

## BILL ANALYSIS

Senate Research Center  
82S10691 KCR-D

S.B. 3  
By: Carona  
Business & Commerce  
6/13/2011  
As Filed

### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

As proposed, S.B. 3 amends current law relating to the operation and name of the Texas Windstorm Insurance Association and to the resolution of certain disputes concerning claims made to that association, and provides penalties.

### RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 21 (Section 2210.203, Insurance Code), SECTION 25 (Section 2210.2551, Insurance Code), SECTION 28 (Section 2210.260, Insurance Code), SECTION 30 (Section 2210.363, Insurance Code), SECTION 36 (Section 2210.554, Insurance Code), and SECTION 37 (Sections 2210.575, 2210.576, and 2210.577, Insurance Code) of this bill.

Rulemaking authority is expressly granted to the Texas Supreme Court in SECTION 37 (Section 2210.578, Insurance Code) of this bill.

Rulemaking authority is expressly granted to a legislative interim study committee formed to conduct a study of alternative ways to provide insurance to the seacoast territory of this state through a quasi-governmental entity in SECTION 53 of this bill.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 83.002, Insurance Code, by adding Subsection (c) to provide that this chapter also applies to a person appointed as a qualified inspector under Section 2210.254 (Qualified Inspectors) or 2210.255 (Appointment of Licensed Engineer as Inspector), and 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. Amends Section 541.152, Insurance Code, by amending Subsection (b) and adding Subsection (c), as follows:

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

(c) Provides that Subsection (b) does not apply to an action under this subchapter brought against the Texas Windstorm Insurance Association (TWIA) or an agent or representative of that association.

SECTION 3. Amends the heading to Chapter 2210, Insurance Code, to read as follows:

#### CHAPTER 2210. TEXAS COASTAL INSURANCE PLAN

SECTION 4. Amends Section 2210.002(a), Insurance Code, as follows:

(a) Authorizes this chapter to be cited as the Texas Coastal Insurance Plan Act, rather than the Texas Windstorm Insurance Association Act. Provides that a reference to the Texas Windstorm Insurance Association Act means this chapter.

SECTION 5. Amends Section 2210.003(1), Insurance Code, to redefine "association."

SECTION 6. Amends Section 2210.003, Insurance Code, by adding Subdivision (3-b) to define "catastrophe year."

SECTION 7. Amends Subchapter A, Chapter 2210, Insurance Code, by adding Sections 2210.0081, 2210.010, 2210.012, and 2210.013, as follows:

Sec. 2210.0081. CERTAIN ACTIONS BROUGHT AGAINST ASSOCIATION BY COMMISSIONER. Provides that in an action brought by the commissioner of insurance (commissioner) against the Texas Coastal Insurance Plan Association (association) under Chapter 441 (Supervision and Conservatorship):

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

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

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

Sec. 2210.010. APPLICABILITY OF CERTAIN OTHER LAW. (a) Prohibits a person from bringing a private action against the association, including a claim against an agent or representative of the association, under Chapter 541 (Unfair Methods of Competition and Unfair or Deceptive Acts or Practices) or 542 (Processing and Settlement of Claims). Authorizes a class action under Subchapter F (Class Actions by Attorney General or Private Individual), Chapter 541, or under Rule 42 (Class Actions) of the Texas Rules of Civil Procedure, notwithstanding any other provision of this code or this chapter, to only be brought against the association by the attorney general.

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

Sec. 2210.012. STANDARDS OF CONDUCT: BOARD OF DIRECTORS AND EMPLOYEES; REPORT OF CERTAIN FRAUDULENT CONDUCT. (a) Prohibits a member of the board of directors or an employee of the association from:

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

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

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

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

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

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

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

(d) Requires a board member, employee of the association, or member of the windstorm insurance legislative oversight board established under Subchapter N (Legislative Oversight Board) who reasonably suspects that a fraudulent insurance act has been or is about to be committed by any board member, employee of the association, or member of the windstorm insurance legislative oversight board established under Subchapter N, not later than the 30th day after discovering the conduct, to report the conduct and identity of the person engaging in the conduct to the Travis County district attorney or the Texas Department of Insurance (TDI).

Sec. 2210.013. CERTAIN EMPLOYMENT AND CONTRACTS PROHIBITED. Prohibits a member of the board of directors or an employee of the association from appointing or employing, or contracting with, the following individuals for the provision of goods or services in connection with the operation or business of the association, if the individual to be appointed or employed, or with whom a contract is to be entered into, is to be directly or indirectly compensated from funds of the association:

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

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

SECTION 8. Amends Section 2210.053, Insurance Code, by adding Subsection (c) to prohibit the association from being considered a debtor authorized to file a petition or seek relief in bankruptcy under Title 11, United States Code.

SECTION 9. Amends Subchapter B, Chapter 2210, Insurance Code, by adding Section 2210.058, as follows:

Sec. 2210.058. CLAIMS PRACTICES AUDIT. (a) Requires TDI, if the commissioner determines that 500 or more claims have been filed under association policies the bases of which are damage to insured property caused by the same storm, to conduct a random audit of the claim files of those claims to determine whether the association is adequately

and properly documenting claims decisions in each claim file, and ensure that each claim is being handled appropriately, including being handled in accordance with the terms of the policy under which the claim is filed.

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

(c) Requires the commissioner, if, following an audit conducted under this section, the commissioner determines that the association or an agent or representative of the association is not adequately and properly documenting claims decisions or that claims described by Subsection (a) are not otherwise being handled appropriately, to notify the board of directors of that determination, and identify the manner in which the association or an agent or representative of the association should correct any deficiencies identified by the commissioner.

SECTION 10. Amends Section 2210.071(a), Insurance Code, to require that the excess losses and operating expenses, if, in a catastrophe year, an occurrence or series of occurrences in a catastrophe area results in insured losses and operating expenses of the association in excess of premium and other revenue of the association, be paid as provided by this subchapter.

SECTION 11. Amends Section 2210.072, Insurance Code, by amending Subsections (a), (b), and (c) and adding Subsections (b-1), (e), and (f), as follows:

(a) Requires that losses not paid under Section 2210.071(b), rather than Section 2210.071, be paid as provided by this section from the proceeds from Class 1 public securities authorized to be issued in accordance with Subchapter M before, on, or after the date of any occurrence or series of occurrences that results in insured losses. Provides that public securities issued under this section are required to be repaid within a period not to exceed 14 years, rather than 10 years, and are authorized to be repaid sooner if the board of directors elects to do so and the commissioner approves.

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

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

(2) are prohibited from, in the aggregate, exceeding \$1 billion at any one time, regardless of the calendar year or years in which the outstanding public securities were issued.

(b-1) Redesignates existing Subsection (b) as Subsection (b-1). Provides that public securities described by Subsection (a):

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

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

(c) Requires that the public securities, if public securities are issued as described by this section, rather than if the losses are paid with public securities, be repaid in the manner prescribed by Subchapter M from association premium revenue.

(e) Requires that the proceeds of any outstanding public securities described by Subsection (a) that are issued before an occurrence or series of occurrences be exhausted before the proceeds of any securities issued under that subsection after an occurrence or series of occurrences may be used. Authorizes that public securities described by Subsection (a) to be issued after an occurrence or series of occurrences be issued before the proceeds of any outstanding public securities issued under that subsection before an occurrence or series of occurrences have been exhausted.

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

SECTION 12. Amends Section 2210.073, Insurance Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Provides that public securities described by Subsection (a):

(1) are authorized to be issued as necessary in a principal amount not to exceed \$1 billion per catastrophe year; and

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

(c) Creates this subsection from existing text and makes no further changes.

SECTION 13. Amends Section 2210.074, Insurance Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Provides that public securities described by Subsection (a):

(1) are authorized to be issued as necessary in a principal amount not to exceed \$500 million per catastrophe year; and

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

(c) Creates this subsection from existing text. Makes no further changes to this subsection.

SECTION 14. Amends Section 2210.102, Insurance Code, by adding Subsection (i), as follows:

(i) Authorizes the commissioner, notwithstanding Subsection (f), for a vacancy occurring in a position under Subsection (b), to appoint, for the lesser of 120 days or until the vacancy is filled, a person who has demonstrated knowledge in insurance principles. Provides that this subsection does not apply to a vacancy due to the expiration of a term occurring under Section 2210.103 (Terms). Provides that this subsection expires

December 31, 2012, and any appointment in effect on that date is continued until the expiration of the term of the appointment.

SECTION 15. Amends Section 2210.104, Insurance Code, as follows:

Sec. 2210.104. New heading: OFFICERS AND MANAGERIAL EMPLOYEES; SALARIES AND BONUSES. (a) Creates this subsection from existing text. Makes no further changes to this subsection.

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

SECTION 16. Amends Section 2210.105, Insurance Code, by amending Subsections (a) and (b) and adding Subsections (b-1), (e), and (f), as follows:

(a) Requires the association, except for an emergency meeting, to:

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

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

(b) Provides that except for a closed meeting authorized by Subchapter D (Exceptions to Requirement that Meetings Be Open), Chapter 551, Government Code, a meeting of the board of directors or of the members of the association is open to the public, rather than is open to the commissioner or the commissioner's designated representative and the public.

(b-1) Provides that a meeting of the board of directors or the members of the association, including a closed meeting authorized by Subchapter D, Chapter 551, Government Code, is open to the commissioner or the commissioner's designated representative. Provides that the commissioner or the commissioner's designated representative is required to maintain the confidentiality of, and is prohibited from disclosing the content of, any confidential information discussed in a closed meeting authorized by Subchapter D, Chapter 551, Government Code.

(e) Requires the association to broadcast live on the association's Internet website all meetings of the board of directors, other than closed meetings, and maintain on the association's Internet website an archive of meetings of the board of directors.

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

SECTION 17. Amends Section 2210.107, Insurance Code, as follows:

Sec. 2210.107. New heading: PRIMARY BOARD OBJECTIVES; REPORT. (a) Creates this subsection from existing text. Provides that the primary objectives of the board of directors are to ensure that the board and the association:

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

(2) comply with sound insurance principles;

(3) meet all standards imposed under this chapter;

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

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

Makes nonsubstantive changes.

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

SECTION 18. Amends Subchapter C, Chapter 2210, Insurance Code, by adding Section 2210.108, as follows:

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

(b) Provides that a settlement agreement to which the association is a party is public information and is not exempted from required disclosure under Chapter 552, Government Code, and if applicable, is required to contain the name of any attorney or adjuster involved with the claim that is the basis of the settlement.

(c) Prohibits Subsection (b) from being construed to limit or otherwise restrict the categories of information that are public information under Section 552.022 (Categories of Public Information; Examples), Government Code.

(d) Requires the association, before disclosing a settlement agreement to which the association is a party, to redact from the settlement agreement any information that is not otherwise required to be disclosed under this section and that is confidential under Chapter 552, Government Code, or any other law.

SECTION 19. Amends Section 2210.152, Insurance Code, by adding Subsection (c) to require that the plan of operation require the association, including an agent or representative of the association, to use the claim settlement guidelines published by the commissioner under Section 2210.577(f) in evaluating the extent to which a loss to insured property is incurred as a result of wind, waves, tidal surges, rising waters not caused by waves or surges, or wind-driven rain associated with a storm.

SECTION 20. Amends Section 2210.202, Insurance Code, as follows:

Sec. 2210.202. APPLICATION FOR COVERAGE. (a) Provides that notwithstanding Section 2210.203(c) (relating to annual renewal for an insurable property), once every three calendar years, evidence of one declination otherwise described by this subsection is also required with an application for renewal of an association policy.

(b) Requires a property and casualty agent to submit an application for initial insurance coverage on behalf of the applicant on forms prescribed by the association. Requires the association to develop a simplified renewal process that allows for the acceptance of an application for renewal coverage, and payment of premiums, from a property and casualty agent or a person insured under this chapter. Requires that an application for initial or renewal coverage contain:

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

(2) a statement that the agent acting on behalf of the applicant possesses proof of the declination described by Subsection (a) and proof of flood insurance coverage or unavailability of that coverage as described by Section 2210.203(a-1). Makes a nonsubstantive change.

SECTION 21. Amends Section 2210.203, Insurance Code, by amending Subsection (a) and adding Subsection (d), as follows:

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

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

SECTION 22. Amends Sections 2210.204(d) and (e), Insurance Code, as follows:

(d) Requires the property and casualty agent who received a commission as the result of the issuance of an association policy providing the canceled coverage, rather than requires the property and casualty agent who submitted the application, to refund the agent's commission on any unearned premium in the same manner.

(e) Requires that the minimum retained premium in the plan of operation, for cancellation of insurance coverage under this section, be for a period of not less than 90 days, rather than 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 the purchase of similar coverage in the voluntary market, sale of the property to an unrelated party, death of the policyholder, or total loss of the property.

SECTION 23. Amends Subchapter E, Chapter 2210, Insurance Code, by adding Sections 2210.205 and 2210.210, as follows:

**Sec. 2210.205. REQUIRED POLICY PROVISIONS: DEADLINE FOR FILING CLAIM; NOTICE CONCERNING RESOLUTION OF CERTAIN DISPUTES.** (a) Requires that a windstorm and hail insurance policy issued by the association:

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

(2) contain, in boldface type, a conspicuous notice concerning the resolution of disputes under the policy, including the processes and deadlines for appraisal under Section 2210.575 and mediation under Section 2210.576, and the necessity of complying with the requirements of Subchapter L-1 to seek administrative or judicial relief.

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

**Sec. 2210.210. COVERAGE OF CERTAIN STRUCTURES PROHIBITED.** Prohibits the association from issuing coverage for a wind turbine, regardless of whether the turbine is otherwise insurable property under this chapter.

SECTION 24. Amends Section 2210.254, Insurance Code, by adding Subsection (e) to authorize TDI to establish an annual renewal period for persons appointed as qualified inspectors.

SECTION 25. Amends Subchapter F, Chapter 2210, Insurance Code, by adding Section 2210.2551, as follows:

Sec. 2210.2551. EXCLUSIVE ENFORCEMENT AUTHORITY; RULES. (a) Provides that TDI has exclusive authority over all matters relating to the appointment and oversight of qualified inspectors for purposes of this chapter.

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

(c) Provides that Subsection (b) applies only to a determination concerning the appointment of a qualified inspector under this chapter. Provides that the exclusive jurisdiction of TDI under this section does not apply to the practice of engineering as defined by Section 1001.003 (Practice of Engineering), Occupations Code, or to a license issued, qualification required, determination made, order issued, judgment rendered, or other action of a board operating under Chapter 1001 (Engineers), Occupations Code. Provides that in the event of conflict, the authority of that board prevails with regard to the practice of engineering.

SECTION 26. Amends the heading to Section 2210.256, Insurance Code, to read as follows:

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

SECTION 27. Amends Section 2210.256, Insurance Code, by adding Subsection (a-1) to authorize the commissioner ex parte, in addition to any other action authorized under this section, to enter an emergency cease and desist order under Chapter 83 (Emergency Cease and Desist Orders) against a qualified inspector, or a person acting as a qualified inspector, if the commissioner believes that the qualified inspector has through submitting or failing to submit to TDI sealed plans, designs, calculations, or other substantiating information, failed to demonstrate that a structure or a portion of a structure subject to inspection meets the requirements of this chapter and department rules, or refused to comply with requirements imposed under this chapter or department rules, or the person acting as a qualified inspector is acting without appointment as a qualified inspector under Section 2210.254 or 2210.255; and the commissioner determines that the conduct described by Subdivision (1) is fraudulent or hazardous or creates an immediate danger to the public.

SECTION 28. Amends Subchapter F, Chapter 2210, Insurance Code, by adding Section 2210.260, as follows:

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

(b) Authorizes TDI to issue an alternative certification for a residential structure if the person who has an insurable interest in the structure demonstrates that at least one qualifying structural building component of the structure has been inspected by a TDI inspector or by a qualified inspector, and determined to

be in compliance with applicable building code standards, as set forth in the plan of operation.

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

(d) Provides that a person who has an insurable interest in a residential structure that is insured by the association as of January 1, 2012, but for which the person has not obtained a certificate of compliance under Section 2210.251(g), except as provided in Section 2210.251(f) (relating to certain residential structures continuing coverage subject to inspection requirements), to obtain an alternative certification under this section before the association, on or after January 1, 2013, may renew coverage for the structure.

(e) Requires that each residential structure for which a person obtains an alternative certification under this section comply with:

(1) the requirements of this chapter, including Section 2210.258 (Mandatory Compliance with Building Codes; Eligibility); and

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

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

SECTION 29. Amends the heading to Subchapter H, Chapter 2210, Insurance Code, to read as follows:

#### SUBCHAPTER H. RATES; DISCOUNTS

SECTION 30. Amends Subchapter H, Chapter 2210, Insurance Code, by adding Section 2210.363, as follows:

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

(b) Requires the commissioner to adopt rules necessary to implement and enforce this section.

SECTION 31. Amends Section 2210.453, Insurance Code, by adding Subsections (c), (d), and (e), as follows:

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

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

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

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

(d) Prohibits a person who prepares a report required by Subsection (c) from contracting to provide any other service to the association, except for the preparation of similar reports, before the third anniversary of the date the last report prepared by the person under that subsection is submitted.

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

SECTION 32. Amends Subchapter J, Chapter 2210, Insurance Code, by adding Section 2210.455, as follows:

Sec. 2210.455. CATASTROPHE PLAN. (a) Requires the board, not later than June 1 of each year, to submit to the commissioner, the legislative oversight board established under Subchapter N, the governor, the lieutenant governor, and the speaker of the house of representatives a catastrophe plan covering the period beginning on the date the plan is submitted and ending on the following May 31.

(b) Requires that the catastrophe plan:

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

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

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

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

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

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

(d) Provides that the catastrophe plan is for informational purposes and does not bind the association to a particular course of action.

SECTION 33. Amends Sections 2210.551(a) and (b), Insurance Code, as follows:

(a) Provides that this section:

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

(2) applies only to:

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

(B) an affected insurer.

Makes nonsubstantive changes.

(b) Makes a conforming change.

SECTION 34. Amends the heading to Section 2210.552, Insurance Code, to read as follows:

Sec. 2210.552. DISPUTES OTHER THAN CLAIM DISPUTES; VENUE.

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

(a) Authorizes a person insured under this chapter who is aggrieved by an act, ruling, or decision of the association, except as provided by Subsection (e) and Sections 2210.007 (Immunity from Liability in General) and 2210.106 (Immunity of Director or Officer from Liability), and subject to Subchapter L-1, to:

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

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

Deletes existing text authorizing a person insured under this chapter who is aggrieved by an act, ruling, or decision of the association relating to the payment of, the amount of, or the denial of a claim, except as provided by Sections 2210.007 and 2210.106, to bring an action against the association, including an action under Chapter 541, or appeal the act, ruling, or decision under Section 2210.551.

(e) Provides that, except as provided by Subsection (f), Subchapter L-1 provides the exclusive remedies for a claimant to resolve a dispute with the association concerning the payment of, the amount of, or the denial of a claim. Prohibits a claimant from bringing an action against the association concerning the payment of, the amount of, or the denial of a claim before exhausting all remedies under Subchapter L-1. Requires the court, if a claimant brings an action against the association concerning the payment of, the amount of, or the denial of a claim before exhausting all remedies under that subchapter, to abate the action until all remedies under that subchapter have been exhausted. Provides that for purposes of this subsection, "claim" and "claimant" have the meanings assigned by Section 2210.571.

(f) Authorizes a claimant, as defined by Section 2210.571, to bring an action against the association in a district court in the county in which the loss occurred if the claimant disputes an act, ruling, or decision of the association concerning a causation dispute or a coverage dispute, as defined by Section 2210.571. Provides that an action brought under this subsection is subject to Sections 2210.576 and 2210.5761.

(g) Provides that a person who brings an action against the association under this section:

(1) is authorized to recover only the amount of the covered loss for an action brought under Subsection (f), or the amount of actual damages for any other action, plus court costs and reasonable and necessary attorney's fees; and

(2) is prohibited from recovering consequential, punitive, or exemplary damages, including damages under Section 541.152(b) (relating to damages that may be awarded in certain circumstances) of this code or Section 17.50 (Relief for Consumers), Business & Commerce Code.

(h) Provides that for purposes of Subsection (g)(2), "consequential damages" does not include a loss covered under an association policy or an endorsement to an association policy.

SECTION 36. Amends Subchapter L, Chapter 2210, Insurance Code, by adding Sections 2210.553 and 2210.554, as follows:

Sec. 2210.553. LIMITATIONS PERIOD. (a) Requires a person insured under this chapter who brings an action against the association in the manner described by Section 2210.552(a)(1) (relating to certain actions against TWIA) to bring the action not later than the second anniversary of the date of the act, ruling, or decision of the association by which the insured is aggrieved, notwithstanding any other law, including Section 541.162 (Limitations Period).

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

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

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

SECTION 37. Amends Chapter 2210, Insurance Code, by adding Subchapter L-1, as follows:

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

Sec. 2210.571. DEFINITIONS. Defines, in this subchapter, "association policy," "causation dispute," "claim," "claimant," "coverage dispute," and "damage dispute."

Sec. 2210.572. EXCLUSIVE REMEDIES AND LIMITATION ON AWARD. (a) Provides that, subject to Sections 2210.552(e) and (f), and notwithstanding any other provision of this chapter or other law, this subchapter provides the exclusive remedies for a claim against the association, including an agent or representative of the association.

(b) Prohibits the association or an agent or representative of the association, except as provided by Section 2210.552(f), from being held liable for any amount on a claim other than:

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

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

(c) Prohibits the association or an agent or representative of the association from being held liable for damages under Chapter 17, Business & Commerce Code, or under any provision of any law providing for trebling of damages or a penalty.

Sec. 2210.573. **FILING OF CLAIM; CLAIM PROCESSING.** (a) Requires an insured to file a claim under an association policy not later than the first anniversary of the date on which the damage to property that is the basis of the claim occurs, subject to Section 2210.205(b).

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

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

(2) provide the claimant with:

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

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

(c) Provides that if the association does not notify the claimant within the period required by Subsection (b), the claim is presumed to be covered by the association policy.

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

(e) Requires the association, if a claimant fails to submit information necessary for the association to determine whether to pay a claim or any portion of a claim or to deny payment of a claim or any portion of a claim, to, not later than the 15th day after the date the association receives notice of the claim, request in writing any necessary information from the claimant. Authorizes the association, for good cause, to make a request for additional information under this subsection not later than the 30th day after the date the association receives notice of a claim. Provides that if the association makes a written request for information, the applicable period described by Subsection (b) or (d) is tolled from the date the association requests the information until the date the association receives from the claimant information responsive to the request.

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

Sec. 2210.574. **REQUEST FOR REVIEW OF ASSOCIATION DETERMINATION.**

(a) Authorizes a claimant aggrieved by a determination of the association under Section

2210.573 to request in writing a review of the determination not later than the 30th day after the date the claimant receives the association's determination. Authorizes a claimant to submit written comments, documents, records, and other information to the association with or following the request for review.

(b) Requires the association to, on request and free of charge, provide a claimant requesting review of an association determination under Subsection (a) reasonable access to all information relevant to the determination of the association that is being reviewed. Authorizes the claimant to copy the information at the claimant's own cost or to request the association to provide a copy of all or part of the information to the claimant. Authorizes the association to charge a claimant the actual cost incurred by the association in providing a copy of information under this section, excluding any amount for labor involved in making any information or copy of information available to a claimant.

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

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

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

(b) Requires a claimant to make a written request for appraisal not later than the 30th day after the date the claimant receives actual or constructive notice of the outcome of the association's review of a determination under Section 2210.574 that is the basis of the damage dispute. Authorizes the commissioner, if a claimant, on a showing of good cause and not later than the 60th day after the expiration of the 30-day period described by this subsection, requests in writing that the 30-day period to request appraisal be extended, to grant an additional 30-day period in which the claimant is authorized to request appraisal.

(c) Requires the claimant and the association, if a claimant requests appraisal under Subsection (b), to resolve the damage dispute through appraisal, in accordance with the terms of the association policy. Provides that the results of the appraisal:

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

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

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

of the association concerning the actual cash value, amount of loss, or cost of repairing or replacing property insured under an association policy.

(e) Provides that if a claimant requests appraisal under this section, the claimant is responsible for paying any costs incurred or charged by an appraiser retained by and on behalf of the claimant, the association is responsible for paying any costs incurred or charged by an appraiser retained by and on behalf of the association, and the claimant and the association are responsible in equal shares for any costs incurred or charged by any other appraiser chosen by the claimant's and the association's appraisers to participate in the resolution of the dispute.

(f) Requires the commissioner by rule to establish policies and procedures for an appraisal requested and conducted under this section.

Sec. 2210.576. **MEDIATION.** (a) Authorizes the association, if a claimant disputes the association's determination concerning a causation dispute or coverage dispute and provides notice of intent to bring an action that meets the requirements of Section 541.154 (Prior Notice of Action), to require the claimant, as a prerequisite to filing the action against the association, to submit the dispute to alternate dispute resolution by mediation, as provided by Chapter 154 (Alternative Dispute Resolution Procedures), Civil Practice and Remedies Code. Requires the court to abate the action until the mediation is completed if a claimant brings an action against the association before mediation under this section is completed. Authorizes a claimant described by this subsection that also disputes the association's determination concerning a damage dispute related to the causation dispute or coverage dispute that is the subject of mediation to include in the mediation the damage dispute.

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

(c) Requires that mediation under this section be completed not later than the 60th day after the date a request for mediation is made under Subsection (b). Authorizes the 60-day period described by this subsection to be extended by the commissioner by rule or by the association and a claimant by mutual consent.

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

(e) Requires the claimant and the association to select a mediator to conduct mediation under this section. Requires the commissioner to appoint a mediator if the claimant and the association cannot agree on a mediator. Requires the commissioner to adopt rules concerning the division of mediation costs between the claimant and the association.

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

Sec. 2210.5761. **ACTION BY CLAIMANT.** (a) Authorizes a claimant aggrieved by the outcome of mediation under Section 2210.576 to bring an action against the association, subject to providing notice of intent to bring an action that meets the requirements of Section 541.154.

(b) Requires that an action brought against the association under this section be presided over by a judge appointed by the judicial panel on multidistrict litigation designated under Section 74.161 (Judicial Panel on Multidistrict Litigation),

Government Code, if six or more claimants file actions against the association under this section as a result of a weather-related event. Requires a judge appointed under this section to be an active judge in Travis County, for suits filed in Travis County, or an active judge in the county in which suit is filed, for a suit filed in a county other than Travis County. Provides that for purposes of this subsection, "active judge" has the meaning assigned by Section 74.041 (Definitions), Government Code.

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

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

(b) Requires members of the panel to have professional expertise in, and be knowledgeable concerning, the geography and meteorology of the Texas seacoast territory, as well as the scientific basis for determining the extent to which damage to property is caused by wind, waves, tidal surges, rising waters not caused by waves or surges, and wind-driven rain associated with a storm.

(c) Requires the panel to meet at the request of the commissioner or the call of the presiding officer of the panel.

(c-1) Requires the commissioner to adopt rules regarding notice of panel meetings and the transparency of deliberations of the technical panel.

(d) Requires the panel to investigate, collect, and evaluate the information necessary to provide recommendations under Subsection (e).

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

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

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

Sec. 2210.578. JUDICIAL REVIEW. (a) Provides that a claimant who has exhausted all administrative remedies under this subchapter and who is aggrieved by an appraisal under Section 2210.575 is entitled to judicial review. Prohibits a claimant from seeking judicial review before exhausting all administrative remedies under this subchapter.

(b) Authorizes a claimant to seek judicial review of an appraisal under Section 2210.575 in the manner provided for the appeal of contested cases under Subchapter G (Contested Cases: Judicial Review), Chapter 2001 (Administrative Procedure), Government Code. Provides that the standard for judicial review under this section is the substantial evidence rule.

(c) Authorizes the court, in a proceeding for judicial review under this section, to award only the amount described by Section 2210.572(b), plus court costs and reasonable and necessary attorney's fees.

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

(1) the amount of the loss; and

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

(e) Provides that an appeal to a district court under Subsection (d) shall be trial de novo. Provides that the only questions that are authorized to be presented and determined at the trial de novo are:

(1) the amount of the loss; and

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

(f) Provides that the only evidence that is authorized to be admitted in a trial de novo under Subsection (d) is evidence that was admitted or presented in the appraisal process under Section 2210.575. Provides that the Texas Rules of Evidence govern whether evidence presented during the appraisal process under Section 2210.575 is admissible in a trial de novo under Subsection (d).

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

(h) Requires that the appeal seeking a trial de novo under Subsection (d) be presided over by a judge appointed by the judicial panel on multidistrict litigation designated under Section 74.161, Government Code. Requires a judge appointed under this section to be an active judge, as defined by Section 74.041, Government Code, who is a resident of the county in which the loss occurred or of a first tier coastal county or a second tier coastal county adjacent to the county in which the loss occurred.

(i) Requires the Texas Supreme Court to adopt rules governing the proceedings of a trial de novo under Subsection (d).

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

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

SECTION 38. Amends Section 2210.602(2), Insurance Code, to redefine "class 1 public securities."

SECTION 39. Amends Section 2210.604, Insurance Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

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

(a-1) Creates this subsection from existing text. Makes no further changes.

SECTION 40. Amends Section 2210.605(c), Insurance Code, to provide that public securities issued under Section 2210.6136, rather than public securities issued under this chapter, are eligible obligations under Section 404.027 (Liquidity), Government Code.

SECTION 41. Amends Section 2210.608(a), Insurance Code, as follows:

(a) Requires that public security proceeds, including investment income, be held in trust for the exclusive use and benefit of the association. Authorizes the association to use the proceeds to:

(1)-(3) Makes no changes to these subdivisions;

(4)-(5) Makes nonsubstantive changes;

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

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

SECTION 42. Amends Sections 2210.609(a) and (b), Insurance Code, as follows:

(a) Requires the association, if the association determines that it is unable to pay the public security obligations and public security administrative expenses, if any, with available funds, to pay those obligations and expenses in accordance with Sections 2210.612 (Payment of Class 1 Public Securities), 2210.613 (Payment of Class 2 Public Securities), 2210.6135 (Payment of Class 3 Public Securities), and 2210.6136 as applicable.

(b) Makes a nonsubstantive change.

SECTION 43. Amends Section 2210.610(a), Insurance Code, to authorize revenues received from the premium surcharges under Section 2210.613 and member assessments under Sections 2210.613 and 2210.6135 to be applied only as provided by this subchapter.

SECTION 44. Amends Section 2210.611, Insurance Code, as follows:

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

(1) used to pay public security obligations payable in the subsequent calendar year, offsetting the amount of the premium surcharge and member assessments, as applicable, that would 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.

SECTION 45. Amends Section 2210.612, Insurance Code, as follows:

Sec. 2210.612. PAYMENT OF CLASS 1 PUBLIC SECURITIES. (a) Requires the association to pay Class 1 public securities issued under Section 2210.072 (Payment from Class 1 Public Securities; Financial Instruments) from its net premium and other revenue, rather than its premium and other revenue.

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

SECTION 46. Amends Sections 2210.613(b), (c), and (d), Insurance Code, as follows:

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

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

- (1) all policies written under the following lines of insurance fire and allied lines, farm and ranch owners, residential property insurance, private passenger automobile liability and physical damage insurance, and commercial automobile liability and physical damage insurance; and
- (2) the property insurance portion of a commercial multiple peril insurance.

Deletes existing text providing that 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) Provides that a premium surcharge under Subsection (b) is a separate charge, rather than is a separate nonrefundable charge, in addition to the premiums collected and is not subject to premium tax or commissions.

SECTION 47. Amends Section 2210.6135(a), Insurance Code, to require the association, for the payment of the losses, to assess the members of the association in the amounts necessary for the repayment of public securities issued in a principal amount not to exceed \$500 million per catastrophe year. Makes nonsubstantive changes.

SECTION 48. Amends Subchapter M, Chapter 2210, Insurance Code, by adding Section 2210.6136, as follows:

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

(1) the first source of payment being as described in Section 2210.612 to the extent public securities issued under this section are marketable, in a principal amount not to exceed \$1 billion;

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

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

(b) Prohibits the aggregate principal amount of public securities issued in the manner described by this section from exceeding \$2.5 billion in any consecutive 12-month period from the earlier of, as applicable:

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

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

SECTION 49. Amends Section 2210.614, Insurance Code, as follows:

Sec. 2210.614. **REFINANCING PUBLIC SECURITIES.** (a) Creates this subsection from existing text. Makes no further changes to this subsection.

(b) Prohibits public securities refinanced under this section, notwithstanding Section 1207.006 (Maturity), Government Code, from having a term that is greater than 14 years.

SECTION 50. Amends Section 2210.616, Insurance Code, as follows:

Sec. 2210.616. **STATE NOT TO IMPAIR PUBLIC SECURITY OBLIGATIONS.** (a) Creates this subsection from existing text. Provides that the state pledges for the benefit and protection of financing parties, the board, and the association that the state will not take or permit any action that would:

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

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

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

Deletes existing text prohibiting the state, if public securities under this subchapter are outstanding, from taking action to limit or restrict the rights of the association to fulfill its responsibility to pay public security obligations.

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

SECTION 51. Amends Subchapter M, Chapter 2210, Insurance Code, by adding Section 2210.6165, as follows:

Sec. 2210.6165. PROPERTY RIGHTS. Provides that if public securities issued under this subchapter are outstanding, the rights and interests in revenues from a premium surcharge or member assessment held by the association, a successor to the association, any member of the association, or any entity required to impose, collect, or receive a premium surcharge or a member assessment under this subchapter, to the extent those rights and interests are property rights, are extinguished once those revenues are first pledged for the repayment of the association's public security obligations as provided by Section 2210.609 (Repayment of Association's Public Security Obligations).

SECTION 52. Repealer: Section 2210.551(e) (relating to certain hearings to be held in Travis County), Insurance Code.

SECTION 53. (a) Requires a legislative interim study committee to conduct a study of alternative ways to provide insurance to the seacoast territory of this state through a quasi-governmental entity.

(b) Sets forth the composition of the committee.

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

(d) Requires the committee to:

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

(2) recommend the appropriate scope of authority and responsibility for the entity to provide insurance to the seacoast territory of this state, an organizational structure to exercise authority and responsibility over the provision of insurance to the seacoast territory of this state, a timetable for implementation, and specific amendments to state laws and rules that are necessary to implement the committee's recommendations under this subdivision; and

(3) estimate funding requirements to implement the recommendations.

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

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

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

SECTION 54. (a) Provides that the name of TWIA is changed to the Texas Coastal Insurance Plan Association.

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

SECTION 55. Provides that this Act applies only to a Texas windstorm and hail insurance policy, and a claim or dispute arising under a Texas windstorm and hail insurance policy, delivered, issued for delivery, or renewed by TWIA on or after the 30th day after the effective date of this Act. Provides that a Texas windstorm and hail insurance policy, and a claim or dispute arising under a Texas windstorm and hail insurance policy, delivered, issued for delivery, or renewed by TWIA before the 30th day after the effective date of this Act, are governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 56. Requires TWIA to amend TWIA's plan of operation to conform to the changes in law made by this Act not later than January 1, 2012.

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

SECTION 58. Effective date: upon passage or the 91st day after the last day of the legislative session.