

AN ACT

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

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

1 Association.

2 SECTION 3. Section 2210.002(b), Insurance Code, is amended  
3 to read as follows:

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

15 SECTION 4. Section 2210.003, Insurance Code, is amended by  
16 adding Subdivision (3-b) to read as follows:

17 (3-b) "Catastrophe year" means a calendar year in  
18 which an occurrence or a series of occurrences results in insured  
19 losses, regardless of when the insured losses are ultimately paid.

20 SECTION 5. Subchapter A, Chapter 2210, Insurance Code, is  
21 amended by adding Sections 2210.0081, 2210.010, 2210.012,  
22 2210.013, and 2210.014 to read as follows:

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

26 (1) the association's inability to satisfy obligations  
27 under Subchapter M related to the issuance of public securities

1 under this chapter constitutes a condition that makes the  
2 association's continuation in business hazardous to the public or  
3 to the association's policyholders for the purposes of Section  
4 441.052;

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

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

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

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

27 (c) In a proceeding with respect to which the commissioner

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

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

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

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

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

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

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

24 (1) accept or solicit any gift, favor, or service that  
25 might reasonably tend to influence the member or employee in the  
26 discharge of duties related to the operation or business of the  
27 association or that the member or employee knows or should know is

1 being offered with the intent to influence the member's or  
2 employee's conduct related to the operation or business of the  
3 association;

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

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

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

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

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

27 (c) A member of the board of directors or an association

1 employee who violates Subsection (a) is subject to any applicable  
2 civil or criminal penalty if the violation also constitutes a  
3 violation of another statute or rule.

4 (d) A board member or employee of the association who  
5 reasonably suspects that a fraudulent insurance act has been or is  
6 about to be committed by any board member or employee of the  
7 association shall, not later than the 30th day after discovering  
8 the conduct, report the conduct and identity of the person engaging  
9 in the conduct to the department and may report the conduct and the  
10 identity of the person engaging in the conduct to another  
11 authorized governmental agency. The department shall forward a  
12 report received under this subsection to the authorized  
13 governmental agency in accordance with Chapter 701.

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

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

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

1       Sec. 2210.014. APPLICABILITY OF CERTAIN OTHER LAW. (a) A  
2 person may not bring a private action against the association,  
3 including a claim against an agent or representative of the  
4 association, under Chapter 541 or 542. Notwithstanding any other  
5 provision of this code or this chapter, a class action under  
6 Subchapter F, Chapter 541, or under Rule 42, Texas Rules of Civil  
7 Procedure, may only be brought against the association by the  
8 attorney general at the request of the department.

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

11       SECTION 6. Section 2210.053, Insurance Code, is amended by  
12 amending Subsection (b) and adding Subsection (c) to read as  
13 follows:

14       (b) The department may develop programs to improve the  
15 efficient operation of the association, including a program for  
16 approving policy forms under Section 2301.010 and a program  
17 designed to create incentives for insurers to write windstorm and  
18 hail insurance voluntarily to cover property located in a  
19 catastrophe area, especially property located on the barrier  
20 islands of this state.

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

24       SECTION 7. Section 2210.054(a), Insurance Code, is amended  
25 to read as follows:

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

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

4 SECTION 8. Section 2210.056(c), Insurance Code, is amended  
5 to read as follows:

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

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

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

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

19 Sec. 2210.059. CLAIMS PRACTICES AUDIT. (a) The  
20 commissioner, in the manner and at the time the commissioner  
21 determines to be necessary, shall conduct a random audit of claim  
22 files concerning claims the bases of which are damage to insured  
23 property caused by a particular storm to:

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

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



1 of the policy under which the claim is filed.

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

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

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

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

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

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

23 (2) an association employee.

24 SECTION 10. Section 2210.071, Insurance Code, is amended by  
25 amending Subsection (a) and adding Subsection (c) to read as  
26 follows:

27 (a) If, in a catastrophe year, an occurrence or series of

1 occurrences in a catastrophe area results in insured losses and  
2 operating expenses of the association in excess of premium and  
3 other revenue of the association, the excess losses and operating  
4 expenses shall be paid as provided by this subchapter.

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

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

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

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

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

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

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

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

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

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

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

21 (e) The proceeds of any outstanding public securities  
22 described by Subsection (a) that are issued before an occurrence or  
23 series of occurrences shall be depleted before the proceeds of any  
24 securities issued after an occurrence or series of occurrences may  
25 be used. This subsection does not prohibit the association from  
26 issuing securities after an occurrence or series of occurrences  
27 before the proceeds of outstanding public securities issued during

1 a previous catastrophe year have been depleted.

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

7 SECTION 12. Section 2210.073, Insurance Code, is amended by  
8 amending Subsection (b) and adding Subsection (c) to read as  
9 follows:

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

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

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

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

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

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

27 (1) may be issued as necessary in a principal amount

1 not to exceed \$500 million per catastrophe year, in the aggregate,  
2 whether for a single occurrence or a series of occurrences; and

3 (2) subject to the \$500 million maximum described by  
4 Subdivision (1), may be issued, in one or more issuances or  
5 tranches, during the calendar year in which the occurrence or  
6 series of occurrences occurs or, if the public securities cannot  
7 reasonably be issued in that year, during the following calendar  
8 year.

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

20 SECTION 14. Section 2210.075, Insurance Code, is amended to  
21 read as follows:

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

26 (b) An insurer must notify the board of directors, in the  
27 manner prescribed by the association whether the insurer will be

1 purchasing reinsurance. If the insurer does not elect to purchase  
2 reinsurance under this section, the insurer remains liable for any  
3 assessment imposed under Section 2210.074(c) [~~2210.074(b)~~].

4 SECTION 15. Section 2210.102, Insurance Code, is amended by  
5 adding Subsection (i) to read as follows:

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

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

17 (a) Except for an emergency meeting, the association shall:  
18 (1) notify the department not later than the 11th day  
19 before the date of a meeting of the board of directors or of the  
20 members of the association; and  
21 (2) not later than the seventh day before the date of a  
22 meeting of the board of directors, post notice of the meeting on the  
23 association's Internet website and the department's Internet  
24 website.

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

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

3           ~~[(2)]~~ the public.

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

11           (e) The association shall:

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

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

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

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

24           SECTION 17. Section 2210.107, Insurance Code, is amended to  
25 read as follows:

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

1 board and the association:

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

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

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

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

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

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

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

26 SECTION 18. Subchapter C, Chapter 2210, Insurance Code, is  
27 amended by adding Section 2210.108 to read as follows:



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

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

6           (1) is public information and is not exempted from  
7 required disclosure under Chapter 552, Government Code; and

8           (2) if applicable, must contain the name of any  
9 attorney or adjuster representing a claimant or the association in  
10 connection with the claim that is the basis of the settlement.

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

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

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

21       SECTION 20. Section 2210.202, Insurance Code, is amended to  
22 read as follows:

23       Sec. 2210.202. APPLICATION FOR COVERAGE. (a) A person who  
24 has an insurable interest in insurable property may apply to the  
25 association for insurance coverage provided under the plan of  
26 operation and an inspection of the property, subject to any rules  
27 established by the board of directors and approved by the

1 commissioner. The association shall make insurance available to  
2 each applicant in the catastrophe area whose property is insurable  
3 property but who, after diligent efforts, is unable to obtain  
4 property insurance through the voluntary market, as evidenced by  
5 one declination from an insurer authorized to engage in the  
6 business of, and writing, property insurance providing windstorm  
7 and hail coverage in the first tier coastal counties. For purposes  
8 of this section, "declination" has the meaning assigned by the plan  
9 of operation and shall include a refusal to offer coverage for the  
10 perils of windstorm and hail and the inability to obtain  
11 substantially equivalent insurance coverage for the perils of  
12 windstorm and hail. Notwithstanding Section 2210.203(c), evidence  
13 of one declination every three calendar years is also required with  
14 an application for renewal of an association policy.

15 (b) A property and casualty agent must submit an application  
16 for initial ~~[the]~~ insurance coverage on behalf of the applicant on  
17 forms prescribed by the association. The association shall develop  
18 a simplified renewal process that allows for the acceptance of an  
19 application for renewal coverage, and payment of premiums, from a  
20 property and casualty agent or a person insured under this chapter.  
21 An ~~[The]~~ application for initial or renewal coverage must contain:

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

25 (2) ~~[. Each application for initial or renewal~~  
26 ~~coverage must also contain]~~ a statement that the agent acting on  
27 behalf of the applicant possesses proof of the declination

1 described by Subsection (a) and proof of flood insurance coverage  
2 or unavailability of that coverage as described by Section  
3 2210.203(a-1).

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

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

12 (d) The commissioner, after receiving a recommendation from  
13 the board of directors, shall approve a commission structure for  
14 payment of an agent who submits an application for coverage to the  
15 association on behalf of a person who has an insurable interest in  
16 insurable property. The commission structure adopted by the  
17 commissioner must be fair and reasonable, taking into consideration  
18 the amount of work performed by an agent in submitting an  
19 application to the association and the prevailing commission  
20 structure in the private windstorm market.

21 SECTION 22. Sections 2210.204(d) and (e), Insurance Code,  
22 are amended to read as follows:

23 (d) If an insured requests cancellation of the insurance  
24 coverage, the association shall refund the unearned premium, less  
25 any minimum retained premium set forth in the plan of operation,  
26 payable to the insured and the holder of an unpaid balance. The  
27 property and casualty agent who received a commission as the result

1 of the issuance of an association policy providing the canceled  
2 coverage [submitted the application] shall refund the agent's  
3 commission on any unearned premium in the same manner.

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

10 (1) the purchase of similar coverage in the voluntary  
11 market;

12 (2) sale of the property to an unrelated party;

13 (3) death of the policyholder; or

14 (4) total loss of the property.

15 SECTION 23. Subchapter E, Chapter 2210, Insurance Code, is  
16 amended by adding Sections 2210.205 and 2210.210 to read as  
17 follows:

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

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

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

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

27 (A) the processes and deadlines for appraisal

1 under Section 2210.574 and alternative dispute resolution under  
2 Section 2210.575;

3 (B) the binding effect of appraisal under Section  
4 2210.574; and

5 (C) the necessity of complying with the  
6 requirements of Subchapter L-1 to seek relief, including judicial  
7 relief.

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

11 Sec. 2210.210. COVERAGE OF CERTAIN STRUCTURES PROHIBITED.  
12 The association may not issue coverage for a wind turbine  
13 regardless of whether the turbine could otherwise be considered  
14 insurable property under this chapter.

15 SECTION 24. Section 2210.251(g), Insurance Code, is amended  
16 to read as follows:

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

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

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

1 includes:

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

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

9 (3) an inspector who:

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

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

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

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

21 SECTION 26. Section 2210.255(a), Insurance Code, is amended  
22 to read as follows:

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

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

3 SECTION 27. Subchapter F, Chapter 2210, Insurance Code, is  
4 amended by adding Section 2210.2551 to read as follows:

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

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

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

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

1 Professional Engineers if the department determines that:

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

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

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

15 SECTION 28. The heading to Section 2210.256, Insurance  
16 Code, is amended to read as follows:

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

19 SECTION 29. Section 2210.256, Insurance Code, is amended by  
20 adding Subsection (a-1) to read as follows:

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

25 (1) the commissioner believes that:

26 (A) the qualified inspector has:

27 (i) through submitting or failing to submit



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

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

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

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

13 SECTION 30. Section 2210.259, Insurance Code, is amended by  
14 adding Subsection (c) to read as follows:

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

21 SECTION 31. Subchapter F, Chapter 2210, Insurance Code, is  
22 amended by adding Section 2210.260 to read as follows:

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

1 section and rules adopted by the commissioner.

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

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

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

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

17 (d) Except as provided by Sections 2210.251(d), (e), and  
18 (f), a person who has an insurable interest in a residential  
19 structure that is insured by the association as of August 31, 2012,  
20 but for which the person has not obtained a certificate of  
21 compliance under Section 2210.251(g), must obtain an alternative  
22 certification under this section before the association, on or  
23 after August 31, 2013, may renew coverage for the structure.

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

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

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

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

15           SECTION 32. The heading to Subchapter H, Chapter 2210,  
16 Insurance Code, is amended to read as follows:

17                   SUBCHAPTER H. RATES; DISCOUNTS AND CREDITS

18           SECTION 33. Sections 2210.355(b) and (g), Insurance Code,  
19 are amended to read as follows:

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

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

25                   (2) expenses of operation, including acquisition  
26 costs;

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

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

6           (5) [~~4~~] all other relevant factors, within and  
7 outside this state.

8           (g) A commission paid to an agent for a windstorm and hail  
9 insurance policy issued by the association must comply with the  
10 commission structure approved by the commissioner under Section  
11 2210.203(d) and be reasonable, adequate, not unfairly  
12 discriminatory, and nonconfiscatory.

13           SECTION 34. Subchapter H, Chapter 2210, Insurance Code, is  
14 amended by adding Section 2210.363 to read as follows:

15           Sec. 2210.363. PREMIUM DISCOUNTS; SURCHARGE CREDITS. (a)  
16 The association may offer a person insured under this chapter an  
17 actuarially justified premium discount on a policy issued by the  
18 association, or an actuarially justified credit against a surcharge  
19 assessed against the person, other than a surcharge assessed under  
20 Subchapter M, if:

21           (1) the construction, alteration, remodeling,  
22 enlargement, or repair of, or an addition to, insurable property  
23 exceeds applicable building code standards set forth in the plan of  
24 operation; or

25           (2) the person elects to purchase a binding  
26 arbitration endorsement under Section 2210.554.

27           (b) A premium discount or a credit against a surcharge under

1 Subsection (a)(2) may not exceed 10 percent of the premium for the  
2 policy, before the application of the discount.

3 (c) The commissioner shall adopt rules necessary to  
4 implement and enforce this section, including rules defining  
5 "actuarially justified" for the purposes of this section.

6 SECTION 35. Section 2210.452(c), Insurance Code, is amended  
7 to read as follows:

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

16 SECTION 36. Section 2210.453, Insurance Code, is amended by  
17 adding Subsections (c), (d), and (e) to read as follows:

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

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

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

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

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

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

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

23 SECTION 37. Subchapter J, Chapter 2210, Insurance Code, is  
24 amended by adding Section 2210.455 to read as follows:

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

1 governor, the lieutenant governor, and the speaker of the house of  
2 representatives a catastrophe plan covering the period beginning on  
3 the date the plan is submitted and ending on the following May 31.

4 (b) The catastrophe plan must:

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

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

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

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

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

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

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

26 SECTION 38. The heading to Subchapter L, Chapter 2210,  
27 Insurance Code, is amended to read as follows:

SUBCHAPTER L. CERTAIN APPEALS AND OTHER ACTIONS

SECTION 39. Sections 2210.551(a) and (b), Insurance Code, are amended to read as follows:

(a) This section:

(1) does not apply to:

(A) a person who is required to resolve a dispute under Subchapter L-1; or

(B) a person insured under this chapter who has elected to purchase a binding arbitration endorsement offered by the association under Section 2210.554; 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 40. Subchapter L, Chapter 2210, Insurance Code, is amended by adding Section 2210.554 to read as follows:

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



1 payment of, the amount of, or the denial of the claim.

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

5 SECTION 41. Chapter 2210, Insurance Code, is amended by  
6 adding Subchapter L-1 to read as follows:

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

8 Sec. 2210.571. DEFINITIONS. In this subchapter:

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

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

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

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

20 (a) This subchapter provides the exclusive remedies for a claim  
21 against the association, including an agent or representative of  
22 the association.

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

26 (c) The association, and an agent or representative of the  
27 association, may not be held liable for damages under Chapter 17,

1 Business & Commerce Code, or, except as otherwise specifically  
2 provided by this chapter, under any provision of any law providing  
3 for additional damages, punitive damages, or a penalty.

4 Sec. 2210.573. FILING OF CLAIM; CLAIM PROCESSING. (a)

5 Subject to Section 2210.205(b), an insured must file a claim under  
6 an association policy not later than the first anniversary of the  
7 date on which the damage to property that is the basis of the claim  
8 occurs.

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

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

26 (d) Unless the applicable 60-day period described by this  
27 subsection is extended by the commissioner under Section 2210.581,

1 not later than the later of the 60th day after the date the  
2 association receives a claim or the 60th day after the date the  
3 association receives information requested under Subsection (b),  
4 the association shall provide the claimant, in writing,  
5 notification that:

6 (1) the association has accepted coverage for the  
7 claim in full;

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

10 (3) the association has denied coverage for the claim  
11 in full.

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

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

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

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

24 (3) the time limit to:

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

27 and

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

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

7           Sec. 2210.5731. PAYMENT OF CLAIM. (a) Except as provided  
8 by Subsection (b), if the association notifies a claimant under  
9 Section 2210.573(d)(1) or (2) that the association has accepted  
10 coverage for a claim in full or has accepted coverage for a claim in  
11 part, the association shall pay the accepted claim or accepted  
12 portion of the claim not later than the 10th day after the date  
13 notice is made.

14           (b) If payment of the accepted claim or accepted portion of  
15 the claim is conditioned on the performance of an act by the  
16 claimant, the association shall pay the claim not later than the  
17 10th day after the date the act is performed.

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

27           (b) If a claimant disputes the amount of loss the

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

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

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

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

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

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

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

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

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

17           (g) A claimant or the association may, not later than the  
18 second anniversary of the date of an appraisal decision, file an  
19 action in a district court in the county in which the loss that is  
20 the subject of the appraisal occurred to vacate the appraisal  
21 decision and begin a new appraisal process if:

22           (1) the appraisal decision was obtained by corruption,  
23 fraud, or other undue means;

24           (2) the rights of the claimant or the association were  
25 prejudiced by:

26                   (A) evident partiality by an appraisal umpire;

27                   (B) corruption in an appraiser or appraisal

1 umpire; or

2 (C) misconduct or wilful misbehavior of an  
3 appraiser or appraisal umpire; or

4 (3) an appraiser or appraisal umpire:

5 (A) exceeded the appraiser's or appraisal  
6 umpire's powers;

7 (B) refused to postpone the appraisal after a  
8 showing of sufficient cause for the postponement;

9 (C) refused to consider evidence material to the  
10 claim; or

11 (D) conducted the appraisal in a manner that  
12 substantially prejudiced the rights of the claimant or the  
13 association.

14 (h) Except as provided by Subsection (g), a claimant may not  
15 bring an action against the association with reference to a claim  
16 for which the association has accepted coverage in full.

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

26 (b) If a claimant provides notice of intent to bring an  
27 action under Subsection (a), the association may require the

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

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

14 (d) Alternative dispute resolution under this section must  
15 be completed not later than the 60th day after the date a request  
16 for alternative dispute resolution is made under Subsection (c).  
17 The 60-day period described by this subsection may be extended by  
18 the commissioner by rule in accordance with Section 2210.581 or by  
19 the association and a claimant by mutual consent.

20 (e) If the claimant is not satisfied after completion of  
21 alternative dispute resolution, or if alternative dispute  
22 resolution is not completed before the expiration of the 60-day  
23 period described by Subsection (d) or any extension under that  
24 subsection, the claimant may bring an action against the  
25 association in a district court in the county in which the loss that  
26 is the subject of the coverage denial occurred. An action brought  
27 under this subsection shall be presided over by a judge appointed by



1 the judicial panel on multidistrict litigation designated under  
2 Section 74.161, Government Code. A judge appointed under this  
3 section must be an active judge, as defined by Section 74.041,  
4 Government Code, who is a resident of the county in which the loss  
5 that is the basis of the disputed denied coverage occurred or of a  
6 first tier coastal county or a second tier coastal county adjacent  
7 to the county in which that loss occurred.

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

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

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

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

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

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

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

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

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

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

20           (b) Except as provided by Subsections (c) and (d), a  
21 claimant that brings an action against the association under  
22 Section 2210.575 may recover only:

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

27           (2) prejudgment interest from the first day after the

1 date specified in Section 2210.5731 by which the association was or  
2 would have been required to pay an accepted claim or the accepted  
3 portion of a claim, at the prejudgment interest rate provided in  
4 Subchapter B, Chapter 304, Finance Code; and

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

7 (c) Nothing in this chapter, including Subsection (b), may  
8 be construed to limit the consequential damages, or the amount of  
9 consequential damages, that a claimant may recover under common law  
10 in an action against the association.

11 (d) A claimant that brings an action against the association  
12 under Section 2210.575 may, in addition to the covered loss  
13 described by Subsection (b)(1) and any consequential damages  
14 recovered by the claimant under common law, recover damages in an  
15 amount not to exceed the aggregated amount of the covered loss  
16 described by Subsection (b)(1) and the consequential damages  
17 recovered under common law if the claimant proves by clear and  
18 convincing evidence that the association mishandled the claimant's  
19 claim to the claimant's detriment by intentionally:

20 (1) failing to meet the deadlines or timelines  
21 established under this subchapter without good cause, including the  
22 applicable deadline established under Section 2210.5731 for  
23 payment of an accepted claim or the accepted portion of a claim;

24 (2) disregarding applicable guidelines published by  
25 the commissioner under Section 2210.578(f);

26 (3) failing to provide the notice required under  
27 Section 2210.573(d);

1           (4) rejecting a claim without conducting a reasonable  
2 investigation with respect to the claim; or

3           (5) denying coverage for a claim in part or in full if  
4 the association's liability has become reasonably clear as a result  
5 of the association's investigation with respect to the portion of  
6 the claim that was denied.

7           (e) For purposes of Subsection (d), "intentionally" means  
8 actual awareness of the facts surrounding the act or practice  
9 listed in Subsection (d)(1), (2), (3), (4), or (5), coupled with the  
10 specific intent that the claimant suffer harm or damages as a result  
11 of the act or practice. Specific intent may be inferred from  
12 objective manifestations that the association acted intentionally  
13 or from facts that show that the association acted with flagrant  
14 disregard of the duty to avoid the acts or practices listed in  
15 Subsection (d)(1), (2), (3), (4), or (5).

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

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

23           Sec. 2210.578. EXPERT PANEL. (a) The commissioner shall  
24 appoint a panel of experts to advise the association concerning the  
25 extent to which a loss to insurable property was incurred as a  
26 result of wind, waves, tidal surges, or rising waters not caused by  
27 waves or surges. The panel shall consist of a number of experts to

1 be decided by the commissioner. The commissioner shall appoint one  
2 member of the panel to serve as the presiding officer of the panel.

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

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

11 (d) The panel shall investigate, collect, and evaluate the  
12 information necessary to provide recommendations under Subsection  
13 (e). The cost and expense incurred by the panel associated with the  
14 work of the panel under this section shall be paid or reimbursed by  
15 the association.

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

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

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

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

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

10       (b) Notwithstanding any other law, the association may not  
11 bring an action against a claimant, for declaratory or other  
12 relief, before the 180th day after the date an appraisal under  
13 Section 2210.574, or alternate dispute resolution under Section  
14 2210.575, is completed.

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

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

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

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

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

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

6       Sec. 2210.581. COMMISSIONER EXTENSION OF DEADLINES. (a)  
7 Subject to Subsection (b), the commissioner, on a showing of good  
8 cause, may by rule extend any deadline established under this  
9 subchapter.

10       (b) With reference to claims filed during a particular  
11 catastrophe year, the extension of deadlines under Subsection (a)  
12 may not exceed 120 days in the aggregate.

13       (c) For the purposes of Subsection (a), "good cause"  
14 includes military deployment.

15       Sec. 2210.582. OMBUDSMAN PROGRAM. (a) The department  
16 shall establish an ombudsman program to provide information and  
17 educational programs to assist persons insured under this chapter  
18 with the claim processes under this subchapter.

19       (b) Not later than March 1 of each year, the department  
20 shall prepare and submit to the commissioner a budget for the  
21 ombudsman program, including approval of all expenditures incurred  
22 in administering and operating the program. The commissioner shall  
23 adopt or modify and adopt the budget not later than April 1 of the  
24 year in which the budget is submitted.

25       (c) Not later than May 1 of each year, the association shall  
26 transfer to the ombudsman program money in an amount equal to the  
27 amount of the budget adopted under Subsection (b). The ombudsman

1 program, not later than April 30 of each year, shall return to the  
2 association any unexpended funds that the program received from the  
3 association in the previous year.

4 (d) The department shall, not later than 60 days after the  
5 date of a catastrophic event, prepare and submit an amended budget  
6 to the commissioner for approval and report to the commissioner the  
7 approximate number of claimants eligible for ombudsman services.  
8 The commissioner shall adopt rules as necessary to implement an  
9 amended budget submitted under this section, including rules  
10 regarding the transfer of additional money from the association to  
11 the program.

12 (e) The ombudsman program may provide to persons insured  
13 under this chapter information and educational programs through:

- 14 (1) informational materials;
- 15 (2) toll-free telephone numbers;
- 16 (3) public meetings;
- 17 (4) outreach centers;
- 18 (5) the Internet; and
- 19 (6) other reasonable means.

20 (f) The ombudsman program is administratively attached to  
21 the department. The department shall provide the staff, services,  
22 and facilities necessary for the ombudsman program to operate,  
23 including:

- 24 (1) administrative assistance and service, including  
25 budget planning and purchasing;
- 26 (2) personnel services;
- 27 (3) office space; and



1           (4) computer equipment and support.

2           (g) The ombudsman program shall prepare and make available  
3 to each person insured under this chapter information describing  
4 the functions of the ombudsman program.

5           (h) The association, in the manner prescribed by the  
6 commissioner by rule, shall notify each person insured under this  
7 chapter concerning the operation of the ombudsman program.

8           (i) The commissioner may adopt rules as necessary to  
9 implement this section.

10           SECTION 42. Section 2210.602, Insurance Code, is amended by  
11 amending Subdivisions (1) and (2) and adding Subdivisions (1-a),  
12 (1-b), (5-a), (6-b), and (6-c) to read as follows:

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

15           (1-a) "Board" means the board of directors of the  
16 Texas Public Finance Authority.

17           (1-b) "Catastrophic event" means an occurrence or a  
18 series of occurrences that occurs in a catastrophe area during a  
19 calendar year and that results in insured losses and operating  
20 expenses of the association in excess of premium and other revenue  
21 of the association.

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

1           (5-a) "Gross premium" means association premium, less  
2 premium returned to policyholders for canceled or reduced policies.

3           (6-b) "Member assessment trust fund" means the  
4 dedicated trust fund established by the board and held by the Texas  
5 Treasury Safekeeping Trust Company into which member assessments  
6 collected under Sections 2210.613 and 2210.6135 are deposited.

7           (6-c) "Premium surcharge trust fund" means the  
8 dedicated trust fund established by the board and held by the Texas  
9 Treasury Safekeeping Trust Company into which premium surcharges  
10 collected under Section 2210.613 are deposited.

11           SECTION 43. Section 2210.604, Insurance Code, is amended by  
12 amending Subsections (a) and (c) and adding Subsection (a-1) to  
13 read as follows:

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

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

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

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

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

8           SECTION 44. Section 2210.605(c), Insurance Code, is amended  
9 to read as follows:

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

13           SECTION 45. Section 2210.608, Insurance Code, is amended by  
14 amending Subsection (a) and adding Subsection (c) to read as  
15 follows:

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

19           (1) pay incurred claims and operating expenses of the  
20 association;

21           (2) purchase reinsurance for the association;

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

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

25           (5) pay capitalized interest and principal on the  
26 public securities for the period determined necessary by the  
27 association;

1           (6) pay private financial agreements entered into by  
2 the association as temporary sources of payment of losses and  
3 operating expenses of the association; and

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

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

12           SECTION 46. Section 2210.609, Insurance Code, is amended to  
13 read as follows:

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

27           (b) If any public securities issued under this chapter are

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

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

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

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

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

18 SECTION 47. Section 2210.610(a), Insurance Code, is amended  
19 to read as follows:

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

23 SECTION 48. Section 2210.611, Insurance Code, is amended to  
24 read as follows:

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

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

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

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

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

14 SECTION 49. Section 2210.612, Insurance Code, is amended to  
15 read as follows:

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

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

1 SECTION 50. Sections 2210.613(b), (c), and (d), Insurance  
2 Code, are amended to read as follows:

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

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

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



- 1                   (A) fire and allied lines;
- 2                   (B) farm and ranch owners;
- 3                   (C) residential property insurance;
- 4                   (D) private passenger automobile liability and  
5 physical damage insurance; and
- 6                   (E) commercial automobile liability and physical  
7 damage insurance; and

8                   (2) the property insurance portion of a commercial  
9 multiple peril insurance policy [~~that provide coverage on any~~  
10 ~~premises, locations, operations, or property located in the area~~  
11 ~~described by this subsection for all property and casualty lines of~~  
12 ~~insurance, other than federal flood insurance, workers'~~  
13 ~~compensation insurance, accident and health insurance, and medical~~  
14 ~~malpractice insurance]~~.

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

20                   SECTION 51. Section 2210.6135(a), Insurance Code, is  
21 amended to read as follows:

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

1 the association of the amount of the member's assessment under this  
2 section.

3 SECTION 52. Subchapter M, Chapter 2210, Insurance Code, is  
4 amended by adding Section 2210.6136 to read as follows:

5 Sec. 2210.6136. ALTERNATIVE SOURCES OF PAYMENT. (a)  
6 Notwithstanding any other provision of this chapter and subject to  
7 Subsection (b), on a finding by the commissioner that all or any  
8 portion of the total principal amount of Class 1 public securities  
9 authorized to be issued under Section 2210.072 cannot be issued,  
10 the commissioner, by rule or order, may cause the issuance of Class  
11 2 public securities in a principal amount not to exceed the  
12 principal amount described by Section 2210.073(b).

13 (b) The commissioner shall order the repayment of the cost  
14 of Class 2 public securities issued in the manner described by  
15 Subsection (a) as follows:

16 (1) in the manner described by Section 2210.612(a), in  
17 an amount equal to the lesser of:

18 (A) \$500 million; or

19 (B) that portion of the total principal amount of  
20 Class 1 public securities authorized to be issued under Section  
21 2210.072 that cannot be issued, plus any costs associated with that  
22 portion; and

23 (2) after payment under Subdivision (1), in the manner  
24 described by Sections 2210.613(a) and (b), in an amount equal to the  
25 difference between the principal amount of public securities issued  
26 under Subsection (a) and the amount repaid in the manner described  
27 by Subdivision (1), plus any costs associated with that amount.

1        (c) If Class 2 public securities are issued in the manner  
2 authorized by this section, Class 3 public securities may be issued  
3 only after Class 2 public securities have been issued in the maximum  
4 amount authorized under Section 2210.073.

5        SECTION 53. Section 2210.616, Insurance Code, is amended to  
6 read as follows:

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

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

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

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

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

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

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

4       SECTION 54. Subchapter M, Chapter 2210, Insurance Code, is  
5 amended by adding Section 2210.6165 to read as follows:

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

15       SECTION 55. Subchapter A, Chapter 2301, Insurance Code, is  
16 amended by adding Section 2301.010 to read as follows:

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

21       (b) Notwithstanding Section 16.070, Civil Practice and  
22 Remedies Code, and for the purpose described by Section  
23 2210.053(b), a policy form or printed endorsement form for  
24 residential or commercial property insurance that is filed by an  
25 insurer described by Subsection (a) or adopted by the department  
26 under this subchapter for use by an insurer described by Subsection  
27 (a) may provide for a contractual limitations period for filing

1 suit on a first-party claim under the policy. The contractual  
2 limitations period may not end before the earlier of:

3 (1) two years from the date the insurer accepts or  
4 rejects the claim; or

5 (2) three years from the date of the loss that is the  
6 subject of the claim.

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

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

20 (e) The department, to encourage the authorized insurers to  
21 write windstorm and hail insurance in the catastrophe area, as  
22 defined by Section 2210.003, and in other areas of the state, may  
23 approve policy or contractual provisions other than those described  
24 by Subsections (b) and (c) that are consistent with sound  
25 underwriting and insurance principles, provided that the policy or  
26 contractual provisions meet the requirements of Sections  
27 2301.007(a) and 2301.053.

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

7       SECTION 56. Chapter 1001, Occupations Code, is amended by  
8 adding Subchapter N to read as follows:

9               SUBCHAPTER N. WINDSTORM-RELATED DESIGN SERVICES

10       Sec. 1001.651. DEFINITIONS. In this subchapter:

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

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

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

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

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

24               (2) in consultation with the Texas Department of  
25 Insurance, adopt rules establishing criteria for determining  
26 whether an engineer possesses the knowledge, understanding, and  
27 professional competence to be qualified to provide engineering

1 design services related to compliance with applicable windstorm  
2 certification standards under Subchapter F, Chapter 2210,  
3 Insurance Code.

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

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

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

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

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

22 (2) remove the engineer from the roster described by  
23 Section 1001.652(b); or

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

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

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

6        SECTION 57. Sections 2210.551(e) and 2210.552, Insurance  
7 Code, are repealed.

8        SECTION 58. Section 2301.010, Insurance Code, as added by  
9 this Act, applies only to an insurance policy that is delivered,  
10 issued for delivery, or renewed on or after January 1, 2012. A  
11 policy delivered, issued for delivery, or renewed before January 1,  
12 2012, is governed by the law as it existed immediately before the  
13 effective date of this Act, and that law is continued in effect for  
14 that purpose.

15        SECTION 59. Not later than December 1, 2011, the Texas Board  
16 of Professional Engineers shall adopt rules to implement Subchapter  
17 N, Chapter 1001, Occupations Code, as added by this Act.

18        SECTION 60. (a) A legislative interim study committee  
19 shall conduct a study of alternative ways to provide insurance to  
20 the seacoast territory of this state, including through a  
21 quasi-governmental entity.

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

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



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

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

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

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

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

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

19           (d) The committee shall:

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

27           (2) study the residual markets for windstorm and hail

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

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

7 (4) recommend:

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

11 (B) an organizational structure to exercise  
12 authority and responsibility over the provision of insurance to the  
13 seacoast territory of this state;

14 (C) a timetable for implementation; and

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

18 (5) estimate funding requirements to implement the  
19 recommendations.

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

22 (f) Except as specifically provided by this section, the  
23 committee may operate in the same manner as a joint committee of the  
24 82nd Legislature.

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

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

2 SECTION 61. (a) The Texas Department of Insurance and the  
3 Texas Windstorm Insurance Association shall jointly study whether  
4 the association's using a single adjuster program would improve the  
5 effectiveness and efficiency with which the association receives,  
6 processes, settles, and pays claims filed under insurance policies  
7 issued by the association under Chapter 2210, Insurance Code.

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

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

18 SECTION 62. (a) Except as otherwise specifically provided  
19 by this section, this Act applies only to a Texas windstorm and hail  
20 insurance policy that is delivered, issued for delivery, or renewed  
21 by the Texas Windstorm Insurance Association on or after the 60th  
22 day after the effective date of this Act. A Texas windstorm and  
23 hail insurance policy that is delivered, issued for delivery, or  
24 renewed by the Texas Windstorm Insurance Association before the  
25 60th day after the effective date of this Act is governed by the law  
26 in effect immediately before the effective date of this Act, and the  
27 former law is continued in effect for that purpose.

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

8           (c) If a person insured by the Texas Windstorm Insurance  
9 Association disputes the amount the association will pay for a  
10 partially or fully accepted claim filed by the person, Section  
11 2210.574, Insurance Code, as added by this Act, applies only if the  
12 Texas windstorm and hail insurance policy under which the claim is  
13 filed is delivered, issued for delivery, or renewed on or after the  
14 60th day after the effective date of this Act.

15           (d) If a person insured by the Texas Windstorm Insurance  
16 Association disputes the amount the association will pay for a  
17 partially or fully accepted claim filed by the person and the Texas  
18 windstorm and hail insurance policy under which the claim is filed  
19 is delivered, issued for delivery, or renewed before the 60th day  
20 after the effective date of this Act:

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

23                 (2) notwithstanding Section 2210.574, Insurance Code,  
24 as added by this Act, or any other provision of this Act, the  
25 claimant must attempt to resolve the dispute through the appraisal  
26 process contained in the association policy under which the claim  
27 is filed before an action may be brought against the Texas Windstorm

1 Insurance Association concerning the claim.

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

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

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

20 (h) Section 2210.605(c), Insurance Code, as amended by this  
21 Act, and Section 2210.6136, Insurance Code, as added by this Act,  
22 apply to the issuance and repayment of public securities issued by  
23 the Texas Windstorm Insurance Association under Chapter 2210,  
24 Insurance Code, in response to an occurrence or series of  
25 occurrences that takes place on or after July 1, 2011, so long as  
26 the public securities are issued on or after the effective date of  
27 this Act. The issuance and repayment of public securities issued by

1 the association under Chapter 2210, Insurance Code, before the  
2 effective date of this Act is governed by the law as it existed  
3 immediately before the effective date of this Act, and that law is  
4 continued in effect for that purpose.

5 SECTION 63. The Texas Windstorm Insurance Association shall  
6 amend the association's plan of operation to conform to the changes  
7 in law made by this Act not later than the 60th day after the  
8 effective date of this Act.

9 SECTION 64. If any provision of this Act or its application  
10 to any person or circumstance is held invalid, the invalidity does  
11 not affect other provisions or applications of this Act that can be  
12 given effect without the invalid provision or application, and to  
13 this end the provisions of this Act are severable.

14 SECTION 65. This Act takes effect immediately if it  
15 receives a vote of two-thirds of all the members elected to each  
16 house, as provided by Section 39, Article III, Texas Constitution.  
17 If this Act does not receive the vote necessary for immediate  
18 effect, this Act takes effect on the 91st day after the last day of  
19 the legislative session.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 3 was passed by the House on June 16, 2011, by the following vote: Yeas 97, Nays 41, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 3 on June 27, 2011, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 3 on June 28, 2011, by the following vote: Yeas 98, Nays 44, 3 present, not voting.

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Chief Clerk of the House

H.B. No. 3

I certify that H.B. No. 3 was passed by the Senate, with amendments, on June 22, 2011, by the following vote: Yeas 29, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 3 on June 28, 2011, by the following vote: Yeas 18, Nays 12.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor