\$0
2014	\$0
2015	\$0
2016	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain from <i>Appropriated Receipts</i> 666	Probable (Cost) from <i>Appropriated Receipts</i> 666
2012	\$500,000	(\$500,000)
2013	\$0	\$0
2014	\$0	\$0
2015	\$0	\$0
2016	\$0	\$0

Fiscal Analysis

The bill would amend the Insurance Code relating to the operation of the Texas Windstorm Insurance Association (TWIA) and to the resolution of certain disputes concerning claims made to that association, and to the issuance of windstorm and hail insurance policies in the private insurance market by certain insurers; providing penalties.

This bill would amend Chapter 2210 of the Insurance Code, regarding the continuation of TWIA and the changing of TWIA's name to the Texas Coastal Insurance Plan Association (TCIPA). The bill would add requirements for open meetings and open records, and amend policy coverage, policy cancellation, and required policy provisions.

The bill would provide that if the Commissioner of Insurance at the Texas Department of Insurance (TDI) takes an action against TCIPA under Chapter 441, TCIPA's inability to satisfy obligations issued under Subchapter M constitutes a hazard to the public for purposes of section 441.052 of the Ins. Code. The new section 2210.010 would not allow a person to bring a private action against TCIPA under chapter 541 or chapter 542, chapter 542 would not apply to the processing and settlement of claims by TCIPA, and a class action could only be brought by the Texas Attorney General. The bill would state that TCIPA is not considered a debtor authorized to file bankruptcy under Title 11, U.S. Code.

The bill would require TDI to conduct a random audit of claims filed with TCIPA and amends the definition of catastrophe year.

The bill would allow the issuance of Class 1 public securities pre-event, and would increase the possible maturity to 14 years. The bill would provide that Class 1 public securities may be issued before a catastrophe on the request of the board with the approval of the commission, and may not exceed \$1 billion in the aggregate at any one time, regardless of the calendar year or years in which the outstanding securities were issued. Additionally, the bill would provide that the Class 1 public securities shall be issued as necessary but not to exceed \$1 billion in principal amount in a catastrophe year, in the aggregate, if issued before the catastrophe, or on or after the catastrophe, and may be issued in multiple tranches during the calendar year of the event or in the following year. The bill would state that if public securities are issued as described by sec. 2210.072, then they shall be repaid from TCIPA premium revenue. The bill would provide that if Class 1 debt is issued pre-event, TCIPA will have to use those funds to pay claims before the proceeds of any Class 1 debt issued after the occurrence; however, Class 1 securities may be issued after an event, but before pre-event proceeds have been exhausted. If proceeds issued under subsection (e) must be depleted, those proceeds will count against the \$1 billion cap.

The bill would clarify that \$1 billion in the aggregate is the principal amount of Class 2 public securities that can be issued in a catastrophe year, whether for losses from a single event or series of events and that the debt can be issued in one of more tranches during the calendar year of the event or events, but also in the following calendar year, if debt cannot reasonably be issued in the year of the events. Additionally, the bill would clarify that \$500 million in the aggregate is the principal amount of Class 3 public securities that can be issued in a catastrophe year, whether for losses from a single event or series of events and that the debt can be issued in one of more tranches during the calendar year of the event or events, but also in the following calendar year, if debt cannot reasonably be issued in the year of the events.

The bill would require the Texas Board of Professional Engineers to adopt rules to implement changes in the Occupations Code relating to windstorm-related design services and windstorm certification standards.

Additionally, the bill would require that TCIPA submit a catastrophe plan describing how TCIPA would evaluate losses and process claims following certain categories of windstorms.

The bill would take effect immediately upon receiving a two-thirds majority vote in each house. If the

bill does not receive a two-thirds vote in each house, the bill would take effect on the 91st day after the last day of the legislative session.

Methodology

Based on the analysis provided by TDI, it is assumed that all duties and responsibilities associated with the agency implementing the provisions of the bill could be accomplished by utilizing existing agency resources.

The changes to the Insurance Code regarding the issuance of public securities will require the Texas Public Finance Authority (TPFA) to revise the commercial paper program documents prepared for the sale of Class 1 public securities and seek a private liquidity agreement to support the commercial paper program that have been prepared for the sale of Class 1 public securities. Based on the analysis provided by TPFA, implementation of the bill will cost \$500,000 in fiscal year 2012 for professional services to revise the commercial paper program documents and to obtain a new opinion on Class 2 and 3 of public securities from bond counsel on whether debt can be issued as taxable or tax exempt. If debt is issued, the cost would be reimbursed by proceeds for costs of the issuance. Since the timing of a natural disaster that would require the issuance cannot be predicted, it is assumed that TCIPA will fund this cost in fiscal year 2012 and recoup the expense from a future debt issuance.

Based on the analysis by the Bond Review Board, the public securities are obligations solely of TCIPA and do not create a pledge, gift, or loan of the faith, credit, or taxing authority of this state. Since the issuance of TCIPA debt is not and may not constitute a legal or moral obligation of the state, it should have no direct impact on the fiscal health of the state.

The fiscal impact of costs that may be incurred in association with implementing the provisions of the bill for the Texas Board of Professional Engineers are not considered in this analysis because fiscal impact for this agency would be realized outside of the Treasury due to these agencies being Self-Directed and Semi-Independent.

Technology

No technology impact is anticipated.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 347 Public Finance Authority, 352 Bond Review Board, 454 Department of Insurance, 460 Board of Professional Engineers

LBB Staff: JOB, AG, MW, CH, KJG

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82nd LEGISLATURE 1st CALLED SESSION - 2011

June 7, 2011

TO: Honorable John T. Smithee, Chair, House Committee on Insurance

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB3 by Smithee (Relating to the operation and name of the Texas Windstorm Insurance Association and to the resolution of certain disputes concerning claims made to that association; providing penalties.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3, As Introduced: an impact of \$0 through the biennium ending August 31, 2013.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2012	\$0
2013	\$0
2014	\$0
2015	\$0
2016	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain from Insurance Maint Tax Fees 8042	Probable (Cost) from Insurance Maint Tax Fees 8042	Probable Revenue Gain from Appropriated Receipts 666	Probable (Cost) from Appropriated Receipts 666
2012	\$230,584	(\$230,584)	\$942,709	(\$942,709)
2013	\$314,280	(\$314,280)	\$74,316	(\$74,316)
2014	\$258,200	(\$258,200)	\$0	\$0
2015	\$258,200	(\$258,200)	\$0	\$0
2016	\$258,200	(\$258,200)	\$0	\$0

Fiscal Year	Change in Number of State Employees from FY 2011
2012	5.0
2013	4.0
2014	3.0
2015	3.0
2016	3.0

Fiscal Analysis

The bill would amend the Insurance Code relating to the operation of the Texas Windstorm Insurance Association (TWIA) and to the resolution of certain disputes concerning claims made to that association.

This bill would amend Chapter 2210 of the Insurance Code, regarding the continuation of TWIA and the changing of TWIA's name to the Texas Coastal Insurance Plan Association (TCIPA).

The bill would change the sunset review year for TCIPA from 2015 to 2013; make TCIPA subject to Chapters 551 and 552 of the Government Code, regarding open meetings and public information, respectively; and make settlement agreements to which TCIPA is party, including the name of any attorney or adjustor involved with the claim that is the basis of the settlement, public information.

The bill would allow the issuance of public securities to cover TCIPA's excess losses on a per occurrence basis instead of the current yearly basis; allow TCIPA to issue pre-event public securities to cover anticipated losses; detail the policies subject to a premium surcharge imposed to pay for class II securities issued by TCIPA; make the inability of TCIPA to meet obligations related to the issuance of certain securities a condition that constitutes a hazard to the public for the purposes of Section 441.052 of this code; mandate certain standards of conduct for TCIPA employees and board members; prohibit certain employment arrangements and contracts; require TCIPA to post the salaries of and bonuses paid to managers, and advance notice of meetings of the board of directors on TCIPA's website; mandate that TCIPA broadcast live, and maintain an archive of, meetings of the board of directors, other than closed meetings; allow the Commissioner of Insurance to attend closed meetings of the TCIPA board of directors; add establishment of a code of conduct, performance standards, and of an annual evaluation of management to the primary objectives of TCIPA; require TCIPA to submit an annual report evaluating the extent to which TCIPA had met those objectives in the preceding 12-month period; require TCIPA to make random audits of claims practices following certain storms; impose certain restrictions on policies issued by TCIPA; prohibit TCIPA from issuing coverage for casinos or certain other gambling establishments, sexually oriented businesses, and wind turbines; provide for alternative eligibility for coverage for structures for which the insured does not have a certificate of compliance; allow the Commissioner to establish an annual renewal period for qualified inspectors; grant the Texas Department of Insurance (TDI) exclusive authority over the appointment and oversight of qualified inspectors; and amend Chapter 83 of this code to allow TDI to issue emergency cease and desist orders to inspectors and persons acting as inspectors.

The bill would impose certain limitations on certain claims and actions brought against TCIPA; describe the process and requirements for filing of claims, and for the processing of those claims by TCIPA; provide for a process for the review of TCIPA claims determinations; provide that Chapters 541 and 542 of this code, regarding deceptive practices and processing and settlement of claims apply to TCIPA; and prohibit TCIPA from filing a petition or seeking relief in bankruptcy under Title 11 of the U.S. Code.

The bill would require the Commissioner to appoint an expert panel to advise the Commissioner on and recommend methods of determining the extent to which insured storm damage was incurred as a result of wind, waves, tidal surges, rising waters, and wind-driven rain; and, after considering the recommendations of the panel, to publish guidelines that TCIPA would use to settle claims; and require that a legislative interim study committee conduct a study of alternative ways to provide insurance in coastal areas.

Additionally, the bill would require, if TCIPA does not purchase reinsurance, that TCIPA, not later than June 1 of each year, submit an actuarial plan for paying losses in the event of a catastrophe with estimated damage of \$2.5 billion or more; and require that TCIPA, not later than June 1 of each year, submit a catastrophe plan describing how TCIPA would evaluate losses and process claims following certain categories of windstorms.

The bill would repeal Section 2210.551(e), and make conforming changes to Sections 83.002 and 541.152, of the Insurance Code.

The bill would take effect immediately upon receiving a two-thirds majority vote in each house. If the bill does not receive a two-thirds vote in each house, the bill would take effect on the 91st day after the last day of the legislative session.

Methodology

Based on the analysis provided by TDI, the expert panel would cost \$50,000 to compensate members for the initial work performed in fiscal year 2012 and an additional \$50,000 to compensate members for work performed following a storm. Since the timing, magnitude, location, and number of storms that might occur cannot be estimate, this analysis assumes one storm during the next five years, occurring in fiscal year 2013. These costs would be funded by General Revenue – Insurance Maintenance Tax.

Additionally, the bill would create new procedures and processes for TCIPA policyholders to obtain a review of a loss claim, request appraisal and the review by an independent review panel and judicial review. The bill requires the Commissioner of Insurance to appoint the independent review panel from a list of panel members created and published by TDI. The bill also provides for judicial review of the reviews by the appraisal, independent review panel and Association determinations. The bill would require the Commissioner to act and to assess the requests of any Association's insureds to obtain relief regarding a claim or decision of the appraisal or panel. Based on the analysis provided by TDI, the agency will require 2.0 full-time-equivalent positions (FTEs), an Attorney IV and a Program Specialist II, for the processes for finalizing the reviews and gathering of information for executions of the reviews during a year without significant storms. The 2.0 FTEs would cost \$129,220 in salaries and wages with benefits cost of \$36,001, other operating expenses of \$225, and telephone costs of \$2,400 each fiscal year of 2012 through 2016. Additional one-time equipment costs would be \$12,738 in fiscal year 2012. Based on the information provided by TDI, an additional FTE, an Attorney III, would be required during a year with a significant storm. Since the timing, magnitude, location, and number of storms that might occur cannot be estimated, this analysis assumes one storm during the next five years, occurring in fiscal year 2013. The additional 1.0 FTE would cost \$69,552 in salaries and wages with associated benefits cost of \$19,377, other operating expenses of \$225, and telephone costs of \$1,200 each fiscal year of 2013-2016. Additional one-time equipment cost would be \$6,080 in fiscal year 2013. The total cost of the 2.0 FTEs in fiscal year 2012 would be \$180,584 and the 3.0 FTEs in fiscal year 2013 would be \$264,280. These costs would be funded by General Revenue – Insurance Maintenance Tax. Since insurance maintenance tax is self-leveling, this analysis assumes that the costs to implement this bill would come from fund balances or the maintenance tax would be set to recover a higher level of revenue.

Based on the analysis provided by the Sunset Advisory Commission (SAC), the change could provide a basis for spending in the 2012-13 biennium to cover the cost of the Sunset review, depending on the Legislature's determination of agencies scheduled for Sunset review for that biennium and subsequent biennia. According to current statute, the Association would be responsible for paying the costs incurred by the SAC in performing the review, meaning the review would not have a fiscal impact to the State whether it occurred in 2013 or 2015. Based on the analysis provided by the SAC, implementation of the bill would require 3.0 FTEs in fiscal year 2012 and 1.0 FTE in fiscal year 2013, to be funded with revenue from appropriated receipts received from the Association. The 3.0 FTEs in fiscal year 2012 would cost \$148,177 in salaries and wages with associated benefits cost of \$41,282, travel costs of \$3,000, and other costs of \$250. The total cost in fiscal year 2012 would be \$192,709. The 1.0 FTE in fiscal year 2013 would cost \$58,123 in salaries and wages with associated benefits cost of \$16,193 for a total cost of \$74,316.

The changes to the Insurance Code regarding the issuance of public securities will require the Texas Public Finance Authority (TPFA) to revise the commercial paper program documents prepared for the sale of Class 1 public securities. Additionally, revisions to the source of revenue for repayments of all classes of public securities will require TPFA to obtain a new opinion from bond counsel on whether debt can be issued as taxable or tax exempt. Based on the analysis provided by TPFA, implementation of the bill will cost \$750,000 in fiscal year 2012 for professional services to revise the commercial paper program documents and to obtain a new opinion from bond counsel on all classes of public securities. If debt is issued, the cost would be reimbursed by proceeds for costs of the issuance. Since

the timing of a natural disaster that would require the issuance cannot be predicted, it is assumed that TCIPA will fund this cost in fiscal year 2012 and recoup the expense from a future debt issuance.

Based on the analysis by the Bond Review Board, the public securities are obligations solely of TCIPA and do not create a pledge, gift, or loan of the faith, credit, or taxing authority of this state. Since the issuance of TCIPA debt is not and may not constitute a legal or moral obligation of the state, it should have no direct impact on the fiscal health of the state.

Technology

The technology impact to TDI would be \$2,450 in fiscal year 2012 and \$1,225 in fiscal year 2013.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JOB, KJG, MW, CH