

By: Carona

S.B. No. 3

A BILL TO BE ENTITLED

AN ACT

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

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

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 or an agent or representative of that 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 to the Texas Windstorm Insurance Association Act means this chapter.

SECTION 5. Section 2210.003(1), Insurance Code, is amended to read as follows:

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

SECTION 6. 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, regardless of when the insured losses are ultimately paid.

SECTION 7. 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

1 to the association's policyholders for the purposes of Section  
2 441.052;

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

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

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

22 (b) Chapter 542 does not apply to the processing and  
23 settlement of claims by the association or an agent or  
24 representative of the association.

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

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

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

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

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

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

27           (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, employee of the association, or member of the windstorm insurance legislative oversight board established under Subchapter N who reasonably suspects that a fraudulent insurance act has been or is about to be committed by any board member, employee of the association, or member of the windstorm insurance legislative oversight board established under Subchapter N 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 Travis County district attorney or the department.

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

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

4           SECTION 8. Section 2210.053, Insurance Code, is amended by  
5 adding Subsection (c) to read as follows:

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

9           SECTION 9. Subchapter B, Chapter 2210, Insurance Code, is  
10 amended by adding Section 2210.058 to read as follows:

11           Sec. 2210.058. CLAIMS PRACTICES AUDIT. (a) If the  
12 commissioner determines that 500 or more claims have been filed  
13 under association policies the bases of which are damage to insured  
14 property caused by the same storm, the department shall conduct a  
15 random audit of the claim files of those claims to:

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

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

21           (b) The department shall conduct an audit required under  
22 this section as soon as possible after the filing of the 500th claim  
23 described by Subsection (a) to ensure the quality of the process  
24 with which the association, including an agent or representative of  
25 the association, is handling claims described by Subsection (a).

26           (c) If, following an audit conducted under this section, the  
27 commissioner determines that the association or an agent or

1 representative of the association is not adequately and properly  
2 documenting claims decisions or that claims described by Subsection  
3 (a) are not otherwise being handled appropriately, the commissioner  
4 shall:

5           (1) notify the board of directors of that  
6 determination; and

7           (2) identify the manner in which the association or an  
8 agent or representative of the association should correct any  
9 deficiencies identified by the commissioner.

10           SECTION 10. Section 2210.071(a), Insurance Code, is amended  
11 to read as follows:

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

17           SECTION 11. Section 2210.072, Insurance Code, is amended by  
18 amending Subsections (a), (b), and (c) and adding Subsections  
19 (b-1), (e), and (f) to read as follows:

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

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

4                 (1) may be issued if the board of directors  
5 determines, before the date of any occurrence, that the amount  
6 available from premium and other revenue, in combination with the  
7 amounts available from the catastrophe reserve trust fund, may be  
8 insufficient to pay insured losses; and

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

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

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

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

25           (c) If ~~[the losses are paid with]~~ public securities are  
26 issued as described by this section, the public securities shall be  
27 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 exhausted before the proceeds of any securities issued under that subsection after an occurrence or series of occurrences may be used. Public securities described by Subsection (a) to be issued after an occurrence or series of occurrences may be issued before the proceeds of any outstanding public securities issued under that subsection before an occurrence or series of occurrences have been exhausted.

(f) To the extent the proceeds of outstanding public securities described by Subsection (a) that are issued before an occurrence or series of occurrences are used to pay for losses under this section, for the purposes of this chapter, those public securities shall be considered as being issued after the date of the occurrence or series of occurrences and issued in the catastrophe year in which the occurrence or series of occurrences resulted in the payment of losses under this section.

SECTION 12. 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; 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 13. 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; 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 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

1 recoup an assessment paid under this subsection through a premium  
2 surcharge or tax credit.

3 SECTION 14. Section 2210.102, Insurance Code, is amended by  
4 adding Subsection (i) to read as follows:

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

13 SECTION 15. Section 2210.104, Insurance Code, is amended to  
14 read as follows:

15 Sec. 2210.104. OFFICERS AND MANAGERIAL EMPLOYEES; SALARIES  
16 AND BONUSES. (a) The board of directors shall elect from the  
17 board's membership an executive committee consisting of a presiding  
18 officer, assistant presiding officer, and secretary-treasurer.

19 (b) The association shall post on the association's  
20 Internet website the salary of each association employee who serves  
21 in a managerial capacity and any bonuses paid to those association  
22 employees.

23 SECTION 16. Section 2210.105, Insurance Code, is amended by  
24 amending Subsections (a) and (b) and adding Subsections (b-1), (e),  
25 and (f) to read as follows:

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

27 (1) notify the department not later than the 11th day

1 before the date of a meeting of the board of directors or of the  
2 members of the association; and

3 (2) not later than the seventh day before the date of a  
4 meeting of the board of directors, post notice of the meeting on the  
5 association's Internet website and the department's Internet  
6 website.

7 (b) Except for a closed meeting authorized by Subchapter D,  
8 Chapter 551, Government Code, a meeting of the board of directors or  
9 of the members of the association is open to ~~+~~

10 ~~[(1) the commissioner or the commissioner's designated~~  
11 ~~representative; and~~

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

13 (b-1) A meeting of the board of directors or the members of  
14 the association, including a closed meeting authorized by  
15 Subchapter D, Chapter 551, Government Code, is open to the  
16 commissioner or the commissioner's designated representative. The  
17 commissioner or the commissioner's designated representative shall  
18 maintain the confidentiality of, and may not disclose the content  
19 of, any confidential information discussed in a closed meeting  
20 authorized by Subchapter D, Chapter 551, Government Code.

21 (e) The association shall:

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

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

27 (f) A recording of a meeting must be maintained in the

1 archive required under Subsection (e) through and including the  
2 second anniversary of the meeting.

3 SECTION 17. Section 2210.107, Insurance Code, is amended to  
4 read as follows:

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

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

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

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

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

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

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

SECTION 18. 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) is public information and is not exempted from required disclosure under Chapter 552, Government Code; and

(2) if applicable, must contain the name of any attorney or adjuster involved 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 not otherwise required to be disclosed under this section and that is confidential under Chapter 552, Government Code, or any other law.

SECTION 19. Section 2210.152, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c) The plan of operation shall require the association, including an agent or representative of the association, to use the claim settlement guidelines published by the commissioner under Section 2210.577(f) in evaluating the extent to which a loss to insured property is incurred as a result of wind, waves, tidal

1 surges, rising waters not caused by waves or surges, or wind-driven  
2 rain associated with a storm.

3 SECTION 20. Section 2210.202, Insurance Code, is amended to  
4 read as follows:

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

25 (b) A property and casualty agent must submit an application  
26 for initial ~~the~~ insurance coverage on behalf of the applicant on  
27 forms prescribed by the association. The association shall develop

1 a simplified renewal process that allows for the acceptance of an  
2 application for renewal coverage, and payment of premiums, from a  
3 property and casualty agent or a person insured under this chapter.

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

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

8 (2) [~~. Each application for initial or renewal~~  
9 ~~coverage must also contain~~] a statement that the agent acting on  
10 behalf of the applicant possesses proof of the declination  
11 described by Subsection (a) and proof of flood insurance coverage  
12 or unavailability of that coverage as described by Section  
13 2210.203(a-1).

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

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

22 (d) The commissioner, after consultation with the board of  
23 directors, shall adopt rules governing the rate of agent  
24 commissions on policies renewed under Subsection (c). Rules  
25 adopted under this subsection must require that commission rates be  
26 reasonable and not excessive, based on the time required of, and the  
27 nature of work to be performed by, an agent.

SECTION 22. 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.

SECTION 23. 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

1 must:

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

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

7 (A) the processes and deadlines for appraisal  
8 under Section 2210.575 and mediation under Section 2210.576; and

9 (B) the necessity of complying with the  
10 requirements of Subchapter L-1 to seek administrative or judicial  
11 relief.

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

15 Sec. 2210.210. COVERAGE OF CERTAIN STRUCTURES PROHIBITED.  
16 The association may not issue coverage for a wind turbine,  
17 regardless of whether the turbine is otherwise insurable property  
18 under this chapter.

19 SECTION 24. Section 2210.254, Insurance Code, is amended by  
20 adding Subsection (e) to read as follows:

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

23 SECTION 25. Subchapter F, Chapter 2210, Insurance Code, is  
24 amended by adding Section 2210.2551 to read as follows:

25 Sec. 2210.2551. EXCLUSIVE ENFORCEMENT AUTHORITY; RULES.

26 (a) The department has exclusive authority over all matters  
27 relating to the appointment and oversight of qualified inspectors

1 for purposes of this chapter.

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

8 (c) Subsection (b) applies only to a determination  
9 concerning the appointment of a qualified inspector under this  
10 chapter. The exclusive jurisdiction of the department under this  
11 section does not apply to the practice of engineering as defined by  
12 Section 1001.003, Occupations Code, or to a license issued,  
13 qualification required, determination made, order issued, judgment  
14 rendered, or other action of a board operating under Chapter 1001,  
15 Occupations Code. In the event of conflict, the authority of that  
16 board prevails with regard to the practice of engineering.

17 SECTION 26. The heading to Section 2210.256, Insurance  
18 Code, is amended to read as follows:

19 Sec. 2210.256. DISCIPLINARY PROCEEDINGS REGARDING  
20 APPOINTED INSPECTORS AND CERTAIN OTHER PERSONS.

21 SECTION 27. Section 2210.256, Insurance Code, is amended by  
22 adding Subsection (a-1) to read as follows:

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

27 (1) the commissioner believes that:

1                   (A) the qualified inspector has:

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

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

9                   (B) the person acting as a qualified inspector is  
10 acting without appointment as a qualified inspector under Section  
11 2210.254 or 2210.255; and

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

15           SECTION 28. Subchapter F, Chapter 2210, Insurance Code, is  
16 amended by adding Section 2210.260 to read as follows:

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

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

27                   (1) inspected by a department inspector or by a

1 qualified inspector; and

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

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

11 (d) Except as provided in Section 2210.251(f), a person who  
12 has an insurable interest in a residential structure that is  
13 insured by the association as of January 1, 2012, but for which the  
14 person has not obtained a certificate of compliance under Section  
15 2210.251(g), must obtain an alternative certification under this  
16 section before the association, on or after January 1, 2013, may  
17 renew coverage for the structure.

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

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

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

25 (f) The association shall develop and implement an  
26 actuarially sound rate, credit, or surcharge that reflects the  
27 risks presented by structures with reference to which alternative

1 certifications have been obtained under this section. A rate,  
2 credit, or surcharge under this subsection may vary based on the  
3 number of qualifying structural building components included in a  
4 structure with reference to which an alternative certification is  
5 obtained under this section.

6 SECTION 29. The heading to Subchapter H, Chapter 2210,  
7 Insurance Code, is amended to read as follows:

8 SUBCHAPTER H. RATES; DISCOUNTS

9 SECTION 30. Subchapter H, Chapter 2210, Insurance Code, is  
10 amended by adding Section 2210.363 to read as follows:

11 Sec. 2210.363. PREMIUM DISCOUNTS. (a) The association may  
12 offer a person insured under this chapter an actuarially justified  
13 premium discount on a policy issued by the association if the person  
14 elects to purchase a binding arbitration endorsement under Section  
15 2210.554.

16 (b) The commissioner shall adopt rules necessary to  
17 implement and enforce this section.

18 SECTION 31. Section 2210.453, Insurance Code, is amended by  
19 adding Subsections (c), (d), and (e) to read as follows:

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

1           (1) document and denominate the association's  
2 resources available to pay claims, including cash or other highly  
3 liquid assets, assessments that the association is projected to  
4 impose, pre-event and post-event bonding capacity, and  
5 private-sector recognized risk-transfer mechanisms, including  
6 catastrophe bonds and reinsurance;

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

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

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

22           (e) The report required under Subsection (c) is for  
23 informational purposes and does not bind the association to a  
24 particular course of action.

25           SECTION 32. Subchapter J, Chapter 2210, Insurance Code, is  
26 amended by adding Section 2210.455 to read as follows:

27           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 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 is for informational purposes and does not bind the association to a particular course of action.

SECTION 33. 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.

SECTION 34. The heading to Section 2210.552, Insurance Code, is amended to read as follows:

Sec. 2210.552. ~~[CLAIM]~~ DISPUTES OTHER THAN CLAIM DISPUTES;  
VENUE.

SECTION 35. Section 2210.552, Insurance Code, is amended by amending Subsection (a) and adding Subsections (e), (f), (g), and (h) to read as follows:

(a) Except as provided by Subsection (e) and Sections 2210.007 and 2210.106, and subject to Subchapter L-1, a person insured under this chapter who is aggrieved by an act, ruling, or decision of the association ~~[relating to the payment of, the amount of, or the denial of a claim]~~ may:

(1) bring an action against the association, including an action described by Section 2210.5761 that is brought under

1 Subsection (f) [~~, including an action under Chapter 541~~]; or

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

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

16 (f) If a claimant, as defined by Section 2210.571, disputes  
17 an act, ruling, or decision of the association concerning a  
18 causation dispute or a coverage dispute, as defined by Section  
19 2210.571, the claimant may bring an action against the association  
20 in a district court in the county in which the loss occurred. An  
21 action brought under this subsection is subject to Sections  
22 2210.576 and 2210.5761.

23 (g) A person who brings an action against the association  
24 under this section:

25 (1) may recover only the amount of the covered loss for  
26 an action brought under Subsection (f), or the amount of actual  
27 damages for any other action, plus court costs and reasonable and

1 necessary attorney's fees; and

2 (2) may not recover consequential, punitive, or  
3 exemplary damages, including damages under Section 541.152(b) of  
4 this code or Section 17.50, Business & Commerce Code.

5 (h) For purposes of Subsection (g)(2), "consequential  
6 damages" does not include a loss covered under an association  
7 policy or an endorsement to an association policy.

8 SECTION 36. Subchapter L, Chapter 2210, Insurance Code, is  
9 amended by adding Sections 2210.553 and 2210.554 to read as  
10 follows:

11 Sec. 2210.553. LIMITATIONS PERIOD. (a) Notwithstanding  
12 any other law, including Section 541.162, a person insured under  
13 this chapter who brings an action against the association in the  
14 manner described by Section 2210.552(a)(1) must bring the action  
15 not later than the second anniversary of the date of the act,  
16 ruling, or decision of the association by which the insured is  
17 aggrieved.

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

20 Sec. 2210.554. VOLUNTARY ARBITRATION OF CERTAIN COVERAGE  
21 AND CLAIM DISPUTES. (a) A person insured under this chapter may  
22 elect to purchase a binding arbitration endorsement in a form  
23 prescribed by the commissioner. A person who elects to purchase an  
24 endorsement under this section must arbitrate a dispute involving  
25 an act, ruling, or decision of the association relating to the  
26 payment of, the amount of, or the denial of the claim.

27 (b) An arbitration under this section shall be conducted in

1 the manner and under rules and deadlines prescribed by the  
2 commissioner by rule.

3 SECTION 37. Chapter 2210, Insurance Code, is amended by  
4 adding Subchapter L-1 to read as follows:

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

6 Sec. 2210.571. DEFINITIONS. In this subchapter:

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

9 (2) "Causation dispute" means a dispute involving the  
10 extent to which damage to property insured under an association  
11 policy was caused by an event or peril covered under the policy.

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

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

20 (5) "Coverage dispute" means a dispute that involves  
21 whether, or the extent to which, an association policy covers  
22 damages to property alleged to be insured under the policy. The  
23 term does not include a causation dispute.

24 (6) "Damage dispute" means a dispute that involves the  
25 actual cash value, amount of loss, or cost of repairing or replacing  
26 property insured under an association policy. The term does not  
27 include a causation dispute or coverage dispute.

Sec. 2210.572. EXCLUSIVE REMEDIES AND LIMITATION ON AWARD.

(a) Subject to Sections 2210.552(e) and (f), and notwithstanding any other provision of this chapter or other law, this subchapter provides the exclusive remedies for a claim against the association, including an agent or representative of the association.

(b) Except as provided by Section 2210.552(f), the association or an agent or representative of the association may not be held liable for any amount on a claim other than:

(1) amounts payable under any applicable terms of the association policy; and

(2) any costs and fees awarded under Section 2210.578.

(c) The association or 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 trebling of 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 is the basis of the claim occurs.

(b) Except as provided by Subsection (d), not later than the 90th day after the date the association receives a claim, the association shall:

(1) notify the claimant in writing of the amount of money, if any, the association will pay the claimant for the claim; and

1           (2) provide the claimant with:

2                   (A) a detailed description of the assumptions or  
3 estimates used by the association in determining the amount of the  
4 claim to be paid, including the estimated labor and materials  
5 required and the estimated prices for the labor and materials; or

6                   (B) if the association determines that, in whole  
7 or in part, the property damaged is not insured under the  
8 association policy, or that the property insured under the  
9 association policy was damaged by an event or peril not covered by  
10 the association policy, a detailed description of the factual and  
11 legal basis on which the association determined that a coverage or  
12 causation dispute exists concerning all or part of the claim.

13           (c) If the association does not notify the claimant within  
14 the period required by Subsection (b), the claim is presumed to be  
15 covered by the association policy.

16           (d) The association may extend the 90-day period described  
17 by Subsection (b) for a period not to exceed 90 days, if, before the  
18 end of the 90-day period described by Subsection (b), the  
19 association determines that special circumstances require an  
20 extension of the 90-day period described by Subsection (b) and  
21 notifies the claimant in writing of that determination and those  
22 circumstances.

23           (e) If a claimant fails to submit information necessary for  
24 the association to determine whether to pay a claim or any portion  
25 of a claim or to deny payment of a claim or any portion of a claim,  
26 the association shall, not later than the 15th day after the date  
27 the association receives notice of the claim, request in writing

1 any necessary information from the claimant. For good cause, the  
2 association may make a request for additional information under  
3 this subsection not later than the 30th day after the date the  
4 association receives notice of a claim. If the association makes a  
5 written request for information, the applicable period described by  
6 Subsection (b) or (d) is tolled from the date the association  
7 requests the information until the date the association receives  
8 from the claimant information responsive to the request.

9 (f) In addition to the notice and information otherwise  
10 required under this section, the association shall notify a  
11 claimant of the time limits under Section 2210.574 to request  
12 review of the association's determination under Subsection (e).

13 Sec. 2210.574. REQUEST FOR REVIEW OF ASSOCIATION  
14 DETERMINATION. (a) A claimant aggrieved by a determination of the  
15 association under Section 2210.573 may, not later than the 30th day  
16 after the date the claimant receives the association's  
17 determination, request in writing a review of the determination. A  
18 claimant may submit written comments, documents, records, and other  
19 information to the association with or following the request for  
20 review.

21 (b) The association shall, on request and free of charge,  
22 provide a claimant requesting review of an association  
23 determination under Subsection (a) reasonable access to all  
24 information relevant to the determination of the association that  
25 is being reviewed. The claimant may copy the information at the  
26 claimant's own cost or may request the association to provide a copy  
27 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.

(c) Not later than the 60th day after the date the association receives a request for review under Subsection (a), the association shall notify the claimant in writing of the outcome of the association's review. The association and the claimant may agree to extend the 60-day period described by this subsection.

(d) The association's notice to the claimant of the outcome of the association's review must be in writing, contain the reasons for the outcome, and notify the claimant of the time limits to request, as applicable, appraisal under Section 2210.575 or mediation under Section 2210.576.

Sec. 2210.575. APPRAISAL IN DAMAGE DISPUTES. (a) If, after review of an association determination under Section 2210.574, a damage dispute exists with reference to a claim filed under an association policy, but a coverage or causation dispute does not exist with reference to that claim, the claimant must request appraisal of the actual cash value, amount of loss, or cost of repairing or replacing the property insured under the policy.

(b) A claimant must make a written request for appraisal not later than the 30th day after the date the claimant receives actual or constructive notice of the outcome of the association's review of a determination under Section 2210.574 that is the basis of the damage dispute. If a claimant, on a showing of good cause and not later than the 60th day after the expiration of the 30-day period

1 described by this subsection, requests in writing that the 30-day  
2 period to request appraisal be extended, the commissioner may grant  
3 an additional 30-day period in which the claimant may request  
4 appraisal.

5 (c) If a claimant requests appraisal under Subsection (b),  
6 the claimant and the association shall resolve the damage dispute  
7 through appraisal, in accordance with the terms of the association  
8 policy. The results of the appraisal:

9 (1) are binding on the claimant and the association  
10 and are subject to appeal and judicial review only in the manner  
11 provided by Section 2210.578; and

12 (2) become final and appealable on the 15th day after  
13 the date the appealing party receives actual or constructive notice  
14 of the results.

15 (d) A request for appraisal, and participation in the  
16 appraisal process, under this section is a condition precedent to  
17 contesting a determination made by the association concerning the  
18 actual cash value, amount of loss, or cost of repairing or replacing  
19 property insured under an association policy. A claimant who does  
20 not request appraisal within the applicable period described by  
21 Subsection (b) waives the claimant's right to contest a  
22 determination of the association concerning the actual cash value,  
23 amount of loss, or cost of repairing or replacing property insured  
24 under an association policy.

25 (e) If a claimant requests appraisal under this section, the  
26 claimant is responsible for paying any costs incurred or charged by  
27 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 other appraiser chosen by the claimant's and the association's appraisers to participate in the resolution of the dispute.

(f) The commissioner by rule shall establish policies and procedures for an appraisal requested and conducted under this section.

Sec. 2210.576. MEDIATION. (a) If a claimant disputes the association's determination concerning a causation dispute or coverage dispute 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, as provided by Chapter 154, Civil Practice and Remedies Code. If a claimant brings an action against the association before mediation under this section is completed, the court shall abate the action until the mediation is completed. A claimant described by this subsection that also disputes the association's determination concerning a damage dispute related to the causation dispute or coverage dispute that is the subject of mediation may include in the mediation the damage dispute.

(b) The association shall request mediation 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.

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

6       (d) If mediation is not completed before the expiration of  
7 the 60-day period described by Subsection (c) or, if applicable,  
8 any extension under that subsection, the claimant may bring an  
9 action against the association as described by Section 2210.5761.

10       (e) The claimant and the association shall select a mediator  
11 to conduct mediation under this section. If the claimant and the  
12 association cannot agree on a mediator, the commissioner shall  
13 appoint a mediator. The commissioner shall adopt rules concerning  
14 the division of mediation costs between the claimant and the  
15 association.

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

21       Sec. 2210.5761. ACTION BY CLAIMANT. (a) Subject to  
22 providing notice of intent to bring an action that meets the  
23 requirements of Section 541.154, a claimant aggrieved by the  
24 outcome of mediation under Section 2210.576 may bring an action  
25 against the association.

26       (b) If six or more claimants file actions against the  
27 association under this section 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. For purposes of this subsection, "active judge" has the meaning assigned by Section 74.041, Government Code.

(c) An action brought against the association is governed by this subchapter and Sections 2210.552 and 2210.553.

Sec. 2210.577. TECHNICAL PANEL. (a) The commissioner shall appoint a technical panel of experts to advise the association concerning the extent to which damage to property insured under an association policy was incurred as a result of wind, waves, tidal surges, rising waters not caused by waves or surges, and wind-driven rain associated with a storm. 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, rising waters not caused by waves or surges, and wind-driven rain associated with a storm.

(c) The panel shall meet at the request of the commissioner

1 or the call of the presiding officer of the panel.

2 (c-1) The commissioner shall adopt rules regarding notice  
3 of panel meetings and the transparency of deliberations of the  
4 technical panel.

5 (d) The panel shall investigate, collect, and evaluate the  
6 information necessary to provide recommendations under Subsection  
7 (e).

8 (e) At the request of the commissioner, the technical panel  
9 shall recommend to the commissioner methods for determining the  
10 extent to which damage to property insured under an association  
11 policy resulted from wind, waves, tidal surges, rising waters not  
12 caused by waves or surges, and wind-driven rain associated with a  
13 storm for geographic areas or regions designated by the  
14 commissioner.

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

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

22 Sec. 2210.578. JUDICIAL REVIEW. (a) A claimant who has  
23 exhausted all administrative remedies under this subchapter and who  
24 is aggrieved by an appraisal under Section 2210.575 is entitled to  
25 judicial review. A claimant may not seek judicial review before  
26 exhausting all administrative remedies under this subchapter.

27 (b) A claimant may seek judicial review of an appraisal

1 under Section 2210.575 in the manner provided for the appeal of  
2 contested cases under Subchapter G, Chapter 2001, Government Code.  
3 The standard for judicial review under this section is the  
4 substantial evidence rule.

5 (c) In a proceeding for judicial review under this section,  
6 the court may award only the amount described by Section  
7 2210.572(b), plus court costs and reasonable and necessary  
8 attorney's fees.

9 (d) Notwithstanding Subsection (b), a claimant aggrieved by  
10 an appraisal process under Section 2210.575 may appeal to a  
11 district court in the county in which the loss that is the subject  
12 of the appraisal occurred for a determination concerning:

13 (1) the amount of the loss; and

14 (2) the amount of court costs and reasonable and  
15 necessary attorney's fees.

16 (e) An appeal to a district court under Subsection (d) shall  
17 be trial de novo. The only questions that may be presented and  
18 determined at the trial de novo are:

19 (1) the amount of the loss; and

20 (2) the amount of court costs and reasonable and  
21 necessary attorney's fees.

22 (f) The only evidence that may be admitted in a trial de novo  
23 under Subsection (d) is evidence that was admitted or presented in  
24 the appraisal process under Section 2210.575. The Texas Rules of  
25 Evidence govern whether evidence presented during the appraisal  
26 process under Section 2210.575 is admissible in a trial de novo  
27 under Subsection (d).

1        (g) A petition for trial de novo under Subsection (d) must  
2 be filed with a district court in the county in which the loss that  
3 is the subject of the appraisal occurred not later than the 30th day  
4 after the date on which the determination being appealed is final  
5 and appealable under this subchapter.

6        (h) The appeal seeking a trial de novo under Subsection (d)  
7 shall be presided over by a judge appointed by the judicial panel on  
8 multidistrict litigation designated under Section 74.161,  
9 Government Code. A judge appointed under this section must be an  
10 active judge, as defined by Section 74.041, Government Code, who is  
11 a resident of the county in which the loss occurred or of a first  
12 tier coastal county or a second tier coastal county adjacent to the  
13 county in which the loss occurred.

14        (i) The Texas Supreme Court shall adopt rules governing the  
15 proceedings of a trial de novo under Subsection (d).

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

19        Sec. 2210.580. MEDIATION; CERTAIN DEADLINES TOLLED. A  
20 deadline imposed on a claimant under Section 2210.574, 2210.575, or  
21 2210.576 is tolled for a single period not to exceed 45 consecutive  
22 days during which the claimant is actively seeking resolution of  
23 the causation dispute, coverage dispute, or damage dispute through  
24 a mediation administered by the department, other than the  
25 mediation described by Section 2210.576.

26        SECTION 38. Section 2210.602(2), Insurance Code, is amended  
27 to read as follows:

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

7           SECTION 39. Section 2210.604, Insurance Code, is amended by  
8 amending Subsection (a) and adding Subsection (a-1) to read as  
9 follows:

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

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

19           SECTION 40. Section 2210.605(c), Insurance Code, is amended  
20 to read as follows:

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

24           SECTION 41. Section 2210.608(a), Insurance Code, is amended  
25 to read as follows:

26           (a) Public security proceeds, including investment income,  
27 shall be held in trust for the exclusive use and benefit of the

1 association. The association may use the proceeds to:

2 (1) pay incurred claims and operating expenses of the  
3 association;

4 (2) purchase reinsurance for the association;

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

7 (4) provide a public security reserve; ~~and~~

8 (5) pay capitalized interest and principal on the  
9 public securities for the period determined necessary by the  
10 association;

11 (6) pay private financial agreements entered into by  
12 the association as temporary sources of payment of losses and  
13 operating expenses of the association; and

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

17 SECTION 42. Sections 2210.609(a) and (b), Insurance Code,  
18 are amended to read as follows:

19 (a) The board and the association shall enter into an  
20 agreement under which the association shall provide for the payment  
21 of all public security obligations from available funds collected  
22 by the association and deposited into the public security  
23 obligation revenue fund. If the association determines that it is  
24 unable to pay the public security obligations and public security  
25 administrative expenses, if any, with available funds, the  
26 association shall pay those obligations and expenses in accordance  
27 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) 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 43. 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 44. 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 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 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 and member assessments, as applicable, that would

1 otherwise be required to be levied for the year under this  
2 subchapter;

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

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

6 SECTION 45. Section 2210.612, Insurance Code, is amended to  
7 read as follows:

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

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

20 SECTION 46. Sections 2210.613(b), (c), and (d), Insurance  
21 Code, are amended to read as follows:

22 (b) Seventy percent of the cost of the public securities  
23 shall be paid by a [~~nonrefundable~~] premium surcharge collected  
24 under this section in an amount set by the commissioner. On  
25 approval by the commissioner, each insurer, the association, and  
26 the Texas FAIR Plan Association shall assess, as provided by this  
27 section, a premium surcharge to each policyholder of a policy that

1 is in effect on or after the 180th day after the date the  
 2 commissioner issues notice of the approval of the public securities  
 3 [its policyholders as provided by this section]. The premium  
 4 surcharge must be set in an amount sufficient to pay, for the  
 5 duration of the issued public securities, all debt service not  
 6 already covered by available funds and all related expenses on the  
 7 public securities.

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

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

20 (A) fire and allied lines;  
 21 (B) farm and ranch owners;  
 22 (C) residential property insurance;  
 23 (D) private passenger automobile liability and  
 24 physical damage insurance; and  
 25 (E) commercial automobile liability and physical  
 26 damage insurance; and

27 (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 47. 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. The association, for the payment of the losses, shall assess the members of the association in the amounts necessary for the repayment of public securities issued in a principal ~~[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.

SECTION 48. 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 issued under this section are marketable, in a principal amount not to exceed \$1 billion;

(2) the second source of payment being as described in Section 2210.613, in a principal amount not to exceed \$1 billion; and

(3) the third source of payment being as described in Section 2210.6135.

(b) 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.

SECTION 49. 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 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 the same sources as the original public securities.

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

SECTION 50. 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 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~~

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

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

6 SECTION 51. Subchapter M, Chapter 2210, Insurance Code, is  
7 amended by adding Section 2210.6165 to read as follows:

8 Sec. 2210.6165. PROPERTY RIGHTS. If public securities  
9 issued under this subchapter are outstanding, the rights and  
10 interests in revenues from a premium surcharge or member assessment  
11 held by the association, a successor to the association, any member  
12 of the association, or any entity required to impose, collect, or  
13 receive a premium surcharge or a member assessment under this  
14 subchapter, to the extent those rights and interests are property  
15 rights, are extinguished once those revenues are first pledged for  
16 the repayment of the association's public security obligations as  
17 provided by Section 2210.609.

18 SECTION 52. Section 2210.551(e), Insurance Code, is  
19 repealed.

20 SECTION 53. (a) A legislative interim study committee  
21 shall conduct a study of alternative ways to provide insurance to  
22 the seacoast territory of this state through a quasi-governmental  
23 entity.

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

26 (1) four members of the senate appointed by the  
27 lieutenant governor, two of whom represent one or more first tier

1 coastal counties and two of whom do not represent a first tier  
2 coastal county;

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

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

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

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

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

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

21 (d) The committee shall:

22 (1) examine alternative ways to provide insurance to  
23 the seacoast territory of this state through a quasi-governmental  
24 entity;

25 (2) recommend:

26 (A) the appropriate scope of authority and  
27 responsibility for the entity to provide insurance to the seacoast

territory of this state;

(B) an organizational structure to exercise authority and 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

(3) 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.

SECTION 54. (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 55. This Act applies only to a Texas windstorm and hail insurance policy, and a claim or dispute arising under a Texas

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

11       SECTION 56. The Texas Windstorm Insurance Association shall  
12 amend the association's plan of operation to conform to the changes  
13 in law made by this Act not later than January 1, 2012.

14       SECTION 57. If any provision of this Act or its application  
15 to any person or circumstance is held invalid, the invalidity does  
16 not affect other provisions or applications of this Act that can be  
17 given effect without the invalid provision or application, and to  
18 this end the provisions of this Act are severable.

19       SECTION 58. This Act takes effect immediately if it  
20 receives a vote of two-thirds of all the members elected to each  
21 house, as provided by Section 39, Article III, Texas Constitution.  
22 If this Act does not receive the vote necessary for immediate  
23 effect, this Act takes effect on the 91st day after the last day of  
24 the legislative session.