H.B. No. 4409

AN ACT

relating to emergency preparation and management.

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

SECTION 1. Subchapter A, Chapter 418, Government Code, is amended by adding Section 418.006 to read as follows:

Sec. 418.006. CIVIL LIABILITY. An officer or employee of a state or local agency, or a volunteer acting at the direction of an officer or employee of a state or local agency, is considered for purposes of Section 431.085 to be a member of the state military forces ordered into active service of the state by proper authority and is considered to be discharging a duty in that capacity if the person is performing an activity related to sheltering or housing individuals in connection with the evacuation of an area stricken or threatened by disaster.

SECTION 2. Section 418.043, Government Code, is amended to read as follows:

Sec. 418.043. OTHER POWERS AND DUTIES. The division shall:

(1) determine requirements of the state and its political subdivisions for food, clothing, and other necessities in event of a disaster;

(2) procure and position supplies, medicines, materials, and equipment;

(3) adopt standards and requirements for local and interjurisdictional emergency management plans;

(4) periodically review local and interjurisdictional emergency management plans;

(5) coordinate deployment of mobile support units;

(6) establish and operate training programs and programs of public information or assist political subdivisions and emergency management agencies to establish and operate the programs;

(7) make surveys of public and private industries, resources, and facilities in the state that are necessary to carry out the purposes of this chapter;

(8) plan and make arrangements for the availability and use of any private facilities, services, and property and provide for payment for use under terms and conditions agreed on if the facilities are used and payment is necessary;

(9) establish a register of persons with types of training and skills important in disaster mitigation, preparedness, response, and recovery;

(10) establish a register of mobile and construction equipment and temporary housing available for use in a disaster;

(11) assist political subdivisions in developing plans for the humane evacuation, transport, and temporary sheltering of service animals and household pets in a disaster;

(12) prepare, for issuance by the governor, executive orders and regulations necessary or appropriate in coping with disasters;

(13) cooperate with the federal government and any public or private agency or entity in achieving any purpose of this

chapter and in implementing programs for disaster mitigation, preparation, response, and recovery; [~~and~~]

(14) define "individuals with special needs" in the context of a disaster; and

(15) do other things necessary, incidental, or appropriate for the implementation of this chapter.

SECTION 3. Subchapter F, Chapter 418, Government Code, is amended by adding Section 418.126 to read as follows:

Sec. 418.126. PRE-EVENT DISASTER RESPONSE CONTRACTS. (a) The General Land Office shall solicit proposals for and enter into one or more pre-event contracts that may be activated by the office in the event of a weather-related disaster declaration to obtain services for debris removal from beaches as needed following the disaster.

(b) The Texas Department of Transportation shall solicit proposals for and enter into one or more pre-event contracts that may be activated by the department in the event of a weather-related disaster declaration to obtain services for debris removal from the state highway system as needed following the disaster.

(c) The Texas Department of Housing and Community Affairs shall solicit proposals for and enter into one or more pre-event contracts that may be activated by the department in the event of a weather-related disaster declaration to obtain temporary or emergency housing as needed following the disaster.

(d) Services obtained under a pre-event contract under this section may be paid for with money from the disaster contingency fund under Section 418.073.

SECTION 4. Subtitle G, Title 10, Government Code, is amended by adding Chapter 2311 to read as follows:

CHAPTER 2311. ENERGY SECURITY TECHNOLOGIES FOR CRITICAL GOVERNMENTAL FACILITIES

Sec. 2311.001. DEFINITIONS. In this chapter:

(1) "Combined heating and power system" means a system that:

(A) is located on the site of a facility;

(B) is the primary source of both electricity and thermal energy for the facility;

(C) can provide all of the electricity needed to power the facility's critical emergency operations for at least 14 days; and

(D) has an overall efficiency of energy use that exceeds 60 percent.

(2) "Critical governmental facility" means a building owned by the state or a political subdivision of the state that is expected to:

(A) be continuously occupied;

(B) maintain operations for at least 6,000 hours each year;

(C) have a peak electricity demand exceeding 500 kilowatts; and

(D) serve a critical public health or public safety function during a natural disaster or other emergency situation that may result in a widespread power outage, including a:

(i) command and control center;

(ii) shelter;

(iii) prison or jail;

(iv) police or fire station;

(v) communications or data center;

(vi) water or wastewater facility;

(vii) hazardous waste storage facility;

(viii) biological research facility;

(ix) hospital; or

(x) food preparation or food storage facility.

Sec. 2311.002. COMBINED HEATING AND POWER SYSTEMS. When constructing or extensively renovating a critical governmental facility or replacing major heating, ventilation, and air-conditioning equipment for a critical governmental facility, the entity with charge and control of the facility shall evaluate whether equipping the facility with a combined heating and power system would result in expected energy savings that would exceed the expected costs of purchasing, operating, and maintaining the system over a 20-year period. The entity may equip the facility with a combined heating and power system if the expected energy savings exceed the expected costs.

SECTION 5. Section 2210.001, Insurance Code, is amended to read as follows:

Sec. 2210.001. PURPOSE. The primary purpose of the Texas Windstorm Insurance Association is the provision of an [~~An~~] adequate market for windstorm and[~~,~~] hail[~~, and fire~~] insurance in

the seacoast territory of this state. The legislature finds that the provision of adequate windstorm and hail insurance is necessary to the economic welfare of this state, and without that insurance, the orderly growth and development of this state would be severely impeded. This chapter provides a method by which adequate windstorm and[~~,~~] hail[~~, and fire~~] insurance may be obtained in certain designated portions of the seacoast territory of this state. The association is intended to serve as a residual insurer of last resort for windstorm and hail insurance in the seacoast territory. The association shall:

(1) function in such a manner as to not be a direct competitor in the private market; and

(2) provide windstorm and hail insurance coverage to those who are unable to obtain that coverage in the private market.

SECTION 6. Section 2210.002, Insurance Code, is amended to read as follows:

Sec. 2210.002. SHORT TITLE; SUNSET PROVISION. (a) This chapter may be cited as the Texas Windstorm Insurance Association Act.

(b) The association is subject to review under Chapter 325, Government Code (Texas Sunset Act), but is not abolished under that chapter. The association shall be reviewed during the period in which state agencies abolished in 2015 are reviewed. The association shall pay the costs incurred by the Sunset Advisory Commission in performing the review of the association under this subsection. The Sunset Advisory Commission shall determine the costs of the review performed under this subsection, and the

association shall pay the amount of those costs promptly on receipt of a statement from the Sunset Advisory Commission regarding those costs. This subsection expires September 1, 2015.

SECTION 7. Subchapter A, Chapter 2210, Insurance Code, is amended by adding Section 2210.0025 to read as follows:

Sec. 2210.0025. BIENNIAL REPORT TO LEGISLATURE. On or before December 31 of each even-numbered year, the board of directors shall submit to the commissioner, the appropriate committees of each house of the legislature, and the Sunset Advisory Commission a written report relating to the operations of the association during the preceding biennium. The report must include:

(1) any proposed changes in the laws relating to regulation of the association and a statement of the reasons for the changes; and

(2) any information regarding association operations or procedures that is requested by the department to be addressed in the report.

SECTION 8. Section 2210.003, Insurance Code, is amended by adding Subdivision (3-a) and amending Subdivision (6) to read as follows:

(3-a) "Catastrophe reserve trust fund" means the trust fund established under Subchapter J.

(6) "Insurance" means Texas [~~fire and explosion insurance and Texas~~] windstorm and hail insurance.

SECTION 9. Subsection (a), Section 2210.004, Insurance Code, is amended to read as follows:

(a) Except as provided by Subsection (h), for purposes of this chapter and subject to this section, "insurable property" means immovable property at a fixed location in a catastrophe area or corporeal movable property located in that immovable property, as designated in the plan of operation, that is determined by the association according to the criteria specified in the plan of operation to be in an insurable condition against windstorm and hail [~~or fire and explosion, as appropriate~~], as determined by normal underwriting standards. The term includes property described by Section 2210.209.

SECTION 10. Section 2210.005, Insurance Code, is amended to read as follows:

Sec. 2210.005. DESIGNATION AS CATASTROPHE AREA [~~OR INADEQUATE FIRE INSURANCE AREA~~]; REVOCATION OF DESIGNATION. (a) After at least 10 days' notice and a hearing, the commissioner may designate an area of the seacoast territory of this state as a catastrophe area if the commissioner determines, unless such a determination results in an adverse impact to the exposure of the association, that windstorm and hail insurance is not reasonably available to a substantial number of the owners of insurable property located in that territory because the territory is subject to unusually frequent and severe damage resulting from windstorms or hailstorms.

(b) [~~After at least 10 days' notice and a hearing, the commissioner may designate an area of this state as an inadequate fire insurance area if the commissioner determines that fire and explosion insurance is not reasonably available to a substantial~~

~~number of owners of insurable property located in that area.~~

[~~(c)~~] The commissioner shall revoke a designation made under Subsection (a) [~~or (b)~~] if the commissioner determines, after at least 10 days' notice and a hearing, that the applicable insurance coverage is no longer reasonably unavailable to a substantial number of owners of insurable property within the designated territory.

(c) [~~(d)~~] If the association determines that windstorm and hail insurance [~~or fire and explosion insurance~~] is no longer reasonably unavailable to a substantial number of owners of insurable property in a territory designated as a catastrophe area [~~or inadequate fire insurance area, as applicable~~], the association may request in writing that the commissioner revoke the designation. After at least 10 days' notice and a hearing, but not later than the 30th day after the date of the hearing, the commissioner shall:

(1) approve the request and revoke the designation; or

(2) reject the request.

SECTION 11. Section 2210.008, Insurance Code, is amended to read as follows:

Sec. 2210.008. DEPARTMENT ORDERS; GENERAL RULEMAKING AUTHORITY. (a) The [~~After notice and hearing as provided by Subsection (b), the~~] commissioner may issue any orders that the commissioner considers necessary to implement this chapter[~~, including orders regarding maximum rates, competitive rates, and policy forms~~].

(b) The commissioner may adopt rules in the manner

prescribed by Subchapter A, Chapter 36, as reasonable and necessary to implement this chapter [~~Before the commissioner adopts an order, the department shall post notice of the hearing on the order at the secretary of state's office in Austin and shall hold a hearing to consider the proposed order. Any person may appear at the hearing and testify for or against the adoption of the order~~].

(c) In rules adopted under this chapter, the commissioner shall define the meaning of "alter" and "alteration" for purposes of this chapter, specifically as used in Subchapters E and F.

SECTION 12. Subchapter A, Chapter 2210, Insurance Code, is amended by adding Section 2210.009 to read as follows:

Sec. 2210.009. LIST OF PRIVATE INSURERS; INCENTIVE PLAN. (a) The department shall maintain a list of all insurers that engage in the business of property and casualty insurance in the voluntary market in the seacoast territory.

(b) The department shall develop incentive programs in the manner described by Section 2210.053(b) to encourage authorized insurers to write insurance on a voluntary basis and to minimize the use of the association as a means to obtain insurance.

SECTION 13. Section 2210.052, Insurance Code, is amended by amending Subsections (a) and (d) and adding Subsection (e) to read as follows:

(a) Each member of the association shall participate in insured losses and operating expenses of the association, in excess of premium and other revenue [~~the writings, expenses, profits, and losses~~] of the association, in the proportion that the net direct premiums of that member during the preceding calendar year bears to

the aggregate net direct premiums by all members of the association, as determined using the information provided under Subsection (b).

(d) Notwithstanding Subsection (a), a member, in accordance with the plan of operation, is entitled to receive credit for similar insurance voluntarily written in areas [~~an area~~] designated by the commissioner. The member's participation in the insured losses and operating expenses of the association in excess of premium and other revenue [~~writings~~] of the association shall be reduced in accordance with the plan of operation.

(e) Notwithstanding Subsections (a)-(d), an insurer that becomes a member of the association and that has not previously been a member of the association is not subject to participation in any insured losses and operating expenses of the association in excess of premium and other revenue of the association until the second anniversary of the date on which the insurer first becomes a member of the association.

SECTION 14. Subsection (b), Section 2210.056, Insurance Code, is amended to read as follows:

(b) The association's assets may not be used for or diverted to any purpose other than to:

(1) satisfy, in whole or in part, the liability of the association on claims made on policies written by the association;

(2) make investments authorized under applicable law;

(3) pay reasonable and necessary administrative expenses incurred in connection with the operation of the association and the processing of claims against the association;

[~~or~~]

(4) satisfy, in whole or in part, the obligations of the association incurred in connection with Subchapters B-1, J, and M, including reinsurance, public securities, and financial instruments; or

(5) make remittance under the laws of this state to be used by this state to:

(A) pay claims made on policies written by the association;

(B) purchase reinsurance covering losses under those policies; or

(C) prepare for or mitigate the effects of catastrophic natural events.

SECTION 15. Subsection (c), Section 2210.060, Insurance Code, is amended to read as follows:

(c) Subsection (a) does not authorize the association to indemnify a member of the association for participating in the assessments made by [~~writings, expenses, profits, and losses of~~] the association in the manner provided by this chapter.

SECTION 16. Chapter 2210, Insurance Code, is amended by adding Subchapter B-1 to read as follows:

SUBCHAPTER B-1. PAYMENT OF LOSSES

Sec. 2210.071. PAYMENT OF EXCESS LOSSES; PAYMENT FROM RESERVES AND TRUST FUND. (a) If an occurrence or series of occurrences in a catastrophe area results in insured losses and operating expenses of the association in excess of premium and other revenue of the association, the excess losses and operating

expenses shall be paid as provided by this subchapter.

(b) The association shall pay losses in excess of premium and other revenue of the association from available reserves of the association and available amounts in the catastrophe reserve trust fund.

Sec. 2210.072. PAYMENT FROM CLASS 1 PUBLIC SECURITIES; FINANCIAL INSTRUMENTS. (a) Losses not paid under Section 2210.071 shall be paid as provided by this section from the proceeds from Class 1 public securities authorized to be issued in accordance with Subchapter M on or after the date of any occurrence or series of occurrences that results in insured losses. Public securities issued under this section must be repaid within a period not to exceed 10 years, and may be repaid sooner if the board of directors elects to do so and the commissioner approves.

(b) Public securities described by Subsection (a) shall be issued as necessary in a principal amount not to exceed $1 billion per year.

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

(d) The association may borrow from, or enter into other financing arrangements with, any market source, under which the market source makes interest-bearing loans or other financial instruments to the association to enable the association to pay losses under this section or to obtain public securities under this section. For purposes of this subsection, financial instruments includes commercial paper.

Sec. 2210.073. PAYMENT FROM CLASS 2 PUBLIC SECURITIES. (a) Losses not paid under Sections 2210.071 and 2210.072 shall be paid as provided by this section from proceeds from Class 2 public securities authorized to be issued in accordance with Subchapter M on or after the date of any occurrence that results in insured losses under this subsection. Public securities issued under this section must be repaid within a period not to exceed 10 years, and may be repaid sooner if the board of directors elects to do so and the commissioner approves.

(b) Public securities described by Subsection (a) may be issued as necessary in a principal amount not to exceed $1 billion per year. If the losses are paid with public securities described by this section, the public securities shall be repaid in the manner prescribed by Subchapter M.

Sec. 2210.074. PAYMENT THROUGH CLASS 3 PUBLIC SECURITIES. (a) Losses not paid under Sections 2210.071, 2210.072, and 2210.073 shall be paid as provided by this section from proceeds from public securities authorized to be issued in accordance with Subchapter M on or after the date of any occurrence that results in insured losses under this subsection or through reinsurance as described by Section 2210.075. Public securities issued under this section must be repaid within a period not to exceed 10 years, and may be repaid sooner if the board of directors elects to do so and the commissioner approves.

(b) Public securities described by Subsection (a) may be issued as necessary in a principal amount not to exceed $500 million per year. If the losses are paid with public securities described by

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

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

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

SECTION 17. The heading to Subchapter C, Chapter 2210, Insurance Code, is amended to read as follows:

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

SECTION 18. Section 2210.102, Insurance Code, is amended to read as follows:

Sec. 2210.102. COMPOSITION. (a) The board of directors is composed of [~~the following~~] nine members appointed by the

commissioner in accordance with this section.

(b) Four members must be [~~: (1) five~~] representatives of the insurance industry.

(c) Four members must [~~different insurers who are members of the association, elected by the members as provided by the plan of operation;~~

[~~(2) two public representatives who are nominated by the office of public insurance counsel and who~~], as of the date of the appointment, [~~:~~

[~~(A)~~] reside in the first tier coastal counties. At least one of the members appointed under this subsection must be a [~~catastrophe area; and~~

[~~(B) are policyholders of the association; and~~

[~~(3) two~~] property and casualty agent who is licensed under this code and is not a captive agent.

(d) One member must be a representative of an area of this state that is not located in the seacoast territory with demonstrated expertise in insurance and actuarial principles.

(e) All members must [~~agents, each of whom must:~~

[~~(A)~~] have demonstrated experience in insurance, general business, or actuarial principles sufficient to make the success of the association probable[~~;~~

[~~(B) maintain the agent's principal office, as of the date of the appointment, in a catastrophe area; and~~

[~~(C) hold a license under Chapter 4051 as a general property and casualty agent or a personal lines property and casualty agent~~].

(f) Insurers who are members of the association shall nominate, from among those members, persons to fill any vacancy in the four board of director seats reserved for representatives of the insurance industry. The board of directors shall solicit nominations from the members and submit the nominations to the commissioner. The nominee slate submitted to the commissioner under this subsection must include at least three more names than the number of vacancies. The commissioner shall appoint replacement insurance industry representatives from the nominee slate.

(g) The commissioner shall appoint one person to serve as a nonvoting member of the board to advise the board regarding issues relating to the inspection process. The commissioner may give preference in an appointment under this subsection to a person who is a qualified inspector under Section 2210.254. The nonvoting member appointed under this section must:

(1) be an engineer licensed by, and in good standing with, the Texas Board of Professional Engineers;

(2) reside in a first tier coastal county; and

(3) be knowledgeable of, and have professional expertise in, wind-related design and construction practices in coastal areas that are subject to high winds and hurricanes.

(h) [~~(b)~~] The persons appointed under Subsection (c) [~~Subsections (a)(2) and (3)~~] must be from different counties.

SECTION 19. Section 2210.103, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c) A member of the board of directors may be removed by the

commissioner with cause stated in writing and posted on the association's website. The commissioner shall appoint a replacement in the manner provided by Section 2210.102 for a member who leaves or is removed from the board of directors.

SECTION 20. Section 2210.104, Insurance Code, is amended to read as follows:

Sec. 2210.104. OFFICERS. The board of directors shall elect from the board's membership an executive committee consisting of a presiding officer, assistant presiding officer, and secretary-treasurer. [~~At least one of the officers must be a member appointed under Section 2210.102(a)(2) or (3).~~]

SECTION 21. Section 2210.105, Insurance Code, is amended by adding Subsection (d) to read as follows:

(d) Except for an emergency meeting, a meeting of the board of directors shall be held at a location as determined by the board of directors.

SECTION 22. Subchapter C, Chapter 2210, Insurance Code, is amended by adding Section 2210.1051 to read as follows:

Sec. 2210.1051. MEETINGS OF BOARD OF DIRECTORS. (a) Notwithstanding Chapter 551, Government Code, or any other law, members of the board of directors may meet by telephone conference call, videoconference, or other similar telecommunication method. The board may use telephone conference call, videoconference, or other similar telecommunication method for purposes of establishing a quorum or voting or for any other meeting purpose in accordance with this subsection and Subsection (b). This subsection applies without regard to the subject matter

discussed or considered by the members of the board at the meeting.

(b) A meeting held by telephone conference call, videoconference, or other similar telecommunication method:

(1) is subject to the notice requirements applicable to other meetings of the board of directors;

(2) may not be held unless notice of the meeting specifies the location of the meeting and a recording of the meeting is posted on the association's website;

(3) must be audible to the public at the location specified in the notice under Subdivision (2); and

(4) must provide two-way audio communication between all members of the board attending the meeting during the entire meeting, and if the two-way audio communication link with members attending the meeting is disrupted so that a quorum of the board is no longer participating in the meeting, the meeting may not continue until the two-way audio communication link is reestablished.

SECTION 23. Subchapter C, Chapter 2210, Insurance Code, is amended by adding Section 2210.107 to read as follows:

Sec. 2210.107. PRIMARY BOARD OBJECTIVES. The primary objectives of the board of directors are to ensure that the association:

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

(2) complies with sound insurance principles; and

(3) meets all standards imposed under this chapter.

SECTION 24. Section 2210.151, Insurance Code, is amended to

read as follows:

Sec. 2210.151. ADOPTION OF PLAN OF OPERATION. With the advice of the board of directors, the commissioner by rule shall adopt the plan of operation to provide[~~:~~

[~~(1)~~] Texas windstorm and hail insurance in a catastrophe area[~~; and~~

[~~(2) Texas fire and explosion insurance in an inadequate fire insurance area~~].

SECTION 25. Subsection (a), Section 2210.152, Insurance Code, is amended to read as follows:

(a) The plan of operation must:

(1) provide for the efficient, economical, fair, and nondiscriminatory administration of the association; and

(2) include:

(A) a plan for the equitable assessment of the members of the association to defray losses and expenses;

(B) underwriting standards;

(C) procedures for accepting and ceding reinsurance;

(D) procedures for obtaining and repaying amounts under any financial instruments authorized under this chapter;

(E) procedures for determining the amount of insurance to be provided to specific risks;

(F) [~~(E)~~] time limits and procedures for processing applications for insurance; and

(G) [~~(F)~~] other provisions as considered

necessary by the department to implement the purposes of this chapter.

SECTION 26. Section 2210.202, Insurance Code, is amended to read as follows:

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

(b) A [~~general~~] property and casualty agent [~~or a personal lines property and casualty agent~~] must submit an application for the insurance coverage on behalf of the applicant on forms prescribed by the association. The application must contain a

statement as to whether the applicant has submitted or will submit the premium in full from personal funds or, if not, to whom a balance is or will be due. Each application for initial or renewal coverage must also contain a statement that the agent possesses proof of the declination described by Subsection (a) and proof of flood insurance coverage or unavailability of that coverage as described by Section 2210.203(a-1).

SECTION 27. Section 2210.203, Insurance Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) This subsection applies only to a structure constructed, altered, remodeled, or enlarged on or after September 1, 2009, and only for insurable property located in areas designated by the commissioner. Notwithstanding Subsection (a), if all or any part of the property to which this subsection applies is located in Zone V or another similar zone with an additional hazard associated with storm waves, as defined by the National Flood Insurance Program, and if flood insurance under that federal program is available, the association may not issue an insurance policy for initial or renewal coverage unless evidence that the property is covered by a flood insurance policy is submitted to the association. An agent offering or selling a Texas windstorm and hail insurance policy in any area designated by the commissioner under this subsection shall offer flood insurance coverage to the prospective insured, if that coverage is available.

SECTION 28. Section 2210.204, Insurance Code, is amended by amending Subsection (d) and adding Subsection (e) to read as follows:

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

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

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

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

(3) death of the policyholder; or

(4) total loss of the property.

SECTION 29. Subchapter E, Chapter 2210, Insurance Code, is amended by adding Section 2210.2041 to read as follows:

Sec. 2210.2041. NONREFUNDABLE SURCHARGE. A nonrefundable surcharge established under this chapter is not refundable under this code for any reason or purpose.

SECTION 30. Section 2210.251, Insurance Code, is amended to read as follows:

Sec. 2210.251. INSPECTION REQUIREMENTS. (a) Except as provided by this section, to be considered insurable property

eligible for windstorm and hail insurance coverage from the association, a structure that is constructed, altered, remodeled, enlarged, or repaired or to which additions are made on or after January 1, 1988, must be inspected or approved by the department for compliance with the plan of operation.

(b) After January 1, 2004, for geographic areas specified by the commissioner, the commissioner by rule shall adopt the 2003 International Residential Code for one- and two-family dwellings published by the International Code Council. For those geographic areas, the commissioner by rule may adopt a subsequent edition of that code and may adopt any supplements published by the International Code Council and amendments to that code.

(c) After January 1, 2004, a person must submit a notice of a windstorm inspection to the unit responsible for certification of windstorm inspections at the department before beginning to construct, alter, remodel, enlarge, or repair a structure.

(d) A structure constructed, altered, remodeled, enlarged, or repaired or to which additions were made before January 1, 1988, that is located in an area that was governed at the time of the construction, alteration, remodeling, enlargement, repair, or addition by a building code recognized by the association is insurable property eligible for windstorm and hail insurance coverage from the association without compliance with the inspection or approval requirements of this section or the plan of operation.

(e) A structure constructed, altered, remodeled, enlarged, or repaired or to which additions were made before January 1, 1988,

that is located in an area not governed by a building code recognized by the association is insurable property eligible for windstorm and hail insurance coverage from the association without compliance with the inspection or approval requirements of this section or the plan of operation if the structure was previously insured by an insurer authorized to engage in the business of insurance in this state and the structure is in essentially the same condition as when previously insured, except for normal wear and tear, and is without any structural change other than a change made according to code. For purposes of this subsection, evidence of previous insurance coverage must reflect coverage for the perils of windstorm and hail for the property within the 12-month period immediately preceding the date of the application for coverage through the association and includes:

(1) a copy of a previous insurance policy;

(2) copies of canceled checks or agent's records that show payments for previous policies; and

(3) a copy of the title to the structure or mortgage company records that show previous policies.

(f) Notwithstanding any other provision of this section, a residential structure insured by the association as of September 1, 2009, may continue coverage through the association subject to the inspection requirements imposed under Section 2210.258.

(g) The department shall issue a certificate of compliance for each structure that qualifies for coverage. The certificate is evidence of insurability of the structure by the association.

(h) [~~(g)~~] The department may enter into agreements and

contracts as necessary to implement this section.

(i) [~~(h)~~] The department may charge a reasonable fee to cover the cost of making building requirements and inspection standards available to the public.

(j) The department shall charge a reasonable fee for each inspection of each structure in an amount set by the commissioner.

(k) Without limitation of the department's authority to otherwise enforce this chapter, the department shall monitor the association's compliance with this subchapter.

(l) Except as otherwise provided by this subchapter, the department may not consider any request that a structure be certified as insurable property if, within six months after the final inspection of a structure, the department has not received:

(1) fully completed documentation verifying that the structure has been constructed, altered, remodeled, enlarged, or repaired, or any addition to the structure has been made, in compliance with the plan of operation; and

(2) full payment of all inspection fees owed to the department, including any fees related to prior department inspections.

(m) If a structure is rejected for coverage under Subsection (l), a person may make a new request for certification and the structure may be reinspected for compliance with the plan of operation. A request for certification brought under this subsection must meet the requirements of Subsection (l).

SECTION 31. Subchapter F, Chapter 2210, Insurance Code, is amended by adding Sections 2210.258 and 2210.259 to read as

follows:

Sec. 2210.258. MANDATORY COMPLIANCE WITH BUILDING CODES; ELIGIBILITY. (a) Notwithstanding any other provision of this chapter, to be eligible for insurance through the association, all construction, alteration, remodeling, enlargement, and repair of, or addition to, any structure located in the catastrophe area that is begun on or after the effective date of Sections 5 through 49, H.B. No. 4409, Acts of the 81st Legislature, Regular Session, 2009, must be performed in compliance with the applicable building code standards, as set forth in the plan of operation.

(b) The association may not insure a structure described by Subsection (a) until:

(1) the structure has been inspected for compliance with the plan of operation in accordance with Section 2210.251(a); and

(2) a certificate of compliance has been issued for the structure in accordance with Section 2210.251(g).

Sec. 2210.259. SURCHARGE FOR CERTAIN NONCOMPLIANT STRUCTURES. (a) A noncompliant residential structure insured by the association as of September 1, 2009, under Section 2210.251(f) that had been approved for insurability under the approval process regulations in effect on September 1, 2009, is subject to an annual premium surcharge in an amount equal to 15 percent of the premium for insurance coverage obtained through the association. The surcharge under this subsection applies to each policy issued or renewed by the association on or after the effective date of Sections 5 through 49, H.B. No. 4409, Acts of the 81st Legislature,

Regular Session, 2009, and is due on the issuance or renewal of the policy.

(b) A premium surcharge collected under this section shall be deposited in the catastrophe reserve trust fund. A premium surcharge under this section is a separate nonrefundable charge in addition to the premiums collected and is not subject to premium tax or commissions. Failure to pay the surcharge by a policyholder constitutes failure to pay premium for purposes of policy cancellation.

SECTION 32. Subsections (c) and (d), Section 2210.351, Insurance Code, are amended to read as follows:

(c) Except as provided by Subsection (d), as [~~As~~] soon as reasonably possible after the filing has been made, the commissioner in writing shall approve[~~, modify,~~] or disapprove the filing. A filing is considered approved unless [~~modified or~~] disapproved on or before the 30th day after the date of the filing. If the commissioner disapproves a filing, the commissioner shall state in writing the reasons for the disapproval and the criteria the association is required to meet to obtain approval.

(d) The association may use a rate filed by the association without prior commissioner approval if:

(1) the filing is made not later than the 30th day before the date of any use or delivery for use of the rate;

(2) the filed rate does not exceed 105 percent of the rate in effect on the date on which the filing is made;

(3) the filed rate does not reflect a rate change for an individual rating class that is 10 percent higher than the rate

in effect for that rating class on the date on which the filing is made; and

(4) the commissioner has not disapproved the filing in writing, advising of the reasons for the disapproval and the criteria the association is required to meet to obtain approval [~~If at any time the commissioner determines that a filing approved under Subsection (c) no longer meets the requirements of this chapter, the commissioner may, after a hearing held on at least 20 days' notice to the association that specifies the matters to be considered at the hearing, issue an order withdrawing approval of the filing. The order must specify in what respects the commissioner determines that the filing no longer meets the requirements of this chapter. An order issued under this subsection may not take effect before the 30th day after the date of issuance of the order~~].

SECTION 33. Section 2210.352, Insurance Code, is amended to read as follows:

Sec. 2210.352. MANUAL RATE FILINGS: ANNUAL FILING. (a) Not later than August 15 of each year, the association shall file with the department [~~for approval by the commissioner~~] a proposed manual rate for all types and classes of risks written by the association[~~. Chapter 40 does not apply to:~~

[~~(1) a filing made under this subsection; or~~

[~~(2) a department action with respect to the filing~~].

(a-1) The association may use a rate filed by the association under this section without prior commissioner approval if:

(1) the filing is made not later than the 30th day before the date of any use or delivery for use of the rate;

(2) the filed rate does not exceed 105 percent of the rate used by the association in effect on the date on which the filing is made; and

(3) the filed rate does not reflect a rate change for an individual rating class that is 10 percent higher than the rate in effect for that rating class on the date on which the filing is made.

(a-2) The association may not file to use a rate described by Subsection (a-1) more than once per year.

(b) Except as provided by Subsection (a-1), before [~~Before~~] approving or[~~,~~] disapproving[~~, or modifying~~] a filing under this section, the commissioner shall provide all interested persons a reasonable opportunity to:

(1) review the filing;

(2) obtain copies of the filing on payment of any legally required copying cost; and

(3) submit to the commissioner written comments or information related to the filing.

(c) Except as provided by Subsection (a-1), [~~The commissioner shall schedule an open meeting not later than the 45th day after the date the department receives a filing at which interested persons may present written or oral comments relating to the filing.~~

[~~(d) An open meeting under Subsection (c) is subject to Chapter 551, Government Code, but is not a contested case hearing~~

~~under Chapter 2001, Government Code.~~

[~~(e) The department shall file with the secretary of state for publication in the Texas Register notice that a filing has been made under Subsection (a) not later than the seventh day after the date the department receives the filing. The notice must include information relating to:~~

[~~(1) the availability of the filing for public inspection at the department during regular business hours and the procedures for obtaining copies of the filing;~~

[~~(2) procedures for making written comments related to the filing; and~~

[~~(3) the time, place, and date of the open meeting scheduled under Subsection (c) at which interested persons may present written or oral comments relating to the filing.~~

[~~(f) After the conclusion of the open meeting,~~] the commissioner shall approve or[~~,~~] disapprove[~~, or modify~~] the filing in writing not later than October [~~November~~] 15 of the year in which the filing was made. If the filing is not approved or[~~,~~] disapproved[~~, or modified~~] on or before that date, the filing is considered approved.

(d) Except as provided by Subsection (a-1), if [~~(g) If~~] the commissioner disapproves a filing, the commissioner shall state in writing the reasons for the disapproval and the criteria the association is required to meet to obtain approval.

SECTION 34. Section 2210.353, Insurance Code, is amended to read as follows:

Sec. 2210.353. MANUAL RATE FILINGS: AMENDED ANNUAL FILING.

(a) Not later than the 30th day after the date the association receives the commissioner's written disapproval under Section 2210.352(c) [~~2210.352(f)~~], the association may file with the commissioner an amended annual filing that conforms to all criteria stated in that written disapproval.

(b) Not later than the 30th day after the date an amended filing made under Subsection (a) is received, the commissioner shall approve [~~the amended filing with or without modifications~~] or disapprove the amended filing. If the filing is not [~~modified or~~] disapproved on or before the 30th day after the date of receipt, the filing is considered approved [~~without modification~~]. If the commissioner disapproves a filing, the commissioner shall state in writing the reasons for the disapproval and the criteria the association is required to meet to obtain approval.

(c) Before approving or disapproving an amended annual filing under this section, the commissioner shall, in the manner provided by Section 2210.352(b), provide all interested persons a reasonable opportunity to:

(1) review the amended annual filing;

(2) obtain copies of the amended annual filing on payment of any legally required copying cost; and

(3) submit to the commissioner written comments or information related to the amended annual filing.

[~~(d) The commissioner may, in the manner provided by Sections 2210.352(c) and (d), hold a hearing regarding an amended filing not later than the 20th day after the date the department receives the amended filing.~~

[~~(e) Not later than the 10th day after the date the hearing is concluded, the commissioner shall approve or disapprove the amended filing.~~

[~~(f) The requirements imposed under Subsection (a) and under Sections 2210.352(e), (f), and (g) apply to a hearing conducted under this section and the commissioner's decision resulting from that hearing.~~]

SECTION 35. Subsections (a), (c), and (d), Section 2210.354, Insurance Code, are amended to read as follows:

(a) In conjunction with the review of a filing under Section 2210.352, other than a filing made under Subsection (a-1) of that section [~~or 2210.353~~]:

(1) the commissioner may request the association to provide additional supporting information relating to the filing; and

(2) any interested person may file a written request with the commissioner, during a period specified by the commissioner by rule, for additional supporting information relating to the filing.

(c) The commissioner shall submit to the association all requests for additional supporting information made under this section for the commissioner's use and the use of any interested person not later than the 21st day after the date of receipt of the filing.

(d) Unless a different period is requested by the association and approved by the commissioner, the association shall provide the information to the commissioner not later than the

fifth day after the date the written request for additional supporting information is delivered to the association. [~~The department shall notify an interested person who has requested additional information of the availability of the information not later than one business day after the date the commissioner receives the information from the association.~~]

SECTION 36. Section 2210.355, Insurance Code, is amended by adding Subsections (h) and (i) to read as follows:

(h) In adopting rates under this chapter, recognized catastrophe models may be considered.

(i) The association may establish rating territories and may vary rates among the territories as provided by this subsection. A rating territory that subdivides a county may be used only if the rate for any subdivision in the county is not more than:

(A) five percent higher than the rate used by the association in 2009 in any other subdivision in the county;

(B) six percent higher than the rate used by the association in 2010 in any other subdivision in the county;

(C) seven percent higher than the rate used by the association in 2011 in any other subdivision in the county; and

(D) eight percent higher than the rate used by the association in 2012 in any other subdivision in the county.

SECTION 37. Subsection (b), Section 2210.361, Insurance Code, is amended to read as follows:

(b) After notice and hearing, the commissioner may accept[~~, modify,~~] or reject a recommendation made by the association under this section. [~~Chapter 40 does not apply to an action taken under~~

~~this section.~~]

SECTION 38. Subsections (a), (c), and (d), Section 2210.452, Insurance Code, are amended to read as follows:

(a) The commissioner shall adopt rules under which the association makes [~~members relinquish their net equity on an annual basis as provided by those rules by making~~] payments to the catastrophe reserve trust fund. The trust fund may be used only to fund[~~:~~

[~~(1)~~] the obligations of the trust fund under Subchapter B-1 [~~Section 2210.058(a); and~~

[~~(2) the mitigation and preparedness plan established under Section 2210.454 to reduce the potential for payments by association members that give rise to tax credits in the event of loss~~].

(c) At the end of each calendar year or policy year, the association shall use [~~pay~~] the net gain from operations [~~equity~~] of the association [~~a member~~], including all premium and other revenue of the association in excess of incurred losses and operating expenses, to make payments to the trust fund, to procure [~~or a~~] reinsurance, or to make payments to the trust fund and to procure reinsurance [~~program approved by the commissioner~~].

(d) The commissioner by rule shall establish the procedure relating to the disbursement of money from the trust fund to policyholders in the event of an occurrence or series of occurrences within a catastrophe area that results in a disbursement under Subchapter B-1 [~~Section 2210.058(a)~~].

SECTION 39. Section 2210.453, Insurance Code, is amended to

read as follows:

Sec. 2210.453. REINSURANCE [~~PROGRAM~~]. (a) The association may [~~shall~~]:

(1) make payments into the trust fund; and [~~or~~]

(2) purchase [~~establish a~~] reinsurance [~~program approved by the department~~].

(b) The [~~With the approval of the department, the~~] association may purchase [~~establish a~~] reinsurance [~~program~~] that operates in addition to or in concert with the trust fund, public securities, financial instruments, and assessments authorized by this chapter.

SECTION 40. Subsection (b), Section 2210.454, Insurance Code, is amended to read as follows:

(b) Each state fiscal year, the department may fund the mitigation and preparedness plan using available funds [~~the investment income of the trust fund in an amount not less than $1 million and not more than 10 percent of the investment income of the prior fiscal year. From that amount and as part of that plan, the department may use in each fiscal year $1 million for the windstorm inspection program established under Section 2210.251~~].

SECTION 41. Chapter 2210, Insurance Code, is amended by adding Subchapters M and N to read as follows:

SUBCHAPTER M. PUBLIC SECURITIES PROGRAM

Sec. 2210.601. PURPOSE. The legislature finds that authorizing the issuance of public securities to provide a method to raise funds to provide windstorm and hail insurance through the association in certain designated portions of the state is for the

benefit of the public and in furtherance of a public purpose.

Sec. 2210.602. DEFINITIONS. In this subchapter:

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

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

(3) "Class 2 public securities" means public securities authorized to be issued on or after the occurrence of a catastrophic event by Section 2210.073.

(4) "Class 3 public securities" means public securities authorized to be issued on or after the occurrence of a catastrophic event by Section 2210.074.

(5) "Credit agreement" has the meaning assigned by Chapter 1371, Government Code.

(6) "Insurer" means each property and casualty insurer authorized to engage in the business of property and casualty insurance in this state and an affiliate of such an insurer, as described by Section 823.003, including an affiliate that is not authorized to engage in the business of property and casualty insurance in this state. The term specifically includes a county mutual insurance company, a Lloyd's plan, and a reciprocal or interinsurance exchange.

(7) "Public security" means a debt instrument or other

public security issued by the Texas Public Finance Authority.

(8) "Public security administrative expenses" means expenses incurred to administer public securities issued under this subchapter, including fees for credit enhancement, paying agents, trustees, and attorneys, and for other professional services.

(9) "Public security obligations" means the principal of a public security and any premium and interest on a public security issued under this subchapter, together with any amount owed under a related credit agreement.

(10) "Public security obligation revenue fund" means the dedicated trust fund established by the association and held by the Texas Safekeeping Trust Company outside the state treasury under this subchapter.

(11) "Public security resolution" means the resolution or order authorizing public securities to be issued under this subchapter.

Sec. 2210.603. APPLICABILITY OF OTHER LAWS. (a) The board shall issue the public securities as described by Section 2210.604 in accordance with and subject to the requirements of Chapter 1232, Government Code, other than Section 1232.108 of that chapter, and in accordance with and subject to other provisions of Title 9, Government Code, that apply to issuance of a public security by a state agency. In the event of a conflict, this subchapter controls.

(b) A purpose for which public securities are issued under this chapter constitutes an eligible project for purposes of Chapter 1371, Government Code.

Sec. 2210.604. ISSUANCE OF PUBLIC SECURITIES AUTHORIZED.

(a) At the request of the association and with the approval of the commissioner, the Texas Public Finance Authority shall issue Class 1, Class 2, or Class 3 public securities. The association and the commissioner must approve each tranche of commercial paper issued under a commercial paper program established under this chapter.

(b) The association shall specify in the association's request to the board the maximum principal amount of the public securities and the maximum term of the public securities.

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

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

(2) provide a public security reserve fund; and

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

Sec. 2210.605. TERMS OF ISSUANCE. (a) The board shall determine the method of sale, type and form of public security, maximum interest rates, and other terms of the public securities that, in the board's judgment, best achieve the goals of the association and effect the borrowing at the lowest practicable cost. The board may enter into a credit agreement in connection with the public securities.

(b) Public securities must be issued by the board on behalf of the association.

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

Sec. 2210.606. ADDITIONAL COVENANTS. The board may make additional covenants with respect to the public securities and the designated income and receipts of the association pledged to their payment, and provide for the flow of funds and the establishment, maintenance, and investment of funds and accounts with respect to the public securities, and the administration of those funds and accounts, as provided in the proceedings authorizing the public securities.

Sec. 2210.607. PUBLIC SECURITY PROCEEDS. The proceeds of public securities issued by the board under this subchapter may be deposited with the Texas Treasury Safekeeping Trust Company.

Sec. 2210.608. USE OF PUBLIC SECURITY PROCEEDS. (a) Public security proceeds, including investment income, shall be held in trust for the exclusive use and benefit of the association. The association may use the proceeds to:

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

(2) purchase reinsurance for the association;

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

(4) provide a public security reserve; and

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

(b) Any excess public security proceeds remaining after the purposes for which the public securities were issued are satisfied may be used to purchase or redeem outstanding public securities. If

there are no outstanding public security obligations or public security administrative expenses, the excess proceeds shall be transferred to the catastrophe reserve trust fund.

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

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

(c) The association shall deposit all revenue collected under Sections 2210.612, 2210.613, and 2210.6135 in the public security obligation revenue fund. Money deposited in the fund may be invested as permitted by general law. Money in the fund required to be used to pay public security obligations and public security

administrative expenses, if any, shall be transferred to the appropriate funds in the manner and at the time specified in the proceedings authorizing the public securities to ensure timely payment of obligations and expenses. This may include the board establishing funds and accounts with the comptroller that the board determines are necessary to administer and repay the public security obligations. If the association has not transferred amounts sufficient to pay the public security obligations to the board's designated interest and sinking fund in a timely manner, the board may direct the Texas Treasury Safekeeping Trust Company to transfer from the public security obligation revenue fund to the appropriate account the amount necessary to pay the public security obligation.

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

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

Sec. 2210.610. PUBLIC SECURITY PAYMENTS. (a) Revenues received from the premium surcharges under Section 2210.613 may be

applied only as provided by this subchapter.

(b) The association may pay public security obligations with other legally available funds.

(c) Public security obligations are payable only from sources provided for payment in this subchapter.

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

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

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

(3) deposited in the catastrophe reserve trust fund.

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

(b) The association may enter financing arrangements as described by Section 2210.072(d) as necessary to obtain public securities issued under that section. Nothing in this subsection shall prevent the authorization and creation of one or more programs for the issuance of commercial paper before the date of an occurrence that results in insured losses under Section 2210.072(a)

so long as no tranche of commercial paper is issued under a commercial paper program until after such an occurrence.

Sec. 2210.613. PAYMENT OF CLASS 2 PUBLIC SECURITIES. (a) The association shall pay Class 2 public securities issued under Section 2210.073 as provided by this section. Thirty percent of the cost of the public securities shall be paid through member assessments as provided by this section. The association shall notify each member of the association of the amount of the member's assessment under this section. The proportion of the losses allocable to each insurer under this section shall be determined in the manner used to determine each insurer's participation in the association for the year under Section 2210.052. A member of the association may not recoup an assessment paid under this subsection through a premium surcharge or tax credit.

(b) Seventy percent of the cost of the public securities shall be paid by a nonrefundable premium surcharge collected under this section in an amount set by the commissioner. On approval by the commissioner, each insurer, the association, and the Texas FAIR Plan Association shall assess a premium surcharge to its policyholders as provided by this section. The premium surcharge must be set in an amount sufficient to pay all debt service not already covered by available funds and all related expenses on the public securities.

(c) The premium surcharge under Subsection (b) shall be assessed on all policyholders who reside or have operations in, or whose insured property is located in a catastrophe area for each Texas windstorm and hail insurance policy and each property and

casualty insurance policy issued for property located in the catastrophe area. A premium surcharge under Subsection (b) applies to all policies that provide coverage on any premises, locations, operations, or property located in the area described by this subsection for all property and casualty lines of insurance, other than federal flood insurance, workers' compensation insurance, accident and health insurance, and medical malpractice insurance.

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

Sec. 2210.6135. PAYMENT OF CLASS 3 PUBLIC SECURITIES. (a) The association shall pay Class 3 public securities issued under Section 2210.074 as provided by this section through member assessments. The association shall assess the members of the association an amount not to exceed $500 million per year for the payment of the losses. The association shall notify each member of the association of the amount of the member's assessment under this section.

(b) The proportion of the losses allocable to each insurer under this section shall be determined in the manner used to determine each insurer's participation in the association for the year under Section 2210.052.

(c) A member of the association may not recoup an assessment paid under this section through a premium surcharge or tax credit.

Sec. 2210.614. REFINANCING PUBLIC SECURITIES. The

association may request the board to refinance any public securities issued in accordance with Subchapter B-1, whether Class 1, Class 2, or Class 3 public securities, with public securities payable from the same sources as the original public securities.

Sec. 2210.615. SOURCE OF PAYMENT; STATE DEBT NOT CREATED. (a) A public security or credit agreement is payable solely from revenue as provided by this subchapter.

(b) A public security issued under this subchapter, and any related credit agreement, is not a debt of this state or any state agency or political subdivision of this state, and does not constitute a pledge of the faith and credit of this state or any state agency or political subdivision of this state.

(c) Each public security, and any related credit agreement, issued under this subchapter must state on the security's face that:

(1) neither the state nor a state agency, political corporation, or political subdivision of the state is obligated to pay the principal of or interest on the public security except as provided by this subchapter; and

(2) neither the faith and credit nor the taxing power of the state or any state agency, political corporation, or political subdivision of the state is pledged to the payment of the principal of or interest on the public security.

Sec. 2210.616. STATE NOT TO IMPAIR PUBLIC SECURITY OBLIGATIONS. If public securities under this subchapter are outstanding, the state may not:

(1) take action to limit or restrict the rights of the

association to fulfill its responsibility to pay public security obligations; or

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

Sec. 2210.617. ENFORCEMENT BY MANDAMUS. A writ of mandamus and any other legal and equitable remedies are available to a party at interest to require the association or another party to fulfill an agreement and to perform functions and duties under:

(1) this subchapter;

(2) the Texas Constitution; or

(3) a relevant public security resolution.

Sec. 2210.618. EXEMPTION FROM TAXATION. A public security issued under this subchapter, any transaction relating to the public security, and profits made from the sale of the public security are exempt from taxation by this state or by a municipality or other political subdivision of this state.

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

Sec. 2210.620. AUTHORIZED INVESTMENTS. Public securities issued under this subchapter are authorized investments under:

(1) Subchapter B, Chapter 424;

(2) Subchapter C, Chapter 425; and

(3) Sections 425.203-425.213.

SUBCHAPTER N. LEGISLATIVE OVERSIGHT BOARD

Sec. 2210.651. DEFINITION. In this subchapter, "board" means the windstorm insurance legislative oversight board.

Sec. 2210.652. COMPOSITION OF BOARD. The windstorm insurance legislative oversight board is composed of eight members as follows:

(1) four members of the senate appointed by the lieutenant governor, including the chairperson of the Senate Business and Commerce Committee, who shall serve as co-chairperson of the board; and

(2) four members of the house of representatives appointed by the speaker of the house of representatives.

Sec. 2210.653. POWERS AND DUTIES OF BOARD. (a) The board shall:

(1) receive information about rules proposed by the department relating to windstorm insurance and may submit comments to the commissioner on the proposed rules;

(2) monitor windstorm insurance in this state, including:

(A) the adequacy of rates;

(B) the operation of the association; and

(C) the availability of coverage; and

(3) review recommendations for legislation proposed by the department or the association.

(b) The board may request reports and other information from the department and the association as necessary to implement this

subchapter.

Sec. 2210.654. REPORT. (a) Not later than November 15 of each even-numbered year, the board shall report on the board's activities under Section 2210.653 to:

(1) the governor;

(2) the lieutenant governor; and

(3) the speaker of the house of representatives.

(b) The report must include:

(1) an analysis of any problems identified; and

(2) recommendations for any legislative action necessary to address those problems and to foster stability, availability, and competition within the windstorm insurance industry.

SECTION 42. Section 941.003, Insurance Code, is amended by adding Subsection (e) to read as follows:

(e) A Lloyd's plan is subject to Chapter 2210, as provided by that chapter.

SECTION 43. Section 942.003, Insurance Code, is amended by adding Subsection (f) to read as follows:

(f) An exchange is subject to Chapter 2210, as provided by that chapter.

SECTION 44. The following laws are repealed:

(1) Subdivisions (5) and (12), Section 2210.003, Insurance Code;

(2) Sections 2210.058 and 2210.059, Insurance Code;

(3) Sections 2210.205 and 2210.206, Insurance Code;

(4) Sections 2210.356, 2210.360, and 2210.363,

Insurance Code; and

(6) Subchapter G, Chapter 2210, Insurance Code.

SECTION 45. (a) The board of directors of the Texas Windstorm Insurance Association established under Section 2210.102, Insurance Code, as that section existed before amendment by this Act, is abolished effective December 31, 2009.

(b) The commissioner of insurance shall appoint the members of the board of directors of the Texas Windstorm Insurance Association under Section 2210.102, Insurance Code, as amended by this Act, not later than December 31, 2009.

(c) The term of a person who is serving as a member of the board of directors of the Texas Windstorm Insurance Association immediately before the abolition of that board under Subsection (a) of this section expires on December 31, 2009. Such a person is eligible for appointment by the commissioner of insurance to the new board of directors of the Texas Windstorm Insurance Association under Section 2210.102, Insurance Code, as amended by this Act.

SECTION 46. (a) The commissioner of insurance shall adopt rules as required by Chapter 2210, Insurance Code, as amended by this Act, as soon as possible after the effective date of this Act, but not later than the 30th day after the effective date of this Act.

(b) The Texas Windstorm Insurance Association, through the board of directors of that association, shall propose to the commissioner of insurance amendments to the association's plan of operation as required by Chapter 2210, Insurance Code, as amended by this Act, not later than March 1, 2010.

SECTION 47. Sections 2210.202 and 2210.203, Insurance Code, as amended by this Act, apply to an application for insurance coverage submitted to the Texas Windstorm Insurance Association on or after the effective date of this Act.

SECTION 48. Section 2210.251, Insurance Code, as amended by this Act, applies to an inspection conducted on or after September 1, 2009. Except as otherwise specifically provided by that section, a structure that has been inspected and is the subject of a certificate of compliance issued by the Texas Department of Insurance under Subsection (g), Section 2210.251, Insurance Code, as that section existed immediately before September 1, 2009, is not required to obtain a new inspection certificate to remain eligible for insurance coverage through the Texas Windstorm Insurance Association unless the structure is altered, remodeled, enlarged, or repaired on or after September 1, 2009.

SECTION 49. The changes in law made by this Act in amending Section 2210.251, Insurance Code, take effect September 1, 2009.

SECTION 50. Not later than January 1, 2010, the relevant state agencies shall adopt the contracts required by Section 418.126, Government Code, as added by this Act.

SECTION 51. (a) Except as provided by Subsection (b) of this section or otherwise provided by this Act, this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

(b) Sections 1 through 4 and 50 of this Act take effect September 1, 2009.

President of the Senate

Speaker of the House

I certify that H.B. No. 4409 was passed by the House on May 6, 2009, by the following vote: Yeas 147, Nays 0, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 4409 on May 29, 2009, and requested the appointment of a conference committee to consider the differences between the two houses; that the House adopted the conference committee report on H.B. No. 4409 on May 31, 2009, by the following vote: Yeas 147, Nays 0, 1 present, not voting; and that the House adopted H.C.R. No. 287 authorizing certain corrections in H.B. No. 4409 on June 1, 2009, by the following vote: Yeas 147, Nays 0, 1 present, not voting.

Chief Clerk of the House

H.B. No. 4409

I certify that H.B. No. 4409 was passed by the Senate, with amendments, on May 27, 2009, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; that the Senate adopted the conference committee report on H.B. No. 4409 on June 1, 2009, by the following vote: Yeas 31, Nays 0; and that the Senate adopted H.C.R. No. 287 authorizing certain corrections in H.B. No. 4409 on June 1, 2009, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: _____

Date

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Governor