

**House Bill 3**  
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SECTION 1. Section 83.002, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c) This chapter also applies to:

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

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

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

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

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

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

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

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

(a) This chapter may be cited as the Texas Coastal ~~[Windstorm]~~ Insurance Plan ~~[Association]~~ Act. A reference

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SECTION 1. Same as House version.

No equivalent provision.

No equivalent provision.

No equivalent provision.

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to the Texas Windstorm Insurance Association Act means this chapter.

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

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

No equivalent provision.

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

(1) "Association" means the Texas Coastal [~~Windstorm~~] Insurance Plan Association.

No equivalent provision.

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

(3-b) "Catastrophe year" means a calendar year in which an occurrence or a series of occurrences results in insured losses.

No equivalent provision.

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regardless of when the insured losses are ultimately paid.

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

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

**No equivalent provision.**

**No equivalent provision.**

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

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

- (1) a stock life, health, or accident insurance company;
- (2) a mutual life, health, or accident insurance company;
- (3) a stock fire or casualty insurance company;
- (4) a mutual fire or casualty insurance company;
- (5) a Mexican casualty insurance company;
- (6) a Lloyd's plan;
- (7) a reciprocal or interinsurance exchange;
- (8) a fraternal benefit society;
- (9) a stipulated premium company;
- (10) a nonprofit legal services corporation;
- (11) a statewide mutual assessment company;
- (12) a local mutual aid association;
- (13) a local mutual burial association;
- (14) an association exempt under Section 887.102;
- (15) a nonprofit hospital, medical, or dental service corporation, including a corporation subject to Chapter 842;

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- (16) a county mutual insurance company;
  - (17) a farm mutual insurance company;
  - (18) a risk retention group;
  - (19) a purchasing group;
  - (20) an eligible surplus lines insurer; and
  - (21) except as provided by Section 542.053(b), a guaranty association operating under Chapter 462 or 463.
- (b) This subchapter does not apply to the Texas Windstorm Insurance Association.

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

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

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

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

(3) unless the commissioner takes further action against the association under Chapter 441, as a condition of release from

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

Sec. 2210.0081. Same as House version.

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supervision, the association must demonstrate to the satisfaction of the commissioner that the association is able to satisfy obligations under Subchapter M related to the issuance of public securities under this chapter.

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

No equivalent provision.

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

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

No equivalent provision.

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

(2) accept other employment or engage in a business or

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professional activity that the member or employee might reasonably expect would require or induce the member or employee to disclose confidential information acquired by reason of the member's or employee's position with the association;

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

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

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

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

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

(d) A board member or employee of the association who reasonably suspects that a fraudulent insurance act has been or is about to be committed by any board member or employee

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of the association shall, not later than the 30th day after discovering the conduct, report the conduct and identity of the person engaging in the conduct to the department and may report the conduct and the identity of the person engaging in the conduct to another appropriate governmental authority. The department shall forward a report received under this subsection to the appropriate governmental authority if the department does not have the authority to finally resolve, or jurisdiction over, the matter that is the subject of the report.

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

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

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

**No equivalent provision.**

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**No equivalent provision.**

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

(b) If a person insured under this chapter is assigned to act as presiding officer to preside over or resolve a dispute involving

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the association and another person insured under this chapter, the presiding officer shall, not later than the seventh day after the date of assignment, give written notice to the association and to each other party to the dispute, or the association's or other party's attorney, that the presiding officer is insured under this chapter.

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

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

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

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

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

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

**No equivalent provision.**

SECTION 10. Section 2210.053, Insurance Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) The department may develop programs to improve the



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efficient operation of the association, including a program for approving policy forms under Section 2301.010 and a program designed to create incentives for insurers to write windstorm and hail insurance voluntarily to cover property located in a catastrophe area, especially property located on the barrier islands of this state.

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

**No equivalent provision.**

**No equivalent provision.**

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

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

(a) The association shall file annually with the department and the state auditor's office a statement covering periods designated by the department that summarizes the transactions, conditions, operations, and affairs of the association during the preceding year.

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

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

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

Sec. 2210.058. **AUDIT OF ASSOCIATION.** (a) The association is subject to audit by the state auditor and shall

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

(1) determine whether the association is adequately and properly documenting claims decisions in each claim file; and  
(2) ensure that each claim is being handled appropriately, including being handled in accordance with the terms of the policy under which the claim is filed.

(b) The department shall conduct an audit required under this section as soon as possible to ensure the quality of the process with which the association is handling claims described by Subsection (a).

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

(1) notify the board of directors of that determination; and  
(2) identify the manner in which the association should correct any deficiencies identified by the commissioner and issue an order to that effect.

Sec. 2210.061. CONTRACTORS AND MANAGERIAL EMPLOYEES: COMPENSATION AND BONUSSES. The

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pay the costs incurred by the state auditor in performing an audit under this section.

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

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

(1) determine whether the association is adequately and properly documenting claims decisions in each claim file; and  
(2) ensure that each claim is being handled appropriately, including being handled in accordance with the terms of the policy under which the claim is filed.

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

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

(1) notify the board of directors of that determination; and  
(2) identify the manner in which the association should correct any deficiencies identified by the commissioner.

Sec. 2210.061. CONTRACTORS AND MANAGERIAL EMPLOYEES: COMPENSATION AND BONUSSES. The

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association shall post on the association's Internet website any compensation, monetary or otherwise, and any bonus that, when aggregated, exceed \$100,000 in a calendar year and that are paid or given by the association to:

- (1) a vendor or independent contractor with whom the association has a contract; or
- (2) an association employee.

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

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

**No equivalent provision.**

SECTION 13. Section 2210.072, Insurance Code, is amended

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association shall post on the association's Internet website any compensation, monetary or otherwise, and any bonus that, when aggregated, exceed \$100,000 in a 12-month period and that are paid or given by the association to:

- (1) a vendor or independent contractor with whom the association has a contract; and
- (2) an association employee who serves in a managerial capacity.

**No equivalent provision.**

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

- (c) Losses not paid under Subsection (b) shall be paid from the proceeds from public securities issued in accordance with this subchapter and Subchapter M and, notwithstanding Subsection (a), may be paid from the proceeds of public securities issued under Section 2210.072(a) before an occurrence or series of occurrences that results in insured losses.

SECTION 8. Section 2210.072, Insurance Code, is amended

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by amending Subsections (a), (b), and (c) and adding Subsections (b-1), (e), and (f) to read as follows:

(a) Losses not paid under Section 2210.071(b) [2210.071] shall be paid as provided by this section from the proceeds from Class 1 public securities authorized to be issued in accordance with Subchapter M before, on, or after the date of any occurrence or series of occurrences that results in insured losses.

Public securities issued under this section must be repaid within a period not to exceed 14 [40] years, and may be repaid sooner if the board of directors elects to do so and the commissioner approves.

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

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

(2) may not, in the aggregate, exceed \$1 billion at any one

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by amending Subsections (a) and (b) and adding Subsections (a-1) and (a-2) to read as follows:

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

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

(a-2) [on or after the date of any occurrence or series of occurrences that results in insured losses.] Public securities issued under this section must be repaid within a period not to exceed 14 [40] years, and may be repaid sooner if the board of directors elects to do so and the commissioner approves. The amount of outstanding public securities issued under this section before an occurrence or series of occurrences that results in insured losses may not, in the aggregate, exceed \$1 billion at any one time, regardless of the calendar year or years in which the outstanding public securities were issued.

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time, regardless of the calendar year or years in which the outstanding public securities were issued.

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

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

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

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

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

(f) If, under Subsection (e), the proceeds of any outstanding public securities issued during a previous catastrophe year must be depleted, those proceeds shall count against the \$1

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

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

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

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billion limit on public securities described by this section in the catastrophe year in which the proceeds must be depleted.

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

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

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

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

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

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

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

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

(2) subject to the \$500 million maximum described by

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

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

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

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

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

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

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

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

(2) may be issued, in one or more issuances or tranches,

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

(c) If the losses are paid with public securities described by this section, the public securities shall be repaid in the manner prescribed by Subchapter M through member assessments as provided by this section. The association shall notify each member of the association of the amount of the member's assessment under this section. The proportion of the losses allocable to each insurer under this section shall be determined in the manner used to determine each insurer's participation in the association for the year under Section 2210.052. A member of the association may not recoup an assessment paid under this subsection through a premium surcharge or tax credit.

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

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

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

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during the calendar year in which the occurrence or series of occurrences occurs or, if the public securities cannot reasonably be issued in the calendar year in which the occurrence or series of occurrences takes place, during the following calendar year.

(c) If the losses are paid with public securities described by this section, the public securities shall be repaid in the manner prescribed by Subchapter M through member assessments as provided by this section. The association shall notify each member of the association of the amount of the member's assessment under this section. The proportion of the losses allocable to each insurer under this section shall be determined in the manner used to determine each insurer's participation in the association for the year under Section 2210.052. A member of the association may not recoup an assessment paid under this subsection through a premium surcharge or tax credit.

SECTION 11. Same as House version.

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

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

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

(a) Except for an emergency meeting, the association shall:  
(1) notify the department not later than the 11th day before the date of a meeting of the board of directors or of the members of the association; and  
(2) not later than the seventh day before the date of a meeting of the board of directors, post notice of the meeting on the association's Internet website and the department's Internet website.  
(b) Except for a closed meeting authorized by Subchapter D, Chapter 551, Government Code, a meeting of the board of directors or of the members of the association is open to[  
~~(1) the commissioner or the commissioner's designated representative; and~~  
(2)] the public.

SECTION 12. Same as House version.

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

(a) Except for an emergency meeting, the association shall:  
(1) notify the department not later than the 11th day before the date of a meeting of the board of directors or of the members of the association; and  
(2) not later than the seventh day before the date of a meeting of the board of directors, post notice of the meeting on the association's Internet website and the department's Internet website.  
(b) Except for a closed meeting authorized by Subchapter D, Chapter 551, Government Code, a meeting of the board of directors or of the members of the association is open to[  
~~(1) the commissioner or the commissioner's designated representative; and~~  
(2)] the public.



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

(e) The association shall:

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

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

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

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

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

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

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

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

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

(e) The association shall:

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

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

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

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

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

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

(2) complies with sound insurance principles; and

(3) meets all standards imposed under this chapter, including

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

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

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

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

Sec. 2210.108. OPEN MEETINGS AND OPEN RECORDS.

(a) Except as specifically provided by this chapter or another law, the association is subject to Chapters 551 and 552, Government Code.

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

(1) subject to Subsection (d), is public information and is not

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that claims against the association are promptly and fairly resolved.

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

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

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

Sec. 2210.108. OPEN MEETINGS AND OPEN RECORDS.

(a) Except as specifically provided by this chapter or another law, the association is subject to Chapters 551 and 552, Government Code.

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

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exempted from required disclosure under Chapter 552, Government Code; and  
(2) if applicable, must contain the name of any attorney representing a claimant or the association in connection with the claim that is the basis of the settlement.

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

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

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

(c) The plan of operation shall require the association to use

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(1) a name, address, telephone number, tax identification number, social security number, or policy or claim number of a person insured under this chapter;  
(2) policy information related to:  
(A) insured amounts; or  
(B) insured items that identify specific property or could reasonably be used to identify specific property;  
(3) claim file information, including photographs and descriptive reports, that identifies specific property or could reasonably be used to identify specific property; and  
(4) other information that could be considered personally identifiable financial information.

(c) This section may not be construed to limit a request:  
(1) by a person insured under this chapter, or the person's counsel, for information contained in that person's association policy or for claim information related to a loss claimed under that policy;  
(2) by the commissioner or the department for information for a purpose authorized under this code, including for the purposes of developing and implementing incentive programs under Sections 2210.009(b) and 2210.053(b);  
(3) for aggregate policy, coverage, and claims information; or  
(4) for discovery in a judicial or administrative proceeding.

No equivalent provision.

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the claim settlement guidelines published by the commissioner under Section 2210.578(f) in evaluating the extent to which a loss to insured property is incurred as a result of wind, waves, tidal surges, or rising waters not caused by waves or surges.

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

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

(b) A property and casualty agent must submit an application for initial ~~the~~ insurance coverage on behalf of the applicant

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

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

(b) A property and casualty agent must submit an application for initial ~~the~~ insurance coverage on behalf of the applicant

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on forms prescribed by the association. The association shall develop a simplified process that allows for the acceptance of an application for initial or renewal coverage from, and payment of premiums by, a property and casualty agent, a person insured under this chapter, or an applicant for coverage under this chapter. Each ~~The~~ application for initial or renewal coverage must contain:

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

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

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

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

(d) The commissioner, after receiving a recommendation from the board of directors, shall approve a commission structure for payment of an agent who submits an application for coverage to the association on behalf of a person who has an insurable interest in insurable property. The commission

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on forms prescribed by the association. The association shall develop a simplified renewal process that allows for the acceptance of an application for renewal coverage, and payment of premiums, from a property and casualty agent or a person insured under this chapter. An ~~The~~ application for initial or renewal coverage must contain:

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

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

No equivalent provision.

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structure adopted by the commissioner must be fair and reasonable, taking into consideration the amount of work performed by an agent in submitting an application to the association and the prevailing commission structure in the private windstorm market.

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

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

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

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

**No equivalent provision.**

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**No equivalent provision.**

SECTION 17. Section 2210.203, Insurance Code, is amended by amending Subsections (a-1) and (c) and adding

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Subsections (a-2) and (a-3) to read as follows:

(a-1) ~~[This subsection applies only to a structure constructed, altered, remodeled, or enlarged on or after September 1, 2009, and only for insurable property located in areas designated by the commissioner.]~~ Notwithstanding Subsection (a), if all or any part of the property to be insured ~~[which this subsection applies]~~ is located in Zone V or another similar zone with an additional hazard associated with storm waves, as defined by the National Flood Insurance Program, or is a residential structure located in an area described by Section 2210.004(g)(2), [and if flood insurance under that federal program is available,] the association may not issue an insurance policy for initial or renewal coverage unless evidence is submitted to the association that the property to be covered under the policy is also covered by a flood insurance policy that has a deductible or self-insurance amount comparable to the association policy to be issued and that is issued under the National Flood Insurance Program or by an insurer in an aggregate amount that is:

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

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

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

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

(c) A policy is automatically [may be] renewed annually [en

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~~application for renewal]~~ as long as the property continues to be insurable 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. The association may not issue coverage for

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

Sec. 2210.205. REQUIRED POLICY PROVISIONS: DEADLINE FOR FILING CLAIM; NOTICE CONCERNING **DISPUTE RESOLUTION.**

(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 **loss** that is the basis of the claim occurs; and

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

(A) describing the appraisal process under Section 2210.576;

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

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

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

Sec. 2210.210. COVERAGE OF CERTAIN STRUCTURES PROHIBITED. The association may not issue coverage for a



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the following structures, regardless of whether the structure is otherwise insurable property under this chapter:

(1) a wind turbine;

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

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

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

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

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wind turbine regardless of whether the turbine could otherwise be considered insurable property under this chapter.

Sec. 2210.211. PROOF OF OTHER COVERAGE REQUIRED FOR SETTLEMENT OF CERTAIN CLAIMS; CLAIMS PAYMENT LIMITED. (a) This section applies only to a claim filed under an association policy the issuance or renewal of which, under Section 2210.203(a-1), requires evidence of coverage by a flood insurance policy.  
(b) The association may not pay or settle a portion of a claim filed under a policy described by Subsection (a) if:  
(1) that portion of the claim is for damage that is covered by the flood insurance policy, if the required flood insurance coverage was in effect on the date the damage occurred; or  
(2) that portion of the claim is for damage that would have been covered by the flood insurance policy, if the required flood insurance coverage was not in effect on the date the damage occurred.

No equivalent provision.

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

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

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

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

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

(3) an inspector who:

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

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

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

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

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

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

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

(a) On request of an engineer who is licensed by the Texas Board of Professional Engineers and is on the roster described by Section 1001.652, Occupations Code, the commissioner shall appoint the engineer as an inspector under this subchapter not later than the 10th day after the date the engineer delivers to the commissioner information demonstrating that the engineer is qualified to perform windstorm inspections under this subchapter.

SECTION 29. Subchapter F, Chapter 2210, Insurance Code, is amended by adding Section 2210.2551 to read as follows:  
Sec. 2210.2551. ENFORCEMENT AUTHORITY; RULES.

(a) The department has exclusive authority over all matters relating to the appointment and oversight of qualified inspectors for purposes of this chapter and to the physical inspection of structures for the purposes of this chapter, including the submission of documents to the department or association regarding the physical inspection of structures.

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

(c) Subsection (b) applies only to a determination concerning

No equivalent provision.

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

Sec. 2210.2551. **EXCLUSIVE** ENFORCEMENT AUTHORITY; RULES.

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

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

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the appointment of a qualified inspector under this chapter. The exclusive jurisdiction of the department under this section does not apply to the practice of engineering as defined by Section 1001.003, Occupations Code, or to a license issued, qualification required, determination made, order issued, judgment rendered, or other action of a board operating under Chapter 1001, Occupations Code. In the event of conflict, the authority of that board prevails with regard to the practice of engineering.

(d) The department shall report to the Texas Board of Professional Engineers if the department determines that:

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

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

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

SECTION 30. The heading to Section 2210.256, Insurance Code, is amended to read as follows:  
Sec. 2210.256. DISCIPLINARY PROCEEDINGS REGARDING APPOINTED INSPECTORS AND CERTAIN OTHER PERSONS.

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SECTION 21. Same as House version.

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

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

(1) the commissioner believes that:

(A) the qualified inspector has:

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

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

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

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

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

(c) The commissioner by rule may provide for a discount of, or a credit against, a surcharge assessed under Subsection (a) in instances in which a policyholder demonstrates that the noncompliant structure was constructed with at least one structural building component that complies with the building

SECTION 22. Same as House version.

SECTION 23. Same as House version.

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code standards set forth in the plan of operation.

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

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

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

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

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

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

(d) Except as provided in Section 2210.251(f), a person who has an insurable interest in a residential structure that is insured by the association as of January 1, 2012, but for which the person has not obtained a certificate of compliance under

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

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

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

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

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

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

(d) Except as provided in Section 2210.251(f), a person who has an insurable interest in a residential structure that is insured by the association as of January 1, 2012, but for which the person has not obtained a certificate of compliance under

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Section 2210.251(g), must obtain an alternative certification under this section before the association, on or after January 1, 2013, may renew coverage for the structure.

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

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

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

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

No equivalent provision.

No equivalent provision.

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Section 2210.251(g), must obtain an alternative certification under this section before the association, on or after January 1, 2013, may renew coverage for the structure.

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

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

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

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

SECTION 25. The heading to Subchapter H, Chapter 2210, Insurance Code, is amended to read as follows:  
SUBCHAPTER H. RATES; DISCOUNTS AND CREDITS

SECTION 26. Sections 2210.355(b) and (g), Insurance Code, are amended to read as follows:  
(b) In adopting rates under this chapter, the following must be

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considered:

- (1) the past and prospective loss experience within and outside this state of hazards for which insurance is made available through the plan of operation, if any;
  - (2) expenses of operation, including acquisition costs;
  - (3) a reasonable margin for profit and contingencies;
  - (4) payment of public security obligations for Class 1 public securities issued under this chapter, including the additional amount of any debt service coverage determined by the association to be required for the issuance of marketable public securities; and
  - (5) [~~4~~] all other relevant factors, within and outside this state.
- (g) A commission paid to an agent for a windstorm and hail insurance policy issued by the association must comply with the commission structure approved by the commissioner under Section 2210.356 and be reasonable, adequate, not unfairly discriminatory, and nonconfiscatory.

No equivalent provision.

SECTION 27. Subchapter H, Chapter 2210, Insurance Code, is amended by adding Section 2210.356 to read as follows:  
Sec. 2210.356. AGENT COMMISSIONS. (a) The commissioner, after receiving a recommendation from the board, shall approve a commission structure for payment of an agent who submits an application for coverage to the association on behalf of a person who has an insurable interest in insurable property.  
(b) The commission structure adopted by the commissioner must be fair and reasonable, taking into consideration the amount of work performed by an agent in submitting an application to the association and the prevailing commission



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structure in the private windstorm insurance market.

No equivalent provision.

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

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

(b) The association shall offer a person insured under this chapter an actuarially justified premium discount on a policy issued by the association, or an actuarially justified credit against a surcharge assessed against the person, other than a surcharge assessed under Subchapter M, if, in the policy period immediately preceding the policy period for which the premium is paid, the person chose binding arbitration offered by the association under Section 2210.553.

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

*(SECTION 29 found below.)*

No equivalent provision.

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

(c) At the end of each calendar year or policy year, the

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association shall use the net gain from operations of the association, including all premium and other revenue of the association in excess of incurred losses, ~~and~~ operating expenses, public security obligations, and public security administrative expenses, to make payments to the trust fund, to procure reinsurance, or to make payments to the trust fund and to procure reinsurance.

No equivalent provision.

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

Sec. 2210.453. RISK TRANSFER FINANCING; REINSURANCE.

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

*(See SECTION 35 below.)*

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

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

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

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

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

(d) The board of directors shall, on January 1 of each year, develop a plan to obtain pre-event risk transfer financing from private sector sources determined by the board of directors to

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be reasonable and appropriate to the association's risk of loss and in an amount sufficient to maintain the claims paying ability of the association in the event of a catastrophe with estimated damages of \$2.5 billion or more. The plan submitted under this subsection is for informational purposes only and does not bind the association to a particular course of action. The plan shall, at a minimum, include:

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

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

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

(4) the likelihood and maximum size of assessments authorized by this chapter; and

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

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

(1) document and denominate the association's resources available to pay claims, including cash or other highly liquid

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

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assets, assessments that the association is projected to impose, pre-event and post-event bonding capacity, and private-sector recognized risk-transfer mechanisms, including catastrophe bonds and reinsurance;

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

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

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

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

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

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

The report submitted under this subsection is for informational purposes only and does not bind the association to a particular course of action.

*(See SECTION 32 above.)*

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plan covering the period beginning on the date the plan is submitted and ending on the following May 31.

(b) The catastrophe plan must:

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

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

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

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

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

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

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

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

(e) Notwithstanding Subsection (a), the maximum liability limit for dwellings and corporeal movable property described by Section 2210.501(b)(1) may not exceed \$1.5 million.

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

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

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No equivalent provision.

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

(a) This section:

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

(2) applies only to:

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

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

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

No equivalent provision.

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

SUBCHAPTER L. CERTAIN APPEALS AND OTHER ACTIONS

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

(a) This section:

(1) does not apply to:

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

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

(2) applies only to:

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

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

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

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

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

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No equivalent provision.

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

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

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

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

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

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

(1) may recover:

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

and

(B) prejudgment interest; and

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

No equivalent provision.

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

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

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

*(See Sec. 2210.577 of SECTION 38 below.)*

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

SECTION 38. Chapter 2210, Insurance Code, is amended by

SECTION 39. Chapter 2210, Insurance Code, is amended by



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adding Subchapter L-1 to read as follows:

SUBCHAPTER L-1. CLAIMS: SETTLEMENT AND DISPUTE RESOLUTION

Sec. 2210.571. DEFINITIONS. In this subchapter:

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

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

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

Sec. 2210.572. EXCLUSIVE REMEDIES AND LIMITATION ON AWARD. (a) This subchapter provides the exclusive remedies for a claim against the association, including an agent or representative of the association.

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

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

Sec. 2210.573. FILING OF CLAIM; CLAIM PROCESSING.

(a) Subject to Section 2210.205(b), an insured must file a claim under an association policy not later than the first anniversary of the date on which the damage to property that

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adding Subchapter L-1 to read as follows:

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

Sec. 2210.571. DEFINITIONS. In this subchapter:

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

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

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

No equivalent provision.

Sec. 2210.572. FILING OF CLAIM. Subject to the good cause extension to which a claimant is entitled under Section 2210.205(b), an insured must file a claim under an association policy not later than the first anniversary of the date on which

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is the basis of the claim occurs.

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

(c) The association shall, on request, provide a claimant reasonable access to all information relevant to the determination of the association concerning the claim. The claimant may copy the information at the claimant's own cost or may request the association to provide a copy of all or part of the information to the claimant. The association may charge a claimant the actual cost incurred by the association in providing a copy of information under this section, excluding any amount for labor involved in making any information or copy of information available to a claimant.

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

- (1) the association has accepted coverage for the claim in full;
- (2) the association has accepted coverage for the claim in part and has denied coverage for the claim in part; or
- (3) the association has denied coverage for the claim in full.

(e) In a notice described by Subsection (d)(1), the association must inform the claimant of the amount of loss the association

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the damage to property that is the basis of the claim occurs.

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

- (1) acknowledge receipt of the claim;
- (2) commence any investigation of the claim; and
- (3) request from the claimant all items, statements, and forms that the association reasonably believes, at that time, will be required from the claimant.

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

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

Sec. 2210.574. NOTICE OF ACCEPTANCE OR REJECTION OF CLAIM. (a) Except as provided by Subsection (c), the association shall notify a claimant in writing of the acceptance or rejection of a claim not later than the 30th day after the date the association receives all items, statements, and forms required by the association to secure final proof of loss.

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

(c) If the association is unable to accept or reject the claim within the period specified by Subsection (a), the association, within that same period, shall notify the claimant of the reasons that the association needs additional time. The

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will pay and of the time limit to request appraisal under Section 2210.574.

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

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

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

(3) the time limit to:

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

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

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

No equivalent provision.

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association shall accept or reject the claim not later than the 30th day after the date the association notifies a claimant under this subsection.

Sec. 2210.575. PAYMENT OF CLAIM; DELAY IN PAYMENT OF CLAIM; INTEREST ON CLAIM. (a)

Except as provided by Subsection (b) or (c), if the association notifies a claimant under Section 2210.574 that the association will pay a claim or part of a claim, the association shall pay the claim not later than the 10th day after the date notice is made.

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

(c) If the association does not have sufficient cash on hand or

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available in the catastrophe reserve trust fund to comply with this section, the commissioner by rule may extend the periods described by Subsections (a) and (b) by an additional period not to exceed 120 days.

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

Sec. 2210.576. DISPUTES CONCERNING AMOUNT OF LOSS.

(a) If a claimant disputes the amount of loss determined by the association, the claimant or the association may resolve that dispute by, not later than the 60th day after the date the claimant receives the notice from the association that gives rise to the dispute, requesting appraisal in accordance with the terms of the insurance policy.

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

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

No equivalent provision.

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

(b) If a claimant disputes the amount of loss the association will pay for a claim or a portion of a claim, the claimant, not later than the 60th day after the date the claimant receives the notice described by Section 2210.573(d)(1) or (2), may demand appraisal in accordance with the terms of the association policy.

(c) If a claimant, on a showing of good cause and not later than the 15th day after the expiration of the 60-day period described by Subsection (b), requests in writing that the 60-day period be extended, the association may grant an

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additional 30-day period in which the claimant may demand appraisal.

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

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

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

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

(1) require appraisers to register with the department as a condition of being placed on the roster of umpires; and

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

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

(c) If a claimant or the association requests appraisal under this section,

the claimant is responsible for paying any costs incurred or charged by an appraiser retained by and on behalf of the claimant, the association is responsible for paying any costs incurred or charged by an appraiser retained by and on behalf of the association, and the claimant and the association are responsible in equal shares for any costs incurred or charged by any umpire.

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

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

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

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

(b) If a claimant provides notice of intent to bring an action

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of loss determined by appraisal.

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

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

Sec. 2210.577. ALTERNATE DISPUTE RESOLUTION. (a) If a claimant disputes the association's determination

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under Subsection (a), the association may require the claimant, as a prerequisite to filing the action against the association, to submit the dispute to alternative dispute resolution by mediation or moderated settlement conference, as provided by Chapter 154, Civil Practice and Remedies Code.

A claimant that does not provide notice of intent to bring an action before the expiration of the period described by Subsection (a) waives the claimant's right to contest the association's partial or full denial of coverage and is barred from bringing an action against the association concerning the denial of coverage.

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

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

(e) If the claimant is not satisfied after completion of alternative dispute resolution, or if alternative dispute resolution is not completed before the expiration of the 60-day period described by Subsection (d) or any extension under that subsection, the claimant may bring an action against the association in a district court in the county in which the loss that is the subject of the coverage denial occurred. An action

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concerning coverage for a claim or causation of damage to property insured under an association policy that is the basis of a claim and provides notice of intent to bring an action that meets the requirements of Section 541.154, the association may require the claimant, as a prerequisite to filing the action against the association, to submit the dispute to alternate dispute resolution by mediation or moderated settlement conference, as provided by Chapter 154, Civil Practice and Remedies Code.

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

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

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

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brought under this subsection shall be presided over by a judge appointed by the judicial panel on multidistrict litigation designated under Section 74.161, Government Code. A judge appointed under this section must be a resident of a first tier coastal county or a second tier coastal county.

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

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

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

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

(1) require mediators to register with the department as a condition of being placed on the roster; and

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

(j) The commissioner shall establish rules to implement this

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

(f) The commissioner shall establish rules to implement this



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section, including provisions for expediting alternative dispute resolution, facilitating the ability of a claimant to appear with or without counsel, establishing qualifications necessary for mediators to be placed on the roster maintained by the department under Subsection (i), and providing that formal rules of evidence shall not apply to the proceedings.

Sec. 2210.576. ISSUES BROUGHT TO SUIT; LIMITATIONS ON RECOVERY. (a) The only issues a claimant may raise in an action brought against the association under Section 2210.575 are:  
(1) whether the association's denial of coverage was proper;

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section, including provisions for expediting alternate dispute resolution, facilitating the ability of a claimant to appear with or without counsel, and providing that formal rules of evidence shall not apply to the proceedings.

Sec. 2210.578. ACTION BY CLAIMANT. (a) Subject to providing notice of intent to bring an action that meets the requirements of Section 541.154, a claimant aggrieved by the association's decision concerning a claim under this subchapter, including an appraisal process under Section 2210.576 or the outcome of alternate dispute resolution under Section 2210.577, may bring an action against the association. (b) If six or more claimants file civil actions against the association as a result of a weather-related event, an action brought against the association under this section must be presided over by a judge appointed by the judicial panel on multidistrict litigation designated under Section 74.161, Government Code. A judge appointed under this section must be an active judge in Travis County, for suits filed in Travis County, or an active judge in the county in which suit is filed, for a suit filed in a county other than Travis County. "Active judge" shall be defined as in Section 74.041, Government Code. (c) An action brought against the association is governed by this subchapter and Sections 2210.552 and 2210.554.

No equivalent provision.

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and

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

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

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

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

and

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

Sec. 2210.577. LIMITATIONS PERIOD. (a)

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

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

*(See Sec. 2210.554 of SECTION 38 above)*

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

**SUBCHAPTER I. EXPERT PANEL**

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

**(1) employing or retaining persons to perform the functions**

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

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

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

(d) The panel shall investigate, collect, and evaluate the information necessary to provide recommendations under

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necessary or proper under Section 2210.402;

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

(3) providing computer equipment and support.

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

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

(b) The commissioner shall appoint a panel of experts to advise the association concerning the extent to which a loss to insurable property that is described by Subsection (a) was caused by wind and tidal surges. The panel consists of the number of experts determined by the commissioner, and the commissioner shall appoint one member of the panel to serve as the presiding officer of the panel.

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

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

(e) The panel shall investigate, collect, and evaluate the information necessary to provide recommendations under

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Subsection (e). The cost and expense incurred by the panel associated with the work of the panel under this section shall be paid or reimbursed by the association.

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

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

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

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

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Subsection (f).

(f) At the request of the commissioner, the panel shall recommend to the commissioner methods or models for determining the extent to which a loss to insurable property may be or was caused by wind and tidal surges with respect to any weather-related event for geographic areas or regions designated by the commissioner. The panel shall, at the request of the commissioner, develop both pre-event and post-event methods or models for determining the extent to which a loss to insurable property may be or was caused by wind and tidal surges. The methods or models developed by the panel shall provide guidance to the commissioner on the issue of whether loss to insurable property resulting from a weather-related event may be or has been caused by wind and tidal surges. The methods or models must be based on sound scientific principles.

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

Sec. 2210.403. RULES. The commissioner may adopt rules

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as necessary to implement this subchapter.

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

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

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

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

(1) qualifications and selection of appraisers for the appraisal procedure, mediators for the mediation process, and members of the expert panel;

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

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

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

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

No equivalent provision.

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

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

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

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

(1-a) "Board" means the board of directors of the Texas Public Finance Authority.

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

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

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

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

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

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

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

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

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(6-b) "Member assessment trust fund" means the dedicated trust fund established by the board and held by the Texas Treasury Safekeeping Trust Company into which member assessments collected under Sections 2210.613 and 2210.6135 are deposited.

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

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

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

(C) operating expenses; and

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

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

No equivalent provision.

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

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

(a-1) The association and the commissioner must approve each tranche of commercial paper issued under a commercial

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paper program established under this chapter.

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

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

No equivalent provision.

No equivalent provision.

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

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

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

- (1) pay the costs related to issuance of the public securities;
- (2) provide a public security reserve fund; ~~and~~
- (3) capitalize interest for the period determined necessary by the association, not to exceed two years; and
- (4) provide the amount of debt service coverage for public securities determined by the association, in consultation with the authority, to be required for the issuance of marketable public securities.



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

No equivalent provision.

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

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

No equivalent provision.

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

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

- (1) pay incurred claims and operating expenses of the association;
- (2) purchase reinsurance for the association;
- (3) pay the costs of issuing the public securities, and public security administrative expenses, if any;
- (4) provide a public security reserve; [~~and~~]
- (5) pay capitalized interest and principal on the public securities for the period determined necessary by the association;
- (6) pay private financial agreements entered into by the association as temporary sources of payment of losses and operating expenses of the association; and

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

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

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

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

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

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

(c) The association shall deposit all revenue collected under

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Section [Sections] 2210.612 [,-2210.613, and 2210.6135] in the public security obligation revenue fund, all revenue collected under Section 2210.613(b) in the premium surcharge trust fund, and all revenue collected under Sections 2210.613(a) and 2210.6135 in the member assessment trust fund. Money deposited in a ~~the~~ fund may be invested as permitted by general law. Money in a ~~the~~ fund required to be used to pay public security obligations and public security administrative expenses, if any, shall be transferred to the appropriate funds in the manner and at the time specified in the proceedings authorizing the public securities to ensure timely payment of obligations and expenses. This may include the board establishing funds and accounts with the comptroller that the board determines are necessary to administer and repay the public security obligations. If the association has not transferred amounts sufficient to pay the public security obligations to the board's designated interest and sinking fund in a timely manner, the board may direct the Texas Treasury Safekeeping Trust Company to transfer from the public security obligation revenue fund, the premium surcharge trust fund, or the member assessment trust fund to the appropriate account the amount necessary to pay the public security obligation.

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

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

No equivalent provision.

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

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

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

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

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

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

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

Sec. 2210.611. EXCESS REVENUE COLLECTIONS AND INVESTMENT EARNINGS. Revenue collected in any year from a premium surcharge under Section 2210.613 and member assessments under Sections 2210.613 and 2210.6135 that exceeds the amount of the public security obligations and public security administrative expenses payable in that year and interest earned on the public security obligation fund may, in the discretion of the association, be:

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

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

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(3) deposited in the catastrophe reserve trust fund.

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

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

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

Sec. 2210.613. PAYMENT OF CLASS 2 PUBLIC SECURITIES. (a) The association shall pay Class 2 public securities issued under Section 2210.073 as provided by this section. Thirty percent of the cost of the public securities shall be paid through member assessments as provided by this section. The association shall notify each member of the association of the amount of the member's assessment under this section. The proportion of the losses allocable to each insurer under this section shall be determined in the manner

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(3) deposited in the catastrophe reserve trust fund.

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

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

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

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

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used to determine each insurer's participation in the association for the year under Section 2210.052. A member of the association:

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

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

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

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

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

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

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

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

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(A) fire and allied lines;  
(B) farm and ranch owners;  
(C) residential property insurance;  
(D) private passenger automobile liability and physical damage insurance; and  
(E) commercial passenger automobile liability and physical damage insurance; and  
(2) the property insurance portion of a commercial multiple peril insurance [that provide coverage on any premises, locations, operations, or property located in the area described by this subsection for all property and casualty lines of insurance, other than federal flood insurance, workers' compensation insurance, accident and health insurance, and medical malpractice insurance].  
(d) A premium surcharge under Subsection (b) is a separate [~~nonrefundable~~] charge in addition to the premiums collected and is not subject to premium tax or commissions. Failure by a policyholder to pay the surcharge constitutes failure to pay premium for purposes of policy cancellation.

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

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

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(A) fire and allied lines;  
(B) farm and ranch owners;  
(C) residential property insurance;  
(D) private passenger automobile liability and physical damage insurance; and  
(E) commercial passenger automobile liability and physical damage insurance; and  
(2) the property insurance portion of a commercial multiple peril insurance policy [that provide coverage on any premises, locations, operations, or property located in the area described by this subsection for all property and casualty lines of insurance, other than federal flood insurance, workers' compensation insurance, accident and health insurance, and medical malpractice insurance].  
(d) A premium surcharge under Subsection (b) is a separate [~~nonrefundable~~] charge in addition to the premiums collected and is not subject to premium tax or commissions. Failure by a policyholder to pay the surcharge constitutes failure to pay premium for purposes of policy cancellation.

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

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

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(c) A member of the association:  
(1) may not recoup an assessment paid under this section through a premium surcharge or tax credit; and  
(2) notwithstanding Section 2210.074(a), may elect to pay an assessment under this section in a lump sum.

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

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

(b) Notwithstanding Section 16.070, Civil Practice and Remedies Code, and for the purpose described by Section 2210.053(b), a policy form or printed endorsement form for residential or commercial property insurance that is filed by an insurer described by Subsection (a) or adopted by the department under this subchapter for use by an insurer described by Subsection (a) may provide for a contractual limitations period for filing suit on a first-party claim under the policy. The contractual limitations period may not end before the earlier of:

- (1) two years from the date the insurer accepts or rejects the claim; or
- (2) three years from the date of the loss that is the subject of the claim.

(c) A policy or endorsement described by Subsection (b) may also contain a provision requiring that a claim be filed with the insurer not later than one year after the date of the loss that is the subject of the claim. A provision under this subsection

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must include a provision allowing the filing of claims after the first anniversary of the date of the loss for good cause shown by the person filing the claim.

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

(e) The department, to encourage the authorized insurers to write windstorm and hail insurance in the catastrophe area, as defined by Section 2210.003, and in other areas of the state, may approve policy or contractual provisions other than those described by Subsections (b) and (c) that are consistent with sound underwriting and insurance principles, provided that the policy or contractual provisions meet the requirements of Sections 2301.007(a) and 2301.053.

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

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

SUBCHAPTER N. WINDSTORM-RELATED DESIGN SERVICES

Sec. 1001.651. DEFINITIONS. In this subchapter:

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

SENATE VERSION (CS)

No equivalent provision.

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

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

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

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

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

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

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

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

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

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- (1) issue an emergency order prohibiting the engineer from entering into a contract to provide design services related to compliance with applicable windstorm certification standards for a period not to exceed 30 days;
- (2) remove the engineer from the roster described by Section 1001.652(b); or
- (3) determine that a structure was not constructed, altered, remodeled, enlarged, repaired, or added to according to the applicable windstorm certification standards and report that finding to the association and the Texas Department of Insurance.
- (d) The board shall give the engineer notice of any action under this section.
- (e) A violation of this subchapter, including a violation of the windstorm inspection standards, is grounds for disciplinary action under Section 1001.452.

**No equivalent provision.**

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SECTION 50. Subchapter M, Chapter 2210, Insurance Code, is amended by adding Section 2210.6136 to read as follows:  
Sec. 2210.6136. COMBINED SOURCES OF PAYMENT.  
(a) In lieu of issuing distinct Class 1, Class 2, or Class 3 public securities, on request of the association and approval by the commissioner, the board may issue public securities payable from all of the sources described in Sections 2210.612, 2210.613, and 2210.6135 with:  
(1) the first source of payment being as described in Section 2210.612, to the extent public securities described by that section are marketable;  
(2) the second source of payment being as described in Section 2210.613, in an amount not to exceed the amount of Class 2 public securities that could be issued under Section

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2210.073 in the calendar year in which securities are issued under this section;

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

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

(b) The commissioner by order shall specify the distribution of the fourth source of payment under Subsection (a)(4) based on the amount of public securities issued under this section, the total amount of outstanding public securities issued under this chapter, the sources of payment for the outstanding public securities, and any other factors the commissioner determines to be relevant.

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

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

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

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No equivalent provision.

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

Sec. 2210.614. REFINANCING PUBLIC SECURITIES. (a) The association may request the board to refinance, in accordance with Chapter 1207, Government Code, any public securities issued in accordance with Subchapter B-1, whether Class 1, Class 2, or Class 3 public securities, with public securities payable from any of the [same] sources described by Section 2210.612, 2210.613, 2210.6135, or 2210.6136 [as the original public securities]. The amount of public securities that may be refinanced under this subsection with the proceeds of Class 1 public securities may not exceed \$1 billion for a single occurrence or a series of occurrences that takes place in a calendar year.  
(b) Notwithstanding Section 1207.006, Government Code, public securities refinanced under this section may not have a term that is greater than 14 years.

No equivalent provision.

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

Sec. 2210.616. STATE NOT TO IMPAIR PUBLIC SECURITY OBLIGATIONS. (a) The state pledges for the benefit and protection of financing parties, the board, and the association that the state will not take or permit any action that would:  
(1) impair the collection of member assessments and premium surcharges or the deposit of those funds into the member assessment trust fund or premium surcharge trust fund;  
(2) reduce, alter, or impair the member assessments or premium surcharges to be imposed, collected, and remitted to

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financing parties until the principal, interest, and premium, and any other charges incurred and contracts to be performed in connection with the related public securities, have been paid and performed in full; or

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

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

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

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

No equivalent provision.

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

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

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

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

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

No equivalent provision.

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

No equivalent provision.

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

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

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

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

(3) four public members with a background in actuarial

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

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

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

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

(3) four public members with a background in actuarial

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science, law, business, or insurance, as follows:

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

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

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

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

(d) The committee shall:

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

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

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

(4) recommend:

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

(B) an organizational structure to exercise authority and

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science, law, business, or insurance, as follows:

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

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

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

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

(d) The committee shall:

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

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

(3) recommend:

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

(B) an organizational structure to exercise authority and

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responsibility over the provision of insurance to the seacoast territory of this state;

(C) a timetable for implementation; and

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

(5) estimate funding requirements to implement the recommendations.

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

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

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

(h) This section expires June 1, 2013.

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

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

SECTION 54. (a) Except as otherwise specifically provided by this section, this Act applies only to a Texas windstorm and hail insurance policy, and to a dispute under a Texas windstorm and hail insurance policy, that is delivered, issued

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responsibility over the provision of insurance to the seacoast territory of this state;

(C) a timetable for implementation; and

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

(4) estimate funding requirements to implement the recommendations.

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

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

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

(h) This section expires June 1, 2013.

**No equivalent provision.**

SECTION 58.

This Act applies only to a Texas windstorm and hail insurance policy, and a claim or dispute arising under a Texas windstorm and hail insurance policy, delivered, issued for

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for delivery, or renewed by the Texas Windstorm Insurance Association on or after the 60th day after the effective date of this Act. A Texas windstorm and hail insurance policy, and a dispute under a Texas windstorm and hail insurance policy, that is delivered, issued for delivery, or renewed by the Texas Windstorm Insurance Association before the 60th day after the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(b) The deadline to file a claim under a Texas windstorm and hail insurance policy delivered, issued for delivery, or renewed before the effective date of this Act by the Texas Windstorm Insurance Association is governed by the law in effect on the date the policy under which the claim is filed was delivered, issued for delivery, or renewed, and that law is continued in effect for that purpose.

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

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

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

(2) notwithstanding Section 2210.574, Insurance Code, as added by this Act, or any other provision of this Act, the

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delivery, or renewed by the Texas Windstorm Insurance Association on or after the 30th day after the effective date of this Act. A Texas windstorm and hail insurance policy, and a claim or dispute arising under a Texas windstorm and hail insurance policy, delivered, issued for delivery, or renewed by the Texas Windstorm Insurance Association before the 30th day after the effective date of this Act, are governed by the law in effect on the date the policy was delivered, issued for delivery, or renewed, and the former law is continued in effect for that purpose.

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claimant must attempt to resolve the dispute through the appraisal process contained in the association policy under which the claim is filed before an action may be brought against the Texas Windstorm Insurance Association concerning the claim.

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

(f) An action brought against the association concerning a claim described by Subsection (d) of this section shall be abated until the appraisal process under Subsection (d)(2) of this section is completed.

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

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

SECTION 56. If any provision of this Act or its application to

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

No equivalent provision.

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any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

No equivalent provision.

No equivalent provision.

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

(b) The commissioner of insurance shall study the feasibility of the association writing policies directly and the impact the association writing policies directly would have on rates for policies issued by the association. The commissioner shall submit the finding of the study conducted under this subsection to the board of directors of the association.

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

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

- (1) two public insurance adjusters;
- (2) two members who represent the general public;
- (3) two independent adjusters;
- (4) one adjuster who represents a domestic insurer authorized

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to engage in business in this state;

(5) one adjuster who represents a foreign insurer authorized to engage in business in this state; and

(6) one representative of the Independent Insurance Agents of Texas.

(b) A member who represents the general public may not be:

(1) an officer, director, or employee of:

(A) an adjuster or adjusting company;

(B) an insurance agent or agency;

(C) an insurance broker;

(D) an insurer; or

(E) any other business entity regulated by the department;

(2) a person required to register as a lobbyist under Chapter 305, Government Code; or

(3) a person related within the second degree of affinity or consanguinity to a person described by Subdivision (1) or (2).

(c) The advisory board shall make recommendations to the commissioner regarding:

(1) matters related to the licensing, testing, and continuing education of licensed adjusters;

(2) matters related to claims handling, catastrophic loss preparedness, ethical guidelines, and other professionally relevant issues; and

(3) any other matter the commissioner submits to the advisory board for a recommendation.

(d) A member of the advisory board serves without compensation. If authorized by the commissioner, a member is entitled to reimbursement for reasonable expenses incurred in attending meetings of the advisory board.

(e) The advisory board is subject to Chapter 2110, Government Code.

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No equivalent provision.

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

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

SECTION 61. Same as House version.

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