

BILL ANALYSIS

Senate Research Center

S.B. 1605
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DIGEST AND PURPOSE

Currently, Texas law authorizes the commissioner of insurance, under certain conditions, to establish a residual market mechanism for residential property insurance known as Fair Access to Insurance Requirements (FAIR) Plan. Current law does not provide a funding mechanism for initial operation of the FAIR Plan. As proposed, S.B. 1605 requires the Texas Public Finance Authority to issue revenue bonds to fund the FAIR Plan association in an amount not to exceed \$75 million and establishes the structure for that program.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 (Article 21.49A-1, Section 10, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 21, Insurance Code, by adding Article 21.49A-1, as follows:

Article 21.49A-1. REVENUE BOND PROGRAM FOR FAIR PLAN ASSOCIATION.

Sec. 1. PURPOSE. Sets forth findings of the legislature.

Sec. 2. DEFINITIONS. Defines “association,” “bond resolution,” “board,” and “insurer.”

Sec. 3. BONDS AUTHORIZED; APPLICATION OF TEXAS PUBLIC FINANCE AUTHORITY ACT. (a) Requires the Texas Public Finance Authority, on behalf of the Fair Access to Insurance Requirements (FAIR) Plan association (association), to issue revenue bonds to fund the association and pay certain costs.

(b) Provides that to the extent not inconsistent with this article, Chapter 1232 (Texas Public Finance Authority), Government Code, applies to bonds issued under this article. Provides that in the event of a conflict, this article controls.

Sec. 4. APPLICABILITY OF OTHER STATUTES. Provides that certain laws apply to bonds issued under this article, to the extent consistent with this article.

Sec. 5. LIMITS. Authorizes the Texas Public Finance Authority (TPFA) to issue, on behalf of the association, bonds in a total amount not to exceed \$75 million.

Sec. 6. CONDITIONS. (a) Authorizes bonds to be issued at public or private sale.

(b) Requires bonds to mature not more than 10 years after the date issued.

(c) Requires bonds to be issued in the name of the association.

Sec. 7. ADDITIONAL COVENANTS. Authorizes the TPFA board of directors (board), in a bond resolution, to make additional covenants with respect to the bonds and the designated income and receipts of the association pledged to their payment and to provide

for the flow of funds and the establishment, maintenance, and investment of funds and accounts with respect to the bonds.

Sec. 8. SPECIAL ACCOUNTS. (a) Authorizes a bond resolution to establish special accounts, including an interest and sinking fund account, reserve account, and other accounts.

(b) Requires the association to administer the accounts in accordance with Article 21.49A (FAIR Plan (Fair Access to Insurance Requirements) Act) of this code.

Sec. 9. SECURITY. (a) Provides that bonds are payable only from the surcharge fee established in Section 10 of this article or other sources the association is authorized to levy, charge, and collect in connection with paying any portion of the bonds.

(b) Provides that bonds are obligations solely of the association. Provides that bonds do not create a pledging, giving, or lending of the faith, credit, or taxing authority of this state.

(c) Requires each bond to include a statement that the state is not obligated to pay any amount on the bond and that the faith, credit, and taxing authority of this state are not pledged, given, or lent to those payments.

(d) Requires each bond issued under this article to state on its face that the bond is payable solely from the revenues pledged for that purpose and that the bond does not and may not constitute a legal or moral obligation of the state.

Sec. 10. SURCHARGE FEE. (a) Provides that a surcharge fee is assessed against each insurer and the association.

(b) Requires the surcharge fee to be set by the commissioner of insurance (commissioner) in an amount sufficient to pay all debt service on the bonds. Requires the surcharge to be paid by each insurer and the association as required by the commissioner by rule.

(c) Requires the comptroller to collect the surcharge fee and requires the Texas Department of Insurance to reimburse the comptroller in the manner described by Article 4.19 of this code.

(d) Authorizes the commissioner, in consultation with the comptroller, to coordinate payment and collection of the surcharge fee with other payments made by insurers and collected by the comptroller.

(e) Provides that as a condition of engaging in the business of insurance in this state, an insurer agrees that if the company leaves the property insurance market in this state the insurer remains obligated to pay, until the bonds are retired, the insurer's share of the surcharge fee assessed under this section in an amount proportionate to that insurer's share of the property insurance market, including residential property insurance, in this state as of the last complete reporting period before the date on which the insurer ceases to engage in that insurance business in this state. Requires the proportion assessed against the insurer to be based on the insurer's gross premiums for property insurance, including residential property insurance, for the insurer's last reporting period. Provides that an insurer is not required to pay the proportionate amount in any year in which the surcharge fee assessed against insurers continuing to write property insurance in this state is sufficient to service the bond obligation.

Sec. 11. TAX EXEMPT. Provides that the bonds issued under this article, and any interest from the bonds, and all assets pledged to secure the payment of the bonds are free from taxation by the state or a political subdivision of this state.

Sec. 12. AUTHORIZED INVESTMENTS. Provides that the bonds issued under this article constitute authorized investments under Article 2.10 (Investment of Funds in Excess of Minimum Capital and Minimum Surplus) and Subpart A, Part I, Article 3.39 (Authorized Investments and Loans for "Domestic" Life Insurance Companies; Authorized Investments; Any of Its Funds and Accumulations), of this code.

Sec. 13. STATE PLEDGE. Provides that the state pledges to and agrees with the owners of any bonds issued in accordance with this article that the state will not limit or alter the rights vested in the association to fulfill the terms of any agreements made with the owners of the bonds or in any way impair the rights and remedies of those owners until the bonds, any premium or interest, and all costs and expenses in connection with any action or proceeding by or on behalf of those owners are fully met and discharged. Authorizes the association to include this pledge and agreement of the state in any agreement with the owners of the bonds.

Sec. 14. ENFORCEMENT BY MANDAMUS. Provides that a writ of mandamus and all other legal and equitable remedies are available to any party at interest to require the association and any other party to carry out agreements and to perform functions and duties under this article, the Texas Constitution, or a bond resolution.

SECTION 2. Effective date: upon passage or September 1, 2003.